

DATE: December 27, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 05-06780

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Raymond R. Mello, Esq.

SYNOPSIS

Applicant has three convictions for shoplifting in July 2004, January 2005, and April 2005, which she attributes to poor impulse control due to problems managing her bipolar illness. Applicant now realizes she must take her medications as prescribed and she receives regular psychotherapy, but it is too soon to conclude there will be no recurrence of her criminal conduct. Personal conduct concerns persist since Applicant did not disclose her then very recent arrest for shoplifting on her application for a position of trust. Financial considerations related to a December 2002 bankruptcy discharge and an August 2005 voluntary repossession of her automobile are mitigated where Applicant is repaying the car loan debt, and for the most part pays her current obligations on time. Designation to hold a position of trust is denied.

STATEMENT OF THE CASE

On September 21, 2004, Applicant submitted an application for a position of public trust. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5220.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 1992, as amended and modified (Directive).⁽¹⁾ In a Statement of Reasons (SOR) dated November 14, 2005, DOHA proposed to deny or revoke eligibility for a position of trust for Applicant because of conduct alleged under Guideline J, criminal conduct, and Guideline F, financial considerations.

Applicant answered the SOR on November 28, 2005, and requested a hearing before a DOHA administrative judge. On February 2, 2006, the case was assigned to me to conduct a hearing to determine whether it was clearly consistent with the interests of national security to assign Applicant to a sensitive position. On March 14, 2006, counsel for Applicant entered his appearance on her behalf. On March 17, 2006, I scheduled a hearing for April 20, 2006.

On April 7, 2006, the government moved to amend the SOR (first amendment), to add a new guideline for personal conduct (Guideline E, ¶ 3.a) alleging that Applicant falsified material facts on her public trust position application (SF

85P) by not listing an arrest for shoplifting in August 2004. In an Order of April 7, 2006, the deadline to respond was set at April 27, 2006. Applicant was given until April 14, 2006, to move to continue the hearing should she require the full 20 days to respond to the government's motion to amend.

On April 12, 2006, Applicant moved to continue the hearing. In a conference call with the parties on April 13, 2006, I granted the pending motions, and a notice of hearing cancellation was issued April 14, 2006. On April 27, 2006, Applicant moved for a brief extension. The government having no objection thereto, Applicant was given until May 3, 2006, to submit a response to allegation ¶ 3.a. On May 2, 2006, Applicant filed her response to ¶ 3.a, admitting the arrest but denying any intent to falsify her SF 85P.

With the consent of the parties, the hearing was held on June 6, 2006, pursuant to amended notice dated May 2, 2006. At the hearing, seven government exhibits (Ex. 1-6, 8) were admitted. Administrative notice was taken of the contents of another document that was marked for identification as Exhibit 7. Seventeen Applicant exhibits (Ex. A-Q) were admitted, exhibits H, L, M, P, and Q over the government's objections. Testimony was taken from three witnesses: Applicant, an active duty medic who works with Applicant, and Applicant's sister. On the government's motion, the SOR was amended at the hearing (second amendment) based on Applicant having presented evidence of her arrests for shoplifting in January 2005 (¶ 1.b) and April 2005 (¶ 1.c). The government also moved to amend the SOR to add under Guideline E, personal conduct, that Applicant deliberately withheld information about her January 2005 shoplifting offense during a January 28, 2005, interview with an OPM agent. That motion was denied. A transcript of the hearing was received on June 16, 2006.

FINDINGS OF FACT

In the SOR as amended, DOHA alleged under Guideline J Applicant committed shoplifting offenses in August 2004, January 2005, and April 2005; under Guideline F that Applicant was granted a release of her debts in bankruptcy in December 2002 and owed \$15,661 on an automobile loan following the repossession of her vehicle in July 2005; and under Guideline E that Applicant falsified her September 2004 SF 85P by not disclosing her August 2004 arrest for shoplifting. Applicant admits the arrests and indebtedness, but proffers mitigation. She denies any intentional falsification of her SF 85P. After a thorough review of the original pleadings, her responses to the SOR amendments, and the testimony and exhibits adduced at her hearing, I make the following findings of fact:

Applicant is a 34-year-old employee of a Tricare managed care support contractor. She was promoted to the position of Tricare service center manager at a military clinic in late May 2005. She has access to sensitive personal and medical information in her daily duties, which include making referrals to outside specialists and dealing with billing and insurance issues.

