

DATE: September 11, 2006

In re:

SSN: -----

Applicant for Trustworthiness Position

ADP Case No. 04-11708

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 2002 and 2005, Applicant incurred approximately \$15,286 in delinquent debt. She has paid off four of the debts and is making timely payments on another account. However, she still has approximately \$10,000 of debt that is either delinquent or she has trouble paying. She has no comprehensive plan for dealing with the remaining debt. I find Applicant did not intentionally falsify her security clearance questionnaire. However, based on her past financial history, it is too soon to conclude her financial situation is under control. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On August 17, 2004, Applicant submitted an application for a position of public trust - an ADP I/II/III position. 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 July 25, 2005, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.

In a sworn statement dated September 19, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on May 24, 2006. A notice of hearing was issued on June 21, 2006, scheduling the hearing for July 11, 2006. The hearing was conducted on that date. The government submitted four exhibits that were marked as Government Exhibits (Gov Ex) 1-4 and admitted without objection. Applicant testified on her own behalf and submitted 15 exhibits which were marked and admitted as Applicant Exhibits (AE) A-N. The record was held open until August 1, 2006. Applicant timely submitted a 69 page exhibit that was admitted without objection as AE O. DOHA received the hearing transcript (Tr.) on August 28, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits the allegations under Guideline F, ¶¶ 1.a, 1.c - 1.i, but denies the allegation in ¶ 1.b and Guideline E ¶ 2.a. Applicant's admissions 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 47 years old and is employed as an indexer with a Department of Defense contractor. She is seeking a position of public trust. She has worked for the same company since October 1995.⁽²⁾ She is single and has two daughters, ages 20 and 22, who reside with her.⁽³⁾ She has a high school education.⁽⁴⁾

On August 17, 2004, Applicant completed a Questionnaire for Public Trust Position (SF 85-P).⁽⁵⁾ A subsequent background investigation revealed Applicant has nine delinquent accounts with a total approximate balance of \$15,286.⁽⁶⁾ The accounts included a \$145 medical account placed for collection in October 2002 (SOR ¶ 1.a); a \$582 computer account charged off in July 2003 (SOR ¶ 1.b); a \$225 account turned over for collection in August 2003 (SOR ¶ 1.c); a \$4,952 credit card account past due since September 2003 (SOR ¶ 1.d); a \$2,531 personal loan, past due since January 2004 (SOR ¶ 1.e); a \$5,846 account past due since February 2004 (SOR ¶ 1.f); a \$392 account charged off in April 2004 (SOR ¶ 1.g); a \$558 student loan account past due since September 2004 (SOR ¶ 1.h); and a \$55 cell phone account placed for collection in May 2005 (SOR ¶ 1.i).

The current status of the delinquent debts are:

SOR Paragraph	Debt	Status	Record
1.a	\$145 medical account placed for collection in October 2002.	Paid on August 26, 2005.	Tr. at 25-28, 37; Gov 3; Gov 4 at 8; AE E; AE I at 10; AE O at 53-54.
1.b	\$582 computer account charged off as a bad debt in July 2003.	Denies. Claims company over-charged her.	Tr. at 28-29; Gov Ex 3 at 2; Gov Ex 4 at 5; AE H at 22; AE I at 6-7.
1.c	\$225 account placed for collection in August 2003.	Paid on August 19, 2005.	Tr. at 29-30, 45-46; Gov Ex 3 at 3; Gov Ex 4 at 5; AE G; AE I at 5.
1.d	\$4,952 credit card account past due since September 2003.	No action taken.	Tr. at 30-31; Gov 3 at 2; Gov 4 at 4; AE H at 23; AE I at 5; AE J at 2.
1.e	\$2,531 personal loan past due since January 2004.	Makes sporadic payments \$75 a month.	Tr. at 31, 46; Gov Ex 3 at 4; Gov Ex 4 at 7; AE H at 23; AE I at 9.
1.f	\$5,846 account past due since February 2004.	Makes timely payments \$65 a month.	Tr. at 31-33; Gov Ex 3 at 2; Gov Ex 4 at 3; AE F; AE I at 1; AE J at 3; AE H at 4, 21.
1.g	\$392 account charged off as a bad debt in April 2004.	No action taken.	Tr. at 33-34, 47; Gov Ex 4 at 7; AE I at 7; AE O at 68-69.
1.h	\$558 student loan account past due since September 2004.	Paid. Settled on August 24, 2005.	Tr. at 34, 36; Gov Ex 3 at 3; Gov Ex 4 at 7; AE D; AE J at 2; AE O at 24.
1.i	\$55 cell phone account placed for collection in ay 2005.	Paid on August 30, 2005.	Tr. at 37; AE E; AE O at 58-59.

