

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant is 37 years old and works for a federal contractor. Since 2000, she accumulated numerous debts listed in the Statement of Reasons (SOR), some of which she has resolved or paid. She failed to list the outstanding financial obligations on her Public Trust Application. She mitigated the concerns raised by financial considerations and personal conduct. Eligibility for a public trust position is granted.

CASENO: 06-23273.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:)	
)	
-----)	
SSN: -----)	ADP Case No. 06-23273
)	
Applicant for Public Trust Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
SHARI DAM**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 37 years old and works for a federal contractor. Since 2000, she accumulated

numerous debts listed in the Statement of Reasons (SOR), some of which she has resolved or paid. She failed to list the outstanding financial obligations on her Public Trust Application. She mitigated the concerns raised by financial considerations and personal conduct. Eligibility for a public trust position is granted.

STATEMENT OF THE CASE

On March 28, 2005, Applicant submitted a Public Trust Position Application (SF-85) for an ADP I/II/III position. On March 7, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant under Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended and revised.¹ The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), and detailed reasons why DOHA recommends the case be referred to an administrative judge to determine whether eligibility for a position of trust should be granted.

In an answer dated March 30, 2007, Applicant responded to the SOR allegations and requested a hearing. On April 23, 2007, the case was assigned to me. On May 15, 2007, a Notice of Hearing was issued, setting the case for hearing on June 4, 2007. At the hearing, Department Counsel submitted four Government Exhibits (GX) that were marked and admitted into the record as GE 1-4 without objection. Applicant submitted four exhibits that were marked and admitted into the record as Applicant's Exhibits (AX) A-D. Applicant testified and called one witness.

The record was held open until June 14, 2007, to give Applicant time to submit additional documents. On June 12, 2007, I extended that deadline to June 18, 2007, without objection from Department Counsel. Applicant submitted additional evidence on June 18, 2007, which I marked as AX E and admitted into evidence without objection. On June 14, 2007, DOHA received the hearing transcript (Tr.).

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in her answer to the SOR and at the hearing, I make the following additional findings of fact:

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On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Regulation, in which the SOR was issued on or after September 1, 2006. A memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) to Director of DOHA, dated November 19, 2004, states DOHA shall utilize provision of the Directive to resolve contractor cases involving trustworthiness determinations.

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Applicant is 37 years old and presently separated from her second husband. Since December 2004, she has worked as a patient advocate for a medical center that administers health care benefits for the federal government. She was promoted in September 2006. From April 3 to June 6, 2007, she was off work due to a medical disability. Prior to her current job, she worked for other health care institutions and financial institutions in customer services. (GX A).

Applicant attends junior college where she is pursuing a degree in human resources. She initially enrolled in college in 1988. She attended until 1996. She resumed her studies in January 2007. While in school previously, she obtained an educational loan in 1993 and one in 1994. (AX E at 6). After leaving school in 1996, both loans were placed in forbearance for various periods of time and were unpaid at other times.² (AX E at 16; 18). The loans total about \$35,000. (Tr. 71). She paid \$360 per month on the loans from March to December 2006. (Tr. 64). They are currently in forbearance status until September 2007. (AX E at 34). She would not be able to attend school if her payments were not current. (Tr. 69).

Applicant's financial difficulties began sometime in 1999, when she left her first husband and did not have sufficient funds to manage her bills, including medical expenses. She was subsequently unemployed for four or five months. (Tr. 52-54). In July 2004, she remarried. Her financial problems continued because her current husband quit his job and she was sick periodically from that time to the present. (Tr. 54-55). According to credit reports, dated June 2005, December 2006, and February 2007, her delinquent debts began accruing in 2000. (GX 2, 3 and 4).

In March 2007, the Government filed a SOR and alleged in Paragraph 1 (¶¶ 1.a through 1.v) that Applicant owed 22 delinquent debts, totaling \$42,715, of which \$33,872 represented student loans. Applicant admitted that she owed all of the delinquent debts listed in the SOR, except the \$1,820 listed in ¶ 1.v, which she has disputed, and claimed some of the listed student loans are inaccurate and duplicate accounts. She admitted that she had not contacted all of the creditors to-date. Subsequent to the hearing, she spoke to a credit counselor and will enter into a repayment plan for the unpaid debts. (AX E at 32; 33). The status of the debts is as follows:

SOR ¶	Debt	Status
1.a	\$107 Medical	Unpaid-to be included in payment plan (AX E at 4)
1.b.	\$998 Medical	Unpaid-to be included in payment plan (AX E at 4)
1.c	\$731 Medical	Unpaid-to be included in payment plan (AX at 4)
1.d	\$150 Medical	Paid
1.e	\$150 Medical	Unpaid - to be included in payment plan (AX at 4)
1.f	\$86 Medical	Paid
1.g	\$100 Medical	Paid (AX E at 25)
1.h	\$512 Medical	Unpaid-to be included in payment plan (AX at 4)

²While a student loan is in forbearance, a student is required to pay interest only.