Applicant's parents divorced after 18 years of marriage in 1981. At age 16, Applicant was hospitalized for two to three months for alcohol abuse and a suicide attempt. She was diagnosed with bipolar disorder, a long-term mental illness which can be successfully managed with effective treatment that may include mood stabilizing and antidepressant medications as well as psychological counseling and psychosocial intervention. (Ex. Q)

Applicant has had problems managing her illness over the years with negative consequences. On graduating from high school, she attended a state college for a semester while working full-time but became depressed and dropped out of school. Planning to join the U.S. military, she stopped taking her medications for her bipolar illness. In October 1991, she entered the military. By December, she had lost her focus to where she could not remember her name, and she was admitted to a psychiatric hospital. She was discharged from the hospital and the military to live with her mother and under the care of a psychiatrist.

Applicant resided with her mother from January 1992 to May 1995, while attending college and working full-time at a local clothing store. On earning her B.A. degree in communications, she moved in with her boyfriend and in June 1996, she began working in the healthcare industry. She managed her bipolar illness by taking her medications as prescribed and going to counseling, and earned a promotion at work.

In February 2000, Applicant moved to Las Vegas to be with her boyfriend, who was pursuing studies there. Two weeks after she relocated, their relationship ended and Applicant was on her own without a job. She incurred significant credit

card debt securing and furnishing an apartment, and paid for her gas and food on credit as well. All told, she incurred about \$13,000 in consumer credit debt. In April 2000, she began working for a health insurer as a project coordinator but was emotionally "a wreck." (Tr. 49) Although she was under the care of a psychiatrist, the effectiveness of prescribed medications was compromised by her bulimic behavior.

Applicant borrowed against her paycheck from a money lender, which exacerbated her financial problems. She tried to consolidate her debt without success. In about June 2001, she quit her job and shortly thereafter returned home. She and her boyfriend reconciled, and in November 2001, she got a job as an ombudsman customer service representative for the contractor that was then supporting the Tricare program in her region.

In mid-July 2002, Applicant filed for Chapter 7 bankruptcy, listing unsecured claims totaling \$31,670.04, \$13,585.50 in student loan debt and \$18,084.54 in delinquent consumer credit debt. She also listed \$4,170.98 in secured claims which was for an automobile, although she reaffirmed that debt on August 16, 2002. On September 12, 2002, she rescinded her reaffirmation agreement, and subsequently voluntarily surrendered the vehicle to her bankruptcy attorney. She was discharged from any future responsibility for her delinquent consumer credit card debt in late December 2002. (Ex. 3) Her student loan debt was not discharged.

During the entire year 2003, Applicant's bipolar illness was being managed by her primary care physician, who continued to prescribe 10 mg. Paxil or from October 2003 its generic equivalent, and 450 mg. Eskalith. Feeling good and thinking she could manage without the medications, Applicant did not fill her prescriptions in July 2004. Without her medications, she experienced a significant increase in her anxiety level and a false sense that she needed clothing to make herself feel better. One Sunday in late July 2004, she shoplifted clothing valued at about \$300 from a local department store. Someone took down her vehicle plate number as she was leaving, and she was contacted by the police the following Tuesday and charged on August 1, 2004, with shoplifting, a class A misdemeanor. On or before September 13, 2004, Applicant pleaded guilty and was sentenced to 90 days in jail, suspended for two years, and fined. (2) Applicant attributes her shoplifting to impulse, although she knew what she was doing at the time. ("It was something that it was an impulse, I knew that I had so much anxiety and it was just something where that was my way, which was the wrong way obviously, to release my anxiety." Tr. 152).

