

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 26 years old and has worked as a beneficiary support representative for a federal contractor since 2003. At an early age she took on considerable responsibility by caring for her younger brother because her mother was incarcerated. She was a single mother at 18 and made poor financial decisions and has been in debt since 1999. She and her husband had over \$42,000 in debt discharged in bankruptcy in October 2005, but they still spend more than they earn and are months behind in car payments. Applicant also deliberately failed to list her delinquencies on her public trust application. She has failed to mitigate the trustworthiness concerns and her eligibility for assignment to sensitive positions is denied.

CASENO: 05-10053.h1

DATE: 04/19/2006

DATE: April 19, 2006

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 05-10053

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

**FOR APPLICANT**

*Pro se*

**SYNOPSIS**

Applicant is 26 years old and has worked as a beneficiary support representative for a federal contractor since 2003. At an early age she took on considerable responsibility by caring for her younger brother because her mother was incarcerated. She was a single mother at 18 and made poor financial decisions and has been in debt since 1999. She and her husband had over \$42,000 in debt discharged in bankruptcy in October 2005, but they still spend more than they earn and are months behind in car payments. Applicant also deliberately failed to list her delinquencies on her public trust application. She has failed to mitigate the trustworthiness concerns and her eligibility for assignment to sensitive positions is denied.

**STATEMENT OF THE CASE**

On August 3, 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").<sup>(1)</sup> On November 25, 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 20, 2005, Applicant responded to the SOR allegations and requested a hearing. In her SOR response, Applicant admitted all of the allegations under Guideline F, except SOR ¶ 1.aa, and she also denied the single allegation under Guideline E. The case was assigned to me on January 30, 2006. A notice of hearing was issued on March 7, 2006, scheduling the hearing for March 29, 2006. The hearing was conducted as scheduled. The government submitted four exhibits that were marked as Government Exhibits (GE) 1-4. The exhibits were admitted into the record without objection. Applicant testified on her own behalf, and submitted two exhibits that were marked as Applicant's Exhibits A-B. The exhibits were admitted without objection. The record was held open to allow Applicant an opportunity to provide additional documentation. She provided a document in a timely manner and it was marked as AE C, and it was admitted without objection. The record was closed on April 10, 2006. DOHA received the hearing

### 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 26 years old and works as a beneficiary support representative for a federal medical contractor. She has three children, one from a previous relationship and two with her husband to whom she has been married since 2002. At the age of 18 Applicant was a single mother and took out a loan to help herself and her mother. Her mother was to assist her in repaying the loan, but was later incarcerated for twenty-five years.<sup>(2)</sup> Applicant took on the additional responsibility of caring for her then eleven year old brother, receiving very little assistance from the state. Applicant admittedly got behind in her debts and obtained a credit card to make purchases for Thanksgiving and Christmas presents.<sup>(3)</sup> During a period of time she was unemployed and did not have medical insurance and incurred medical debts.<sup>(4)</sup> Despite working two jobs she continued to get deeper in debt and had a car repossessed.

Applicant attempted to file for bankruptcy in 2003, and was aware she had delinquent debts because she had received a credit report listing the debts that she gave to her lawyer.<sup>(5)</sup> She had been receiving regular notices of her delinquencies prior to this time.<sup>(6)</sup> Due to some issues with her attorney, the bankruptcy was never filed.<sup>(7)</sup> Despite Applicant's financial problems, in March 2003, her husband purchased a house, using only his credit line. At the end of 2004, Applicant's husband lost his second job and again their family continued to be in a financial crisis. They filed for Chapter 7 bankruptcy in October 2005 and had over \$42,800 in debts discharged on February 15, 2006.<sup>(8)</sup> Applicant did not know what many of her debts were for. When she did make a payment she did not know for how much and could not provide any proof that she had made payments on her debts. She did not contact many of the creditors to determine what the debts were for nor to make any type of arrangements to pay what she owed.<sup>(9)</sup>

Applicant owns a car that she has not made payments on since October 2005.<sup>(10)</sup> This debt was not discharged in bankruptcy. Applicant stated she will turn the car back in when the creditor contacts her.<sup>(11)</sup> She owes over \$10,000 on the car. Many of Applicant's debts were sent to collection or charged off as bad debts as far back as 1999. However, she continued to accumulate a steady stream of consumer debts from 1999 through 2005.

