

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 55 years old and has worked for a federal contractor since March 2003. She has over \$61,000 in delinquent debts that she has made no effort to pay. Due to a medical condition she had a period of memory loss. However, when filling out her SF 85 she was aware that she had more than just her student loan debts that were delinquent. Applicant failed to mitigate the trustworthiness concerns regarding Guidelines F and E. It is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

CASENO: 05-05642.h1

DATE: 04/28/2006

DATE: April 28, 2006

In re:

SSN: -----

Applicant for ADP I/II/II Position

ADP Case No. 05-05642

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 55 years old and has worked for a federal contractor since March 2003. She has over \$61,000 in delinquent debts that she has made no effort to pay. Due to a medical condition she had a period of memory loss. However, when filling out her SF 85 she was aware that she had more than just her student loan debts that were delinquent. Applicant failed to mitigate the trustworthiness concerns regarding Guidelines F and E. It is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

STATEMENT OF THE CASE

On May 19, 2004, Applicant submitted an application for a trustworthiness determination. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").⁽¹⁾ On October 21, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged trustworthiness concerns under Guideline F (financial considerations) and Guideline E (personal conduct).

In a sworn statement, dated December 22, 2005, Applicant responded to the SOR allegations and requested a hearing. In her SOR response, Applicant admitted SOR allegations ¶¶ 1.a-1.c, 1.e-1.g, 1.j-1.q, 1.u, 1.w, 1.x, and 1.z. She denied the allegations in SOR ¶ 1.d, believing it was a duplicate debt, and denied SOR ¶¶ 1.s, 1.t, and 2.a. She answered the allegations in SOR ¶¶ 1.h, 1.i, 1.v, 1.y, 1.aa, 1.bb, 1.cc and 1.dd as either "unknown" or "unsure." The case was assigned to me on March 15, 2006. A notice of hearing was issued on March 27, 2006, scheduling the hearing for April 11, 2006. The hearing was conducted as scheduled. The government submitted six exhibits that were marked as Government Exhibits (GE) 1-6. The exhibits were admitted into the record without objection. Applicant testified on her own behalf, and submitted four exhibits that were marked as Applicant's Exhibits A-D. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on April 21, 2006

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 55 years old, divorced in 1985 and remarried in 1996. Her two children are grown. She has worked for a federal contractor since March 2003 as a client support representative.

Applicant attended college from 1984 through 1989 and accumulated student loan debt.⁽²⁾ She has approximately \$46,000 in student loan debt that has been delinquent and in a collection status since at least 1992.⁽³⁾ She has made one voluntary payment on that debt and believes, but does not know for sure, that the Internal Revenue Service may have garnished her tax refund at some time to apply to the debt.⁽⁴⁾ In her sworn statement made to an investigator on October 4, 2004, she stated: "I admit I owe on the student loan, but I do not know how much the balance is. I intend to research the company who has the student loan and make arrangements to pay the bill. I expect it will take about 10 years to pay in full."⁽⁵⁾ She claims she never had enough money to pay the debt. Applicant provided no evidence that she has researched her student loans or made any payment arrangements in the past or since her statement.

Applicant had medical problems for approximately three and a half years and was hospitalized in 2000.⁽⁶⁾ She did not have medical insurance. Her health improved and she returned to work in March 2003.⁽⁷⁾ Applicant admits she has unpaid medical bills listed in SOR ¶¶ 1.e, 1.j, 1.x, 1.y, 1.z, 1.aa, and 1.bb, totaling approximately \$11,868.⁽⁸⁾ She believes her husband paid one medical bill, but did not provide any documentation, nor does she know which debt may have been paid. In her October 4, 2004 statement, she acknowledged debts for medical bills. She stated she did make some payments on the bills as she was able. She claimed she told her doctor's office that she was moving to a new state and provided a forwarding address. She claimed after she moved she made some additional payments toward her medical bills and then stopped. She provided no reason why she ceased paying her delinquent medical bills. She did not know how much she still owed. She claimed she never received any collection notices.⁽⁹⁾ She also never contacted her creditors to settle her debts.

In March 2003, Applicant and her husband went to a financial counseling firm and learned she had two judgments filed against her for medical services from the state where she had previously lived. She claimed she paid one judgment, but does not know which one, nor how much it was for, and she stated she did not have any documentation to support her claim.⁽¹⁰⁾ She claimed in her October 4, 2004, statement that she intended to have the other judgment paid off in full in one year.⁽¹¹⁾ Applicant provided no proof she has paid the judgment. Applicant was aware in March 2003, that she had at least one remaining judgment against her. Applicant and her husband were not satisfied with the counseling firm because they felt the counselors were mostly interested in trying to sell Applicant and her husband a house, so they stopped going.⁽¹²⁾

Applicant acknowledged in her written statement that she recalled seeing the delinquent account listed in SOR ¶ 1.v on the financial counseling report she received in March 2003. She believed it was her account and her intentions at the time were to have it paid in full in 60 days.⁽¹³⁾ Applicant has not paid the account.