Applicant had been working as a Tricare community representative for her present employer since June 20, 2004, when she was asked to complete a public trust position application (SF 85P) in September 2004. She completed the form at the office and did not seek any assistance. On her SF 85P signed on September 21, 2004, Applicant responded "NO" to question 16 ["In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s)? (Leave out traffic fines of less than \$150)."]. Applicant understood that she was being asked about her then recent arrest for shoplifting but elected to not disclose it. Since it was her first offense, she thought the charge might be dismissed or expunged and would not appear on her record. (Tr. 113, 165) Applicant listed her bankruptcy, but indicated it has been in 1999.

At the recommendation of her primary care manager, Applicant began seeing a psychiatrist (psychiatrist X) for medication adjustment on November 24, 2004. He initially made no changes in her medication or dosages. On January 23, 2005, she shoplifted clothing valued at \$360 from a store in the local mall. Applicant was not taken to the police station but was walked to her vehicle and given a citation advising her she would have to appear in court. The store filed a formal complaint against for shoplifting, a class A misdemeanor, on January 27, 2005. The court agreed to dismiss charges of willful concealment and shoplifting, a class A misdemeanor, provided she remained of good behavior (no new convictions) and completed a psychological evaluation.

On January 28, 2005, Applicant was interviewed by a special investigator from the Office of Personnel Management (OPM). Applicant discussed her bankruptcy filed in July 2002, which she attributed to being unemployed for two months while in Las Vegas and living costs in that area. She also revealed details of her shoplifting in late July 2004, her court appearance which she indicated was on September 13, 2004, and averred she had omitted the charge from her SF 85P because she was not certain how the charge would "play out in court" or her status. She did not volunteer to the agent that she had shoplifted again only a few days before her interview as she had not been given a court date. She also provided a personal financial statement, indicating that her student loans were deferred to March 2006, and she had about \$195 left over after debt and expense payments monthly.

Following her shoplifting in January 2005, Applicant sought treatment from psychiatrist X on or about February 8, 2005. He adjusted her medications, prescribing 300 mg. of lithium carbonate instead of the Eskalith. He also wrote a note to give to the court in which he indicated Applicant had not been doing well with medication changes and experienced poor impulse control which could have caused her shoplifting. In his professional opinion, Applicant's condition had not yet stabilized.

On April 23, 2005, Applicant cut the tags off \$331 worth of clothing in a department store, placed it in her purse and exited without paying. Charged with one count of shoplifting, Applicant was offered a sentence of nine months, six months suspended for one year and three to be served, and one year of probation. On June 15, 2005, Applicant agreed to plead guilty and enter an appeal to superior court, and she was sentenced to 365 days in the house of corrections, all but two days deferred for one year on good behavior, a \$1,000 fine, and one year of probation. She withdrew her appeal, and the district court sentence took effect on July 27, 2005.

Applicant was very depressed after the shoplifting, At the urging of her sister, she admitted herself on April 29, 2005, to a psychiatric hospital for treatment of bipolar and eating disorders. She was discharged on May 2, 2005, to outpatient psychotherapy and to return to work. On or about May 9, 2005, Dr. X increased her dosage of Paxil (or generic equivalent) to 20 mg. from 10 mg. On May 11, 2005, Applicant began outpatient psychotherapy with a licensed psychologist (psychologist Y). She has seen psychologist Y every two to three weeks to at least April 21, 2006. Her therapy has focused on problematic relationships, mood management, and behavioral self-control. On or about July 1, 2005, Applicant was prescribed 25 mg. of Paxil for her anxiety symptoms.

As of July 2005, Applicant was having mechanical problems with an economy car that she had purchased in October 2004, with a loan of \$16,656 that she was repaying at \$331 per month. At the suggestion of another dealer, she informed the finance company that she no longer would be making her payments, and the car was voluntarily repossessed on August 1, 2005. Applicant was left owing a deficiency balance of \$15,661 (¶ 2.b). Starting in October 2005, Applicant has paid \$750 monthly toward the debt. As of May 19, 2006, she had paid \$6,000.

On August 10, 2005, Applicant appeared in court for a review hearing on the agreement to dismiss the January 2005 shoplifting charge. Since she had been convicted on the April 2005 charge, the state brought the January 2005 charge forward for trial. Pursuant to a plea bargain, Applicant pleaded guilty to a reduced Class B misdemeanor shoplifting charge, and she was sentenced to a \$500 fine plus \$100 penalty assessment, suspended for one year based on good behavior.