Applicant and her husband listed in their bankruptcy documents that they earn approximately \$3,700 each month.<sup>(12)</sup> They listed their monthly expenses as \$3,831, and their monthly mortgage payment will increase by approximately \$100

a month in April 2006.<sup>(13)</sup> Applicant has accumulated approximately \$5,000 in student loans.<sup>(14)</sup> She accumulates approximately \$3,000 in additional student loan debt each semester.<sup>(15)</sup> Her loans are in a deferment status until she either graduates or stops attending school.<sup>(16)</sup>

On August 3, 2004, when answering Question 20 on her a public trust application (SF 85) (*Your Financial Record-180 Days Delinquencies Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government.)*) Applicant responded "Yes", but only listed one debt. She admitted she knew she had other debts when she filled out the SF 85, but claimed she could not remember the amounts or the creditors.<sup>(17)</sup> Applicant claimed she did not have a credit report or the delinquency notices to accurately fill out her application. She had two weeks to fill out her paperwork.<sup>(18)</sup> No explanation was provided as to why she did not take that time to list her debts. Applicant previously had testified that she could remember from memory all the names, addresses, dates of employment, supervisors, and telephone numbers for her previous eight employers and five prior residences listed on her SF 85, but could not remember more than one of her debts. She was also able to detail on her bankruptcy documents all of her delinquent debts, but did not do so on her SF 85. Applicant's explanations for failing to divulge all of her delinquencies were not credible. She intentionally and deliberately failed to list all of her delinquent debts.

Applicant provided a character letter from a person who has known her for a year and a half and believes her to be self-sufficient, reliable and trustworthy.<sup>(19)</sup>

## **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."<sup>(20)</sup> 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."<sup>(21)</sup>

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."<sup>(22)</sup> The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.<sup>(23)</sup> The adjudicative guideline 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 Guideline F and Guideline 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 and despite having over \$42,000 in delinquent debts discharged in bankruptcy she is unable to meet her current financial obligations.

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 started to accumulate delinquent debts when she was a single teenage mother who was also caring for her younger brother due to her mother's incarceration. These conditions were beyond her control. FC MC 3 applies. However, Applicant was also making poor financial decisions and spending more than she could afford. Despite having

the majority of her debts discharged in bankruptcy shortly before her hearing, it does not automatically negate her financial history of being unable and unwilling to pay her debts. (24) She continues to make poor financial decisions by not making a car payment since October 2005 and waiting for her car to be repossessed. She offered no evidence that she has received any type of financial counseling. In addition, Applicant's expenditures each month are more than her family's income. She offered no budget to show how she is going to keep from getting into financial difficulties again. Although she ran into financial problems as a teenager that were beyond her control, she continued year after year to accumulate more debts and failed to pay them. She has not taken any positive actions to ensure she is not headed toward financial crisis again. Although the bankruptcy resolved her past debts it is not a cure-all for her financial problems. She is not required to be debt free, but she is required to manage her finances in such a way as to meet her financial obligations. Despite FC MC 3 being applicable I find it is not enough to overcome Applicant's financial history and current situation. 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. (25) 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.

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. Applicant deliberately concealed the full extent of her delinquencies on her SF 85. She had attempted to file for bankruptcy in 2003 and had provided her attorney a list of her creditors. She admitted she had been receiving delinquency notices. She was fully aware that she had more than one debt and failed to divulge her other debts until she was confronted by an investigator. Her falsification was recent because it concerned her current application. She did not provide the correct information until confronted by an investigator months later. No evidence was presented to show she has taken positive steps to reduce her vulnerability to coercion, exploitation or duress. PC C 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 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. 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:-bb: 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. 21-23.
3. Tr. 24.
4. *Id.*
5. Tr. 43.
6. Tr. 44.
7. Tr. 25.
8. AE A; AE C. The Discharge in Bankruptcy Order provided by Applicant does not list the actual debts that were discharged.
9. Tr. 65-77.
10. Tr. 39.
11. Tr. 38-41.
12. AE A; Schedule I.
13. *Id.* at Schedule J; Tr. 37.
14. Tr. 35.
15. Tr. 35-36.
16. Tr. 36.
17. Tr. 57.
18. Tr. 60.
19. AE B.
20. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
21. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).



22. DoD 5200.2-R, ¶ C6.1.1.1.

23. *Id.* at Appendix 8.

24. *See e.g.*, ISCR Case No. 97.0016 (December 31, 1997) at p. 4 ("While a discharge in bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for its security significance.")

25. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002).