Since 2002, Applicant has struggled financially and personally. Her father was diagnosed with cancer in May 2002. During his illness she would often drive to his home located in a nearby state to take care of him. He passed away on July 22, 2003.⁽⁷⁾ Her father would occasionally help her out with finances. Applicant's grandmother lived with her for the last six years of her life. Applicant's oldest daughter had a job taking care of her grandmother. Her grandmother passed away on July 18, 2004.⁽⁸⁾ When her grandmother passed away, her oldest daughter became unemployed.⁽⁹⁾ This caused an additional financial burden. In the wintertime, her two daughter's work schedules are cut to part-time hours

due to the seasonal nature of the employment in the area where they reside. They rely on Applicant for much of their expenses in the winter months. [\(10\)](#)

In August 2004, Applicant sought treatment for Depression and has taken prescription medication since that time. [\(11\)](#) She has also been diagnosed with diabetes, high blood pressure, and high cholesterol. [\(12\)](#) Some time between 2001 to 2004, she was on paid sick leave for six weeks. [\(13\)](#)

Applicant intends to pay off all of her accounts. She has paid the debts alleged in SOR ¶¶ 1.a, 1.b, 1.h and 1.i. [\(14\)](#) She has payment plans with the creditors in SOR ¶¶ 1.e and 1.h. She makes payments on both of these accounts. The payments to the debt in SOR ¶ 1.e appear to be made on a sporadic basis. She agreed to pay \$75 per month. The record evidence indicates payments were made on November 22, 2005, January 30, 2006, April 3, 2006, April 28, 2006 and June 26, 2006. [\(15\)](#)

She agreed to pay \$65 a month towards the debt in SOR ¶ 1.f. The record evidence indicates payments were made on April 20, 2004, February 9, 2005 and February 2, 2006. [\(16\)](#) Her recent credit reports indicate that the account is up-to-date. [\(17\)](#)

Although Applicant intends to pay all her debts, she has no plans for settling the debts alleged in SOR ¶¶ 1.d and 1.g. [\(18\)](#) She disputes the \$558 debt alleged in SOR ¶ 1.b. She claims she agreed to pay \$59.99 for an extended warranty. [\(19\)](#) There were several other delinquent debts not alleged in the SOR. [\(20\)](#) They include a \$3,834 Mastercard account; [\(21\)](#) a \$582 charged off account from a bank; [\(22\)](#) and a \$1,160 department store account. [\(23\)](#) It appears that she is paying on these accounts. For instance she is paying \$33 a month on the Mastercard account. However, the minimal payment she is paying is less than the \$81 finance charge imposed by the creditor making it difficult to reduce the balance. [\(24\)](#) She has also resolved several accounts that were not alleged in the SOR. Among them a \$292 jewelry store account [\(25\)](#) and a \$244 account with a women's clothing store [\(26\)](#)

Applicant attempted to consolidate her debts. She contacted several credit counselors who told her that she could not consolidate her bills because she has a mobile home. She also consulted a credit counselor through her employer but claims that she was no help. [\(27\)](#) Her monthly take home pay is approximately \$1,200 and can be higher if she works overtime. [\(28\)](#) She is renting to own her mobile home. Her mortgage is \$501. [\(29\)](#) After the bills are paid, she has no money left over. [\(30\)](#) She did not provide a copy of her current budget.

On August 17, 2004, Applicant completed a Questionnaire for Public Trust Position (SF 85-P). [\(31\)](#) In response to question "22b. Your Financial Record - Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government." she answered, "Yes," and listed a personal bank loan. She did not list any other delinquent debts.

In her answer to the SOR, Applicant denies that she falsified material facts in response to question 22b on her Questionnaire for Public Trust Position Application (SF 85 P) dated August 14, 2004. Question 22b asks "Are you now over 180 days delinquent on any loan or financial obligation?" Applicant listed a personal loan which is alleged in SOR ¶ 1.e but did not list other debts which were over 180 days delinquent. Applicant did not list the debts because she did not think the debts were 180 days delinquent since she sent in payments to different creditors. At the time she filled out the application, she had just been diagnosed with depression. Her mind was on other things since she had recently lost her grandmother and had lost her father the previous year. [\(32\)](#)

Applicant is highly regarded at work. Her supervisor submitted a letter stating that during the year and half he has supervised her, she has demonstrated impeccable and professional work ethic. She completes all projects and assigned duties in a timely manner. [\(33\)](#) Her former manager describes her as a sincere person who is reliable and conscientious. Other friends and co-workers describe her as "compassionate and respectful," and "a person of high morals and character." [\(34\)](#)

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."⁽³⁵⁾ 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."⁽³⁶⁾

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."⁽³⁷⁾ The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.⁽³⁸⁾ The adjudicative guidelines at issue in this case are:

Financial Considerations - 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. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Personal Conduct is a security 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 (DC), as well as those which could mitigate (MC) security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽³⁹⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽⁴⁰⁾ An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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.⁽⁴¹⁾

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.⁽⁴²⁾ Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.⁽⁴³⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽⁴⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽⁴⁵⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽⁴⁶⁾ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I make the following conclusions.