Applicant was still under the care of psychiatrist X and psychologist Y as of her hearing in June 2006. Psychiatrist X and psychologist Y confirmed Applicant was under active care but did not provide an assessment of her progress. Applicant has found the psychotherapy and increased Paxil dosage helpful in managing her bipolar illness and anxiety. Applicant has been taking her medications as prescribed since May 2005. She now realizes that she must take her medications daily. Applicant's sister has observed Applicant succeed at work because of its highly structured environment. She has seen Applicant struggle with her depression and eating disorder for some time in an unstructured environment, including the home, although has seen some improvement ("things are somewhat better" Tr. 212) since May 2005.

Applicant has resided with her mother since August 2005. She had problems with her boyfriend again. A check of Applicant's credit on September 7, 2005, revealed Applicant's student loan debt was still deferred. She had a couple of credit card accounts with outstanding balances of about \$3,121 and \$1,160. She was also making car payments of \$408 per month on an automobile loan of \$26,919 taken out in July 2005. As of January 2006, Applicant was \$190 past due on the credit card account with the larger balance (then \$3,321), although she subsequently brought it current. As of June 2006, Applicant was living paycheck to paycheck with an estimated only \$80 in savings, despite an estimated remainder of \$1,011.78 each month after payment of expenses. Her mother was charging her \$250 in rent. She owed \$21,721.70 on her current car, \$4,648.86 on the loan for the vehicle repossessed in July 2005, about \$3,400 in consumer credit card debt, and \$16,001.18 in student loan debt. Applicant took a trip to Las Vegas in early 2006 but did not gamble. The amount of her expenditure is not of record.

Applicant has performed very well in her duties as Tricare service manager at a military clinic that has a high volume of

walk-in traffic. The clinic's supervisor considers Applicant a key asset to the clinic: "[Applicant] has shown a remarkable ability to assist each customer in a highly professional manner, exemplifying accuracy of information, superior customer service skills, extensive knowledge of the Tricare program, all while ensuring the privacy of confidential and sensitive information." The commanding officer of the maritime safety and security team has found Applicant to demonstrate "exceptional integrity" throughout her support of their unit for the past three years. (Ex. O)

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." Department of the Navy v. Egan, 484 U.S. 518, 527 (1988). To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines set forth in the Regulation. "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." Regulation ¶ C6.1.1.1.

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made.⁽³⁾ Regulation ¶ C8.2.1. Appendix 8 of the Regulation sets forth the adjudicative guidelines, as well as the specific factors disqualifying and mitigating conditions for determining eligibility for access to classified information and assignment to sensitive duties. In evaluating the trustworthiness of an applicant, the administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person in light of the adjudicative process factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. Regulation AP8.

CONCLUSIONS

Guideline J--Criminal Conduct

A history or pattern of criminal activity creates doubts about a person's judgment, reliability and trustworthiness. (Regulation AP8) Applicant shoplifted clothing valued in excess of \$300 on three separate occasions between late July 2004 and mid-April 2005. Guideline J disqualifying conditions (1) *any conduct, regardless of whether the person was formally charged*, and (2) *a single serious crime or multiple lesser offenses*, are clearly implicated. Considerable doubts are raised as to whether Applicant possesses the requisite degree of trustworthiness that must be demanded of those in sensitive positions.

Although more time has passed since the April 2005 offense (some 13 months) than the time over which the conduct occurred (nine months), it is still too recent to reasonably apply mitigating condition (MC) (1) *the behavior was not recent*. The recidivism of her conduct precludes favorable consideration of MC (2) *the crime was an isolated incident*. Moreover, although Applicant has a history of financial problems (*see* Financial Considerations, *supra*), it was not established that financial pressures led her to shoplift or that anyone pressured her to take the clothing. MC (3) *the person was pressured or coerced into committing the act and those pressures are no longer present in that persons life* does not apply.