Applicant acknowledged she used to purchase food from the account listed in SOR ¶1.w. She stated in October 2004 that she intended to research the debt, verify it, and pay it within one week.⁽¹⁴⁾ Applicant has not paid the debt. She also stated she intended to pay within 30 days the account listed in SOR ¶ 1.s.⁽¹⁵⁾ She has not paid this account.

Applicant owes approximately \$360 on nine debts to one creditor for writing bad checks.⁽¹⁶⁾ The amounts of these debts range from \$20 to \$62. The debts were placed in collection from 1999 to 2000. Applicant has not paid these debts.

Applicant suffered from depression beginning in about 1996. She did not provide any proof of her diagnosis. She claimed she suffered memory loss for several years and she still can not recall things from her past. On her public trust questionnaire (SF 85) when asked if she had debts over 180 days delinquent, she listed only her student loans and no other debts. She claimed in her October 4, 2004 statement that when she read the question she stopped at the word loan and did not read on to the end of the sentence inquiring about financial obligations in addition to loans. She claimed at her hearing that because of her memory loss, she could not recall her other delinquent debts when filling out her SF 85 on May 19, 2004. Applicant acknowledge her health was better in January 2003 and acknowledge a clean bill of health in October 2004, and that she was off medication and no longer receiving treatment. Applicant was aware when she filled out her SF 85 that she had other delinquent debts.⁽¹⁷⁾ She failed to list them because she claims she could not remember the specifics.

Applicant owes approximately \$5,900 to the Social Security Administration that is being garnished from her wages for overpayment of disability benefits she was not entitled to receive.⁽¹⁸⁾ She also has approximately \$4,820 listed on her credit report that is in a collection status for medical expenses she owes.⁽¹⁹⁾

Applicant's husband bought a house in June 2004 using only his credit. Applicant claimed that because she was not employed long enough they did not look into her credit. Applicant stated at the end of the month she and her husband have approximately \$800-\$1000 in expendable income.⁽²⁰⁾ She stated her husband intends to refinance his house to help pay off some of her delinquent debts. They hope to receive approximately \$15,000 to \$20,000 from the refinancing.⁽²¹⁾

Applicant's delinquent debts total over \$61,770. In addition, she owes \$5,900 to the Social Security Administration and has a debt for \$4,820 in collection for medical services, thereby increasing her total debt to \$72,490. Applicant has paid one debt to a creditor not listed in the SOR.⁽²²⁾ Applicant claims her husband paid one debt listed on the SOR, but does not know which one and did not provide any supporting documentation.⁽²³⁾

Applicant received accolades from her employer and those she works with regarding her performance. She is considered a leader and is viewed as having the utmost respect and concern for their clients.⁽²⁴⁾ Her integrity has never been questioned by her supervisor and she has his highest recommendation.⁽²⁵⁾ Applicant provided numerous letters of appreciation that were sent to her employer regarding her performance, and thank you letters from clients.⁽²⁶⁾ Applicant was selected as the employee of the quarter.⁽²⁷⁾

POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position... that will give that person access to such information."⁽²⁸⁾ The President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information."⁽²⁹⁾

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security."⁽³⁰⁾ The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.⁽³¹⁾ The adjudicative guidelines at issue in this case is:

Financial Considerations-a trustworthiness concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Personal Conduct is a trustworthiness concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guidelines F and E.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 1 (*A history of not meeting financial obligations*), and FC DC 3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant has a long history of not paying her financial obligations dating as far back to at least 1992. Despite being aware of delinquent student loans, she has made only one voluntary payment. Also despite being aware of some of her other debts and making promises to pay them, she has made no effort to pay them.

I considered all the Financial Consideration Mitigating Conditions (FC MC), and especially considered FC MC 1 (*The behavior was not recent*), FC MC 2 (*The behavior was isolated*), FC MC 3 (*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)*), FC MC 4 (*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*), and FC MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant has many debts that remain unpaid. FC MC 1 and 2 do not apply. Applicant had a medical problem, did not have medical insurance and although she initially made some payments toward her medical expenses before and after she moved, she basically stopped and the debts remain outstanding. Even though the debts relating to her medical issues arose due to circumstances beyond her control, it is appropriate to consider whether Applicant acted in a reasonable manner when dealing with her financial difficulties. ⁽³²⁾ Applicant paid what she could for a time and then just stopped. Despite having some income left over at the end of the month she has not contacted the creditors to make any arrangement to satisfy her medical or any other of her debts. Applicant has been delinquent in paying her student loans for at least 14 years and has not made a good faith effort to set up even a minimal payment plan. She has basically ignored these debts. Despite her claims that she would pay certain debts in a prescribed period of time since making her sworn statement in October 2004, she has not made any effort to pay even the most nominal of her debts. Despite FC MC 3 being applicable I find it is not enough to overcome Applicant's financial history and current situation. I find although Applicant did seek some financial counseling she admits it was not of the type to help her resolve her debts and she did not pursue financial counseling any further. She made claims she would pay some of her debts but has failed

to follow through. She has not shown any resolve or will to take action on her debts. I find none of the mitigating conditions apply. Applicant has failed to mitigate the concerns raised under Guideline F.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) 2 (*The deliberate omission, concealment, or falsification of relevant and material 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*), applies in this case.