Financial Considerations

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*); and FC DC 3 E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Applicant has a history of not meeting her financial obligations since 2002. Although she has paid off several of her delinquent debts, approximately \$5,344 remains delinquent. She has had trouble paying other debts as well, which total approximately \$5,576. She has no money left over each month after expenses. At this time, it appears, she is unable to satisfy her remaining debts.

I considered the Financial Considerations Mitigating Conditions (FC MC). Although she has paid off several of her debts, she still has difficulty meeting her financial obligations. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*) because she still carries a significant amount of delinquent debt.

FC MC E2.A6.1.3.3 (*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)*) applies, in part. From 2002 to 2003, Applicant spent a lot of time driving back and forth to her father's home after he was diagnosed with cancer. This added a further expense to her budget. The loss of her father in 2003 and grandmother in 2004 caused great emotional strain which may have made it difficult to concentrate on her finances. It placed an additional financial burden on Applicant since she lost her father's financial assistance and her daughter became unemployed temporarily and relied on Applicant for support.

I cannot apply FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*) because although Applicant consulted with a credit counselor, she did not really attend a formal program. She has paid off several of her accounts, but, it does not appear that her financial problems are under control. She still has several debts which remain unresolved. Applicant did not have an organized plan to deal with the remaining unresolved accounts.

FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is applicable, in part. Applicant resolved four of her delinquent accounts. She is making payments on several other accounts. No attempts have been made to resolve other accounts although she intends to resolve these debts in the future.

Applicant has made a good start towards resolving her delinquent accounts. However, a concern remains that Applicant will encounter financial problems in the future. She has no extra income after her monthly expenses are paid. She does not appear to have an established plan to deal with the remaining debt. She does not have a monthly budget in place. Based on Applicant's past financial history, it is too soon to conclude that her financial situation will be resolved. She has failed to mitigate the concern under Guideline F.

Although her evidence of rehabilitation is insufficient at this time this decision should not be construed as a determination that Appellant can not or will not attain the state of true reform and rehabilitation necessary to justify the granting of a trustworthiness determination. Should Appellant be afforded an opportunity to reapply for a trustworthiness determination in the future and she were able to arrange a satisfactory repayment plan with her creditors to repay her delinquent accounts and pay her debts, she may well demonstrate persuasive evidence of trustworthiness. Since she has not attempted to resolve several of her delinquent accounts, it is premature to grant her a trustworthiness position. The Financial Considerations concern is resolved against Applicant.

Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

In this case, the record evidence fails to establish Applicant deliberately omitted or concealed information about her delinquent debts. Although her answer to question 22b was incorrect, Applicant successfully rebutted the allegations that she deliberately provided a false answer. I find credible her explanation that she did not believe any of her debts were over 180 days old when she filled out her security clearance application. She did not believe they were delinquent since she was making payments towards her debts. At the time she filled out her trustworthiness questionnaire, she had been just recently diagnosed with depression. She was grieving the recent loss of her grandmother as well as the loss of her father the previous year. Her mind was on other things. I find that she did not intend to falsify her security clearance application. Guideline E is decided for Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. 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. An applicant with a good or even exemplary work history may engage in conduct that has negative trustworthiness implications. 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 Guideline F, 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: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all of 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.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended.
2. Gov Ex 1; Tr. at 5, 22.
3. Tr. at 23.
4. Tr. at 5.
5. Gov Ex 1.
6. Gov Ex 3, 4.
7. Tr. at 39-40, 60.
8. Tr. at 37-40, 61.
9. Gov Ex 2.
10. Tr. at 52.
11. AE M.
12. Tr. at 40.
13. Tr. at 27.
14. AE D; AE E; AE G.
15. AE O at 2, 65-66.
16. AE O at 11, 17 and 22.
17. AE H at 21; AE I at 1; AE J at 3.
18. Tr. at 31, 33-34.
19. Tr. at 28-29.
20. Tr. at 48-50.
21. AE H at 23.
22. AE H at 14.
23. Tr. at 48-51, 54; AE H at 12.
24. *See* AE O at 26-34.
25. AE C.
26. AE H at 17.

27. Tr. 48.

28. Tr. at 51.

29. Tr. at 43.

30. Tr. at 51.

31. Gov Ex 1.

32. Tr. at 14-15, 21; AE O.

33. AE A.

34. AE N.

35. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

36. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

37. DoD 5200.2-R, ¶ C6.1.1.1.

38. *Id.* at Appendix 8.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at ¶ C8.2.1.

43. Directive , ¶ E3.1.14.

44. *Id.* at ¶ E3.1.15.

45. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

46. Directive, ¶ E2.2.2.