Concerning MC (4) *the person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*, Applicant was cognizant of the illegality of her conduct ("I knew that it was wrong" Tr. 156). However, she submits she shoplifted because of the heightened anxiety symptomatic of her bipolar disorder. Criminal shoplifting due to poor impulse control would negate premeditation, and successful management of her illness could reduce the likelihood of recurrence. In February 2005, her treating psychiatrist opined to the court that Applicant was having problems with impulse control due to her bipolar disorder that "could have caused her to be in legal trouble with shoplifting exhibiting poor insight and judgement." (Ex. H) The court ordered her to undergo a psychological evaluation

(Ex. G). Psychiatrist X did not explain the basis for his opinion and the results of the court-ordered evaluation are not of record. Nonetheless, I cannot rule out her bipolar illness as at least a contributing factor, if not the root cause, of her shoplifting. There is no evidence of any shoplifting when she was having financial problems while living in Las Vegas. The relatively brief span of her shoplifting suggests an exacerbation of her illness and ineffectiveness of her treatment during that time. Following the April 2005 shoplifting, Applicant entered a psychiatric hospital voluntarily. She is not likely to have done so unless she was having a problem managing her bipolar disorder.

Having raised her bipolar illness as a defense, Applicant has the burden of demonstrating that her bipolar illness is under control or has a low probability of recurrence to make future shoplifting unlikely. (4) To her credit, Applicant began outpatient psychotherapy in May 2005 after her third shoplifting offense. She has remained under the active care of both the psychiatrist and psychologist, and she takes her medications as prescribed. Her Lithium and Paxil dosages have not been adjusted since July 2005, and her current treatment regimen appears to be working to the extent there has been no further shoplifting. She also testified that she now realizes she cannot self-medicate and must continue to take her medications as prescribed, even when she feels in control. Yet, there is also no evidence of a recent opinion by either her psychologist or psychiatrist that her condition is stable or of her prognosis. On June 1, 2006, her psychiatrist confirmed only that she remains in his care (Ex. M). Similarly, in February 2006, her psychologist indicated, "Therapy has focused on a number of issues including problematic relationships, mood management, and behavioral self-control. She seems to appreciate the opportunity to discuss these issues and feels that she is benefiting from this therapy." (Ex. L) It is not clear what the psychologist thought of her progress. On ay 31, 2006, he confirmed only that she was in active treatment. (Ex. L) Applicant's sister testified as to her observations of Applicant since May 2005:

I think that, since she has recognized the severity of the problem, I've seen that things are or have been somewhat better but, again, it's, I want to make a separation between the behaviors that I see that she exhibits at home, with my mother or when she is around us, versus what her behavior is like at work because she is very secure and confident there and focused. When she is in an unstructured environment, that's where I see, again, one step forward, two steps back.

(Tr. 212) Work references and her employment evaluation confirm her value and dedication to her job (Ex. N, Ex. O), but they are not enough to overcome the concerns raised by her recent pattern of criminal behavior off duty. When she shoplifted in April 2005, she took the tags off the merchandise before she placed it in her bag.

Guideline F--Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. In February 2000, Applicant joined her boyfriend in Las Vegas, but after only two weeks she found herself on her own and unemployed. Applicant overextended herself on credit to obtain and furnish an apartment and to pay for living expenses. Although she began working in April 2000, her income was not sufficient to pay off her debts. In June 2001, she rejoined her boyfriend in her home state. She was unemployed until mid-November 2001, which served to further exacerbate her financial difficulties. By July 2002, she owed more than \$18,000 in unsecured consumer credit card debt that was discharged in a Chapter 7 bankruptcy in December 2002. In September 2002, she rescinded an agreement to reaffirm her \$3,607.33 car loan debt and voluntarily surrendered her 1997 model-year economy car. An additional \$13,585 in student debt was not discharged, although she managed to defer the debt. Under the Financial Considerations guideline, DC (1) *a history of not meeting financial obligations*, and DC (3) *inability or unwillingness to satisfy debts*, are implicated.