The deliberate omission of relevant and material facts from a trustworthy determination application is a concern and may be disqualifying. PC DC 2. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. ⁽³³⁾ An applicant's financial situation is a matter that could affect a final agency decision on whether to grant the applicant a clearance, and her failure to disclose it would impede a thorough investigation of her background. Applicant listed only that she had delinquent student loans and failed to list she had other debts on her SF 85.

Applicant deliberately concealed the full extent of her delinquencies on her SF 85. I find Applicant credible in that she did suffer a memory loss because of her illness and she could not recall all of her delinquent debts when she filled out her SF 85. However, I find disturbing that Applicant's written statement claimed she had merely stopped reading the question when it asked her if she had any outstanding loans and she did not finish the inquiry to understand that it also requested she list her financial delinquencies. Later she testified that the reason she failed to list her delinquencies was because she could not recall her debts due to a memory loss. However, she was aware that she had other delinquent debts. Although I do believe she could not remember all of her debts, I do not believe she was unaware that she had more debts than just her student loans, and failed to list them because she could not remember the specifics. She admitted in her October 4, 2004 statement that when she and her husband went to the financial counselor in March 2003, she became aware that there were two outstanding judgments against her. One she claimed she paid, the other she did not pay. She did not list this debt on the SF 85. She also acknowledged in her statement that she recalled seeing the debt listed in SOR ¶ 1.v on the financial counselors report she viewed in March 2003, but again failed to list it in her SF 85. Her visit to the financial counselor was after she had started working and was healthy. She certainly was on notice that these debts existed even if she could not remember she had others. Applicant offered no corroborating evidence as to her medical condition. I find that although she likely had memory loss and could not remember many of the specific debts, she was made aware of some of them after she became healthy and was aware she owed more than just her student loans. She was very aware that her memory was impaired and was on notice to make that known. However, she did not check with her husband or make any attempt to make a note on her SF 85 that she may have other debts. She failed to provide the correct information until confronted by an investigator months later.

I have considered all the mitigating conditions and especially considered Personal Conduct Mitigating Condition (PC MC) 2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC 3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC 5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). I conclude none of the mitigating conditions apply. No evidence was presented to show she has taken positive steps to reduce her vulnerability to coercion, exploitation or

duress. PC MC 2, PC MC 3, and PC MC 5, do not apply. I find none of the other mitigating conditions under Guideline E apply. Applicant has failed to mitigate the security concerns with regard to his personal conduct.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. Although Applicant's loyalty to the United States is not in question, I am persuaded by the totality of the evidence that she failed to mitigate the trustworthiness concerns regarding Guidelines F and E, and that it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

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:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.dd Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960 as amended.
2. Tr. 16.
3. Applicant admitted in her answer to the SOR to her student loan debts in ¶¶ 1.a, 1.b, 1.c, but was "unsure" of the student loan debts in SOR ¶¶ 1.h, 1.i, 1.cc. At her hearing she admitted she owed the debts she was previously unsure of. Although she stated in her answer that she believed the debt in SOR ¶ 1.d may be a duplicate, she confirmed in her testimony that this is a legitimate debt. Tr. 16-17.
4. Tr. 18.
5. GE 3 at 3-4.
6. Tr. 13.
7. Tr. 31.
8. In Applicant's Answer to the SOR she answered "unknown" to SOR ¶¶ 1.y, 1.aa, and 1.bb. She admitted owing these debts at her hearing.
9. GE 3 at 2.
10. GE 3 at 2.
11. GE 3 at 2-3.
12. Tr. 25.
13. GE 3 at 4.

14. GE 3 at 5.
15. GE 3 at 5.
16. These debts are listed in SOR ¶¶ 1.f, 1.g, 1.k, 1.l, 1.m, 1.n, 1.o, 1.p, and 1.q.
17. Tr. 34-37.
18. GE 6. Tr. 22-25.
19. The Social Security Administration garnishment and the medical debt in collection are not considered for disqualifying purposes, but are considered when evaluating the "whole person" and Applicant's ability to repay her debts.
20. Tr. 41.
21. Tr. 28-29.
22. AE A.
23. TR. 19-21.
24. AE B.
25. *Id.*
26. *Id.*
27. AE C and D.
28. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
29. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
30. DoD 5200.2-R, ¶ C6.1.1.1.
31. *Id.* at Appendix 8.
32. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).
33. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002).