



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

SSN: -----

Applicant for Public Trust Position

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ADP Case No. 07-08459

Appearances

For Government: Rita C. O'Brien, Esquire, Department Counsel

For Applicant: *Pro Se*

May 22, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted a Public Trust Position Application (SF 85P) on October 24, 2005. On November 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the trustworthiness concerns under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 3, 2008, and requested a decision on the written record without a hearing. On February 25, 2008, the government submitted a File of Relevant Material (FORM) consisting of eight exhibits (Items 1-8). DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. Applicant did not respond by the March 30, 2008, due date. On May

2, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for her. Based upon a review of the FORM, including Applicant's Answer to the SOR (Item 3), eligibility for a public trust position is denied.

Findings of Fact

DOHA alleged that Applicant owes delinquent debt totaling \$35,186 (SOR ¶¶ 1.a-1.z), including five outstanding judgments (SOR ¶¶ 1.a, 1.b, 1.k, 1.l, 1.m). In her Answer, Applicant admitted several of the debts (SOR ¶¶ 1.a-1.j, 1.r, 1.s, 1.v, 1.w, 1.z), but she denied others (SOR ¶¶ 1.k, 1.l, 1.o, 1.p, 1.q, 1.t, 1.u, 1.y). Applicant acknowledged she has a poor credit rating but it was a "hard struggle" being a single mother with a child in daycare. She added that she had taken measures to improve her financial situation. She moved in with her mother, signed up for an online credit counseling course, disputed some items on her credit report, asked for old debts to be removed from her credit report, and contacted the assignee of her student loan debt to make payment arrangements (Item 3). After a review of the government's FORM, including Applicant's Answer, I make the following findings of fact:

Applicant is 31 years old and an employee of a TRICARE managed care support contractor since December 2004. She had worked in provider relations for the previous support contractor from mid-April 2003 to late June 2004 (Item 4). She requires access to sensitive health care information so that she can assist TRICARE Prime beneficiaries needing prior authorization for civilian health care (Item 3).

Applicant attended two years of college from 1995 to 1997 (Item 3). She took out four federal student loans: two in March 1996 in the amounts of \$2,126 (SOR ¶ 1.d) and \$2,625 (SOR ¶ 1.e), one in October 1996 of \$2,625 (SOR ¶ 1.f), and one in February 1997 of \$4,000 (SOR ¶ 1.c). In Spring 1997, she also received an \$800 grant check from the university (SOR ¶ 1.k). The grant was not funded. She did not return the grant monies and the university eventually obtained a judgment against her in September 2002 for \$716 (Items 5, 6, 7, 8).

In September 1997, Applicant began working as an office manager (Item 3). She broke her apartment lease when she relocated for her job, and the landlord eventually obtained a judgment of \$669 against her in May 2000 (SOR ¶ 1.a) (Item 5). She was unemployed from February 2000 to October 2000 (Item 4) and made no effort to repay the judgment (Item 5). She also fell behind in an automobile loan taken out in December 1998 because of her lack of income, and the 1990 model vehicle was repossessed in August 2000 (Items 5, 7). In April 2001, the lender obtained a judgment against her in the amount of \$2,814 (SOR ¶ 1.b). A \$151 unpaid medical debt was placed for collection in August 2000 (not alleged) (Items 5, 6, 7, 8).

From mid-October 2000 until March 2002, Applicant worked as a customer service representative. She got married in June 2001 (Item 4), but it cannot be determined from the available record whether her spouse contributed financially to the household. Applicant was consistently employed, but she defaulted on her student loan

debt (SOR ¶¶ 1.c, 1.d, 1.e, 1.f). The delinquent student loans were referred for collection in September 2001, and in May 2002 a delinquent debt of \$2,886 (not alleged) was placed for collection¹ (Items 7, 8).

Applicant was again unemployed from mid-March 2002 to October 2002. Her spouse was supposed to make payments on an automobile loan in her name, but he failed to do so. In January 2003, the creditor obtained a \$4,962 judgment against her (SOR ¶ 1.m) (Items 5, 7, 8). Applicant also incurred medical costs not covered by insurance that she did not pay. In 2002, delinquent medical debt totaling \$857 was placed for collection (SOR ¶¶ 1.g, 1.h, 1.i, 1.j). In September 2002, a judgment was awarded to a collection agency seeking to collect another \$3,082 in unpaid medical debt (SOR ¶ 1.l) (Items 6, 7, 8).