Applicant also had a subsequent vehicle repossession in early August 2005 unrelated to the bankruptcy (§ 2.b). After she started working for her current employer, Applicant took out an automobile loan of \$16,656 in October 2004 for a 2005-model year compact car, to be repaid at \$331 per month. By August 2005, she had reduced the loan balance by only about \$1,000. (Ex. 5) Applicant stopped paying on the car after a number (not recalled by her) of payments due to mechanical problems with the vehicle rather than lack of funds, but DC (1) and DC (3) are implicated where she stopped paying on the car. After resale at an auction, she owed a deficiency balance of \$10,648. (Ex. 6)

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)* must be considered. While Applicant was responsible for the debt incurred when she was in Las Vegas, she did not foresee that she would have to

find a place of her own within a short time of her arrival. Her subsequent unemployment from late June 2001 to November 2001 when she returned from Las Vegas further compromised her financial situation. The salient issue in this case is whether Applicant has proven herself to be financially responsible since she was afforded a fresh start in bankruptcy. Her handling of her vehicle loan in 2005 raises some concern in this regard. However, in her favor, she has been repaying the deficiency balance at \$750 per month since October 2005. MC (6) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, applies to this debt. Largely due to this \$750 per month obligation, she currently lives paycheck to paycheck. A check of her credit on February 1, 2006, revealed she was 60 days past due on one credit card with a balance owed of \$3,321. Her other active credit card account was current. As of June 2006, she testified she was living from paycheck to paycheck, although her discretionary income was sufficient to cover her expenses and she was not behind in her obligations.

Guideline E--Personal Conduct

The government amended the SOR to allege that Applicant deliberately falsified her September 21, 2004, SF 85P by failing to list her then very recent arrest for shoplifting in response to question 16 ["In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s)? (Leave out traffic fines of less than \$150.)"]. Applicant admits she was aware she was charged with shoplifting, but denies any intentional concealment. (Tr. 165) When questioned by the OPM investigator on January 28, 2005, Applicant explained, "I did not list this incident when I filled out my SF 85 because I was not certain how this would play out in court and my status w/the court." (Ex. 2) When she responded to SOR ¶ 3.a on May 2, 2006, Applicant indicated that after her arrest on August 1, 2004, she had been told the charge would be continued without a finding and therefore not a conviction on her record, and that based on that representation, she believed she could answer "No" to question 16. ("I did misinterpret the question as it applied to the situation where the charge was going to be dropped, thereby invalidating the entire arrest.").

On direct examination, Applicant testified that since it was her first offense, "[she] knew that it was something that could quite possibly [sic] wiped out and not on [her] record anymore." When asked what led her to assume that, Applicant responded, "Because I know that this was mentioned before that people that I work with or, and I understood that that has happened to me before with a speeding ticket." (Tr. 113-14) Applicant did not indicate as she had in May that she was acting on a specific representation that the charge would be continued and then dismissed. The variation in her explanations undermines her credibility on this issue. Moreover, Applicant testified she pleaded guilty to the offense at her initial court appearance in late August 2004. (Tr. 150) Assuming sentencing in August 2004 or even on September 13, 2004, the date given to the OPM investigator, she would have known as of the time she completed her SF 85P that the case had not been continued without a finding, and that she had been fined and sentenced to 90 days in jail, suspended (Tr. 151). The evidence does not support her claim of good faith mistake. DC (2) *deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination* applies.

Applicant provided details of her arrest during her January 2005 interview with the OPM investigator. In the security clearance context, the DOHA Appeal Board has long held that where the disclosure is of information that was the subject of an earlier falsification, MC (3) *the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*, is the proper guideline to consider and not MC (2) *the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*. (ISCR Case No. 03-07839, App. Bd. May 17, 2005). Similar concerns about judgment and reliability are raised by deliberate omission of relevant and material information from an application for public trust position. It is not clear whether Applicant provided the information up-front before being confronted, which is required for consideration of MC (3). Applicant, who sought no assistance in filling out her SF 85P, did not rely on any advice from authorized personnel when she elected to not report her recent arrest. Applicant's candor at her trustworthiness hearing about her other shoplifting offenses is significant evidence in reform. Yet, its ameliorative impact is diminished by Applicant's ongoing denial of intentional omission of her August 2004 arrest (offense committed in late July) from her SF 85P.