1.i	\$830	Depart. store	Unpaid - former joint account- charged off
1.j	\$100	Phone	Paid
1.k	\$8,532	Student loan	Current ³
1.l	\$8,484	Student loan	Current
1.m	\$1,030		Paid 5/07 AX E at 22
1.n	\$7,737	Student loan	Current
1.o	\$9,119	Student loan	Current
1.p	\$1,411	Judgment	Unpaid-to be included in payment plan (AX at 4)
1.q	\$213	Medical	Unpaid-to be included in payment plan (AX at 4)
1.r	\$59	Medical	Paid AX E at 22
1.s	\$134	Medical	Unpaid-to be included in payment plan (AX at 4)
1.t	\$205	Company	Unpaid
1.u	\$207	Credit card	Charged off in 8/01 (GX 4 at 9)
1.v	\$1,820	Credit card	Disputed AX E at 27

As to the factual allegations under Guideline E, Applicant denied that she intentionally falsified her answer to Question 19 of the e-QIP that requested information about outstanding judgments, or her answer to Question 20 that sought information regarding debts more than 180 days delinquent.

Applicant initially submitted the e-QIP in March 2005. Prior to its submission, she completed a SF-85P Worksheet in January.⁴ In her response to the Question 19: Your Financial Record-Bankruptcy, Liens, Judgments, she recorded a judgment that she paid in 2000. (AX A). However, when she submitted the e-QIP in March 2005 and in May 2005, she failed to note that judgment under the question. At the time she completed the worksheet in January, she was unaware of the outstanding judgment noted in ¶ 1.p and the debts listed in ¶¶ 1.q through 1.v. The debts listed in SOR ¶¶ 1.k, 1.l, 1.m, 1.n and 1.o, included a medical bill and her student loans, all of which she did not believe were delinquent at the time. (Tr. 49-52; 60-63; 68-69). In October 2006, she became aware of some of the delinquent debts because she was applying for a mortgage and reviewed her credit report. (Tr. 65). She had not looked at her credit report since 2000 when she was divorced, and did not receive her mail after leaving her first husband. (Tr. 66-67).

While on disability for two months, Applicant received approximately \$1,200 per month. Out of it, she paid her expenses and some money on her debts. When she returns to work full time in June, she will have a net income of \$1,800, leaving her additional monies to continue resolving

³Some of the listed student loans appear to be duplicate entries.

⁴Although Applicant signed and submitted the e-QIP on March 28, 2005 and May 10, 2005, the computer form bears a January 11, 2005 date. (GX 1).

outstanding debts. (Tr. 74). Presently, she does not have any credit cards or loans other than her student loan that remains in forbearance while she attends school. She paid off a car loan in 2006. (Tr. 73). She believes her outstanding debt is about \$5,000 (not including her student loans). (Tr. 71). Since starting her current job, she has not incurred any additional delinquent debts. (Tr. 75). She submitted a budget on June, 18, 2007. (AX E at 34).

Applicant testified candidly about her financial problems and acknowledged her responsibility to continue resolving her debts. She intends to pay all of her obligations. (Tr. 69). Subsequent to meeting with an investigator in May 2006, she continued paying on her student loan and resolved a couple debts. (Tr. 59). She believes her financial situation has improved since December 2006. (Tr. 76). She appears to be committed to obtaining financial stability.

Applicant's sister testified as a character witness. She believes Applicant is a very responsible individual, who takes her obligations seriously. (Tr. 80). Applicant also submitted two memorandums from the commanding officer of the U.S. Army's medical facility where she works. Both of the documents compliment Applicant on her professional performance and dedication to the hospital. (AX C).

POLICIES

In an evaluation of an applicant's suitability for a public trust position, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility for Access to Classified Information" (Guidelines), which set forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC), and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information. By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these Guidelines in conjunction with the factors listed in the adjudicative process. Guideline ¶ 2. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence."

Since the protection of sensitive information is the paramount consideration, the final decision in each case is arrived at by applying the standard that eligibility for a public trust position is “clearly consistent with the interest of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”⁵ The Government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” Guideline ¶ 2(b). These same burdens of proof apply to trustworthiness determinations for ADP positions.

A person who seeks eligibility for a public trust position enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

CONCLUSIONS

I considered all facts in evidence and legal standards, including the “whole person” concept, and concluded the following with respect to the allegations set forth in the SOR.