Applicant stopped working in January 2003 on the birth of her daughter (Item 4). In March 2003, another \$239 in delinquent medical debt was referred for collection (SOR ¶ 1.n). In about April 2003, Applicant began working in the military healthcare industry.² In October 2003, Applicant took out a personal loan of about \$1,000 for hurricane expenses (Item 5). That same month, she and her spouse separated (Item 4). Applicant subsequently defaulted on the loan and a \$425 debt balance was charged off in August 2004 (SOR ¶ 1.s) (Items 6, 7). Applicant claims that her spouse had been arrested for check fraud and she had been forced to reimburse the bank so was unable to make her loan payments (Item 5). Several delinquent cable/telephone accounts were referred for collection around this time as well: in December 2003 for \$485 (SOR ¶ 1.p), in March 2004 for \$1,373 (SOR ¶ 1.q) in charges run up on her account by her spouse after they separated (Item 5), also in March 2004 for \$85 (SOR ¶ 1.r), and in January 2005 for \$297 (SOR ¶ 1.o) (Items 7, 8). In April 2005, a \$120 credit card debt was placed for collection (SOR ¶ 1.u) (Items 6, 7). Additional medical debt totaling \$181 was placed for collection in 2006 (SOR ¶¶ 1.v, 1.w, 1.z) (Items 6, 7, 8).

On October 24, 2005, Applicant completed a SF 85P on which she disclosed that financial judgments had been obtained against her in January 2003 (SOR ¶ 1.m) and September 2002 (SOR ¶ 1.l). As to whether she was now over 180 days delinquent on any loan or financial obligation, Applicant listed a student loan incurred in December 1996 (Item 4). A check of Applicant's credit in December 2005 revealed three additional judgments against her (SOR ¶¶ 1.a, 1.b, 1.k), and several other debts in collection not disputed by Applicant (SOR ¶¶ 1.g, 1.h, 1.i, 1.j, 1.v, 1.w) as well as debts of \$297 (SOR ¶ 1.o), \$485 (SOR ¶ 1.p), \$1,373 (SOR ¶ 1.q) and \$155 (SOR ¶ 1.t) that she now

¹The government alleged a \$297 debt in collection for a computer (SOR ¶ 1.o). However, the credit reports show two debts for collection with the same assignee. The account opened with the original creditor named in SOR ¶ 1.o had a \$2,886 past due balance as of November 2006 (Item 7). The \$297 debt that was alleged in ¶ 1.o was placed with the assignee by a telephone provider in January 2005 (Item 8).

²On her SF 85P, Applicant inconsistently listed a period of unemployment from January 14, 2003 to April 16, 2004, but also that she worked in provider relations in military healthcare from April 17, 2003 to June 20, 2004 (Item 4). In her Answer (Item 3), Applicant indicated that she has worked for her previous employer for three years after having worked on the previous contract for 18 months. It appears that Applicant was unemployed only from January 24, 2003 to April 16, 2003.

disputes (Item 8). A check of her credit one year later showed no progress toward resolving her delinquent debt (Item 7).

On March 21, 2007, Applicant was interviewed by a government investigator about her credit issues. Applicant admitted the judgments in SOR ¶¶ 1.a, 1.b, 1.k, and 1.m were still unpaid. She claimed to have no knowledge of the judgment in SOR 1.l, but also admitted she had not paid medical deductibles/co-pays and had been contacted by the creditor who held the \$3,082 judgment. She did not deny her responsibility for the \$2,814 for the repossessed car (SOR ¶ 1.b), the student loans (SOR ¶¶ 1.c-1.f), the personal loan (SOR 1.s), or the computer debt (reported by the credit bureaus as \$2,687 past due). She averred the \$120 collection debt (SOR ¶ 1.u) was likely a VISA account. Applicant claimed to have paid about \$1,500 toward her student loans and stated she was in the process of arranging for repayment of the \$14,000 aggregate balance. She indicated there was “no specific reason as to why the loans went into default.” Applicant denied any knowledge of some of the debts listed on her credit report, including a \$362 telephone debt placed for collection in March 2006 (SOR 1.x) and a \$155 debt placed for collection in January 2005 (SOR ¶ 1.t), and she disputed the \$1,373 cable/phone debt (SOR ¶ 1.q) because her spouse had run up the debt on her account after they separated. She indicated that most of the other debts would be resolved through a planned bankruptcy filing. Applicant added that she had recently opened a new credit card account on which she was current (Item 5).

As of June 2007, the aggregate balance of Applicant’s delinquent student loans was about \$17,461 (Item 6). In July 2007, Applicant took out an automobile loan of \$11,244, to be repaid at \$390 per month. Her account was current as of September 2007 (Item 6). As of October 2007, Equifax Information Services was reporting \$11,574 in judgment debt (SOR ¶¶ 1.b, 1.k, 1.l, 1.m), \$4,052 in unpaid inactive collection debt (¶¶ 1.g-1.j, 1.n, 1.q, 1.t-1.x, 1.z), three open collection debts totaling \$1,285 (SOR ¶¶ 1.n, 1.r, 1.y), the \$17,461 in student loan debt, and the \$425 personal loan debt (SOR ¶ 1.s). The \$669 judgment debt (SOR ¶ 1.a) had been dropped by Equifax from her credit report, although there is no indication it has been paid.