Whole Person Analysis

"The adjudication process is a careful weighing of a number of variables known as the whole person concept." It

requires examination of a sufficient period of an applicant's life to make an affirmative determination that the person is an acceptable risk to hold security clearance or a sensitive position. All available information, favorable and unfavorable, should be considered. (DoD 5200.2-R, AP8) Applicant has a long term condition that if properly managed should not disqualify her from holding a sensitive position. However, she has not always complied with her treatment regimen with adverse consequences. She had to be psychiatrically hospitalized during boot camp in 1991. Despite years of being under the care of mental health professionals, she stopped taking her medication in 2004 because she felt she could manage without it, which led to heightened levels of anxiety that she assuaged by shoplifting (*see The nature, extent, and seriousness of the conduct; The frequency and recency of the conduct*). Even though she has taken her illness more seriously since May 2005, she apparently continues to be symptomatic when outside of the structured environment at work (*see The presence or absence of rehabilitation and other pertinent behavioral changes*). She also exhibited questionable judgment, acting in self-interest in running up significant credit card debt in 2000/01, and in not disclosing her first shoplifting arrest when she completed her SF 85P (*see The voluntariness of participation; The motivation for the conduct*).

Applicant's efforts to address these concerns, such as receiving appropriate treatment from a psychiatrist and psychologist, obtaining a discharge in bankruptcy, repaying the deficiency balance on her loan for the repossessed vehicle, candidly disclosing to the government during her trustworthiness hearing that she had been arrested for two more shoplifting offenses in 2005, constitute recent evidence in reform (*The presence or absence of rehabilitation and other pertinent behavioral changes*). Applicant also has not allowed any of her off-duty difficulties to negatively affect her job performance where she has appropriately handled sensitive personal information. However, based on the evidence before me, I am unable to conclude that there is little likelihood of continuation or recurrence of the criminal conduct and personal conduct issues.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR, as amended:

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2. Guideline F: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a position of trust.

Elizabeth M. Matchinski

Administrative Judge

1. Effective April 9, 1993, the Composite Health Care Systems Program Office, DOHA, and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence entered into a memorandum of agreement under

which DOHA was authorized to adjudicate trustworthiness cases involving personnel working on unclassified automated systems in ADP-I and ADP-II sensitivity positions as defined in DoD Regulation 5200.2-R. By memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) dated November 19, 2004, DOHA was authorized to utilize the procedures of DoD Directive 5220.6 to resolve contractor cases forwarded to it by the Defense Security Service (DSS) or the Office of Personnel Management (OPM) for trustworthiness determination, including those involving ADP-I, ADP-II, and ADP-III positions.

2. Applicant told an OPM investigator in January 2005 that she appeared in court on September 13, 2004. (Ex. 2) At her trustworthiness hearing, Applicant testified she appeared sometime in late August 2004, and she entered a guilty plea at that hearing. (Tr. 150-51) The criminal complaint reflects an initial court appearance of August 23, 2004 (Ex. 8), which would be consistent with her hearing testimony. It is not clear whether she was sentenced on August 23, 2004, or on a subsequent date, such as September 13, 2004.

3. As noted by the DOHA Appeal Board in ISCR 03-21205 (Dec. 23, 2005), under the memorandum of agreement authorizing DOHA to adjudicate ADP trustworthiness cases, the procedures used will be those applied by DOHA under DoD Directive 5220.6, but the investigative and adjudicative standards are provided by DoD Regulation 5200.2-R.

4. There is a separate adjudicative guideline (Guideline I) to assess emotional, mental, and personality disorders. That guideline would appear to be implicated in this case, given her psychiatrist's diagnosis of bipolar disorder and his assessment of her unstable condition as of February 2005. *See DC (1) An opinion by a credentialed mental health professional that the individual has a condition or treatment that may indicate a defect in judgment, reliability, or stability.* Although the government has not raised Guideline I as a basis to deny Applicant a trustworthiness position, I am not precluded from evaluating the risks posed by her bipolar illness since she raised it as an affirmative defense.