Guideline F: Financial Considerations

⁵“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006)(citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by “substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

Guideline ¶ 18 articulates the Government’s concern regarding financial problems. “Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

Two Financial Considerations Disqualifying Conditions could raise a trustworthiness concern and may be disqualifying in this case: “inability or unwillingness to satisfy debts” and “a history of not meeting financial obligations.” Guidelines ¶ 19(a) and (c). Applicant admitted that she had insufficient funds to meet her debts for a period of time. According to credit reports, Applicant has a history of failing to meet her financial obligations since early 2000. DOHA’s Appeal Board has concluded that “[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.” ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

After the Government produced substantial evidence of these two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove a mitigating condition. Six Financial Considerations Mitigating Conditions under Guidelines ¶ 20(a)-(e) are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness or good judgment;
- (b) the conditions that resulted in the behavior were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt, which is the cause of the problem and provides documented proof to substantiate the dispute or provides evidence of actions to resolve the issue;
- (f) the affluence resulted from a legal source of income.

Based on my evaluation of the record evidence as a whole, I conclude Guideline ¶ 20(a) does not apply as several debts are current. Some of Applicant’s difficulties are attributable to marital problems and medical issues, which trigger the application of Guideline ¶ 20(b). However, there is insufficient evidence in the record to indicate that during those periods of difficulties, she acted “responsibly under the circumstance.” Hence, the mitigation provided under this guideline is limited. Although Applicant has been in touch with a credit counselor and intends to enter into a debt consolidation plan, she did not produce evidence of that agreement, which would be necessary for the application of Guideline ¶ 20(c). She has, however, demonstrated that she resolved seven of the debts and her student loan problems. She has not incurred additional debts since she began her present job. Once she resumes work full time, she will have sufficient income to continue repaying all of her debts, which she expressed a commitment to do. Because the law does not require her to have paid-off every debt in full, her effort over the past year to pay some creditors, despite a limited

income, is sufficient mitigation under Guideline ¶ 20 (d). Applicant disputed the debt listed in ¶ 1.v, which constitutes mitigation under Guideline ¶ 20(e) for that debt. Guideline ¶ 20(f) does not apply.

Guideline E: Personal Conduct

Guideline ¶ 15 articulates the Government's concern regarding personal conduct: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process."

One personal conduct disqualifying condition is particularly relevant and potentially disqualifying in this case. Guideline ¶ 16(a) provides that the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" may raise a trustworthy concern. Applicant's e-QIP had incorrect answers to questions 19 and 20. Applicant denied that she intentionally falsified her answers.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

Applicant asserted that she did not disclose a January 2004 judgment because she did not have knowledge of it when she submitted her e-QIP in March 2005. To corroborate her assertion that she did not intentionally falsify her answers, she produced the January 2005 e-QIP worksheet in which she listed a judgment she previously paid as an indication of her efforts to be truthful. She indicated that she was unaware of her debt problems until she met with an investigator in May 2006 and obtained her credit report in October. She attributes her lack of knowledge to not having reviewed a credit report since 2000 and not receiving mail for a period of time. Based on her demeanor and presentation, her explanations are reasonable and credible. I believe her omissions were negligent and not intentional. Hence, the evidence does not establish deliberate falsification. Accordingly, Guideline E is found in her favor.

Whole Person Analysis

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under Guideline ¶ 2(a). Applicant has made progress in resolving 11 of the SOR debts, as noted by the evidence she produced. She appears to be committed to paying the rest of them through a debt consolidation plan that she is in the process of entering. Her student loans, which constitute the majority of her debt, have been current for the last year. She managed to pay seven debts despite a limited income and has not incurred additional delinquent debts for a couple years. She has a good job that will afford her the means to continue achieving financial stability. Although her past marital situations have

created some of her current obligations, she takes responsibility for their resolution and appears to be on a track of financial management, sufficient to demonstrate reliability and good judgment. I do not believe she is a security risk nor do I believe her financial problems will recur, given her awareness of the potential problems they could create for her employment situation.

After weighing the disqualifying and mitigating conditions, all facts and circumstances, in the context of the whole person, I conclude she has mitigated the security concerns raised pertaining to financial considerations. The evidence leaves me with no doubts as to Applicant’s trustworthiness eligibility and suitability. Accordingly, Guideline F is decided in her favor.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

- | | |
|---|---------------|
| Paragraph 1: Guideline F (Financial Considerations) | FOR APPLICANT |
| Subparagraphs 1.a–1.v: | For Applicant |
| Paragraph 2: Guideline E (Personal Conduct) | FOR APPLICANT |
| Subparagraphs 2.a - 2.c: | For Applicant |

DECISION

In light of all the circumstances and evidence presented in this case, it is clearly consistent with the national interest to grant or continue Applicant’s eligibility for a public trust position. Eligibility for an ADP I/II/III position is granted.

Shari Dam
Administrative Judge