On December 31, 2007, Applicant notified the three credit bureaus that she was disputing several debts (SOR ¶¶ 1.k, 1.l, 1.o, 1.p, 1.q, 1.t, 1.u, 1.x, 1.y), and she asked that they be removed from her credit record. She also asked that any reference to the \$669 judgment (SOR ¶ 1.a) be deleted as it was over seven years old (Item 3). On January 3, 2008, Applicant told DOHA that she had signed up for online credit counseling, disputed those accounts that she did not recognize, and contacted the assignee of her defaulted student loans to arrange for repayment. She expressed her intent to repay the remaining debts through consolidation (Item 3).

Applicant’s supervisor has had an opportunity to assess her work for the past two years. She has been impressed by Applicant’s “hard work, dedication, and trustworthiness.” In 2007, Applicant was selected to participate in a high level project due to her knowledge, reliability, and excellent customer service (Item 3).

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “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.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an Applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally

permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has a record of serious financial delinquency since the late 1990s. Five court judgments were obtained against her between 2000 and 2003, totaling \$12,243. She also defaulted on her federal student loan debt, which has accumulated to about \$17,461. Furthermore, Applicant did not make her payments on several phone/cable service accounts. Assuming that her spouse ran up \$1,373 in phone charges after they separated, she showed poor judgment in not cancelling the account. She also did not make her medical co-pays or deductible amounts and accumulated about \$1,360 in delinquent medical debt. AG ¶¶ 19(a) (“inability or unwillingness to satisfy debts”) and 19(c) (“a history of not meeting financial obligations”) apply.

Applicant’s financial problems are too pervasive and too recent to satisfy AG ¶ 20(a) (“the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment”). Five delinquent accounts were referred for collection in 2006. Applicant’s failure to make her payments on so many different types of debt (car loans, student loans, the personal loan, cable/phone bills, an apartment rental, and medical co-pays) raises considerable concerns about her ability to manage her financial obligations.

Applicant submits in mitigation the struggles of being a single mother with a child in daycare, and instability in employment before her current job (Item 3). The economic burden of raising a child as a single parent, unemployment, as well as medical costs are circumstances contemplated within AG ¶ 20(b) (“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a

business downturn, unexpected medical emergency, or a death, divorce or separation)." There is no evidence that Applicant has received any child support, and medical costs are not a discretionary expense. Applicant was unemployed from February to October 2000, mid-March to October 2002, and January to April 2003. Although she did not explain in detail its impact on her financial situation (for example, there is no indication whether she collected unemployment or social service benefits), it reasonably explains her failure to remain current on her obligations. However, for AG ¶ 20(b) to fully apply, Applicant must also have "acted responsibly under the circumstances." Applicant has worked for her current employer for the past three years but made no payments on her debts, some of which are as little as \$50. She has not presented any evidence that could justify her inattention to her indebtedness. As of May 2007, she knew the government was concerned about her credit issues, and she indicated that she planned to file for bankruptcy, would consolidate her other debts, and had made a payment on her student loans as recently as 2006. However, there is no evidence of the claimed \$1,500 in payments on her student loans, and her October 2007 credit report does not show any progress toward resolving the debts.

In December 2007, Applicant indicated that she had taken steps to improve her financial situation. According to her SF 85P, Applicant has resided with her mother since September 2005. Yet it is not enough to implicate AG ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") where she has not devoted any of the monies saved to her old debts. Promises to pay or to resolve indebtedness through a possible bankruptcy do not substitute for concrete action. There is no evidence that she has completed any counseling, online or in person, even if she has registered for an online course. Applicant also has not adequately demonstrated that she has a reasonable basis to dispute the legitimacy of those debts that she now disputes. While she now contests her liability for two of the judgments and seeks removal of a third from her credit report based on the passage of time, she did not meet her burden of disproving her legal responsibility. She admitted to a government investigator in May 2007 that the \$716 judgment was for a grant that was never funded, the \$669 judgment resulted from her terminating an apartment lease prematurely, and that she had not paid for some medical services. The credit reports confirm the \$3,082 judgment is for unpaid medical costs. She expressed her belief that the \$120 debt was for a VISA account. AG ¶ 20(e) ("the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue") cannot be applied based on the available record.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a public trust position by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. While Applicant's financial situation was likely impacted by her unemployment, the government must be assured that those persons in sensitive positions can be counted on to exercise good judgment at all times. She remains under a significant debt burden that is not likely to be resolved in the near future given her track record of disregard. Applicant indicates that she has learned a hard lesson because of her poor credit, and she does not want to be punished further by losing her employment. Without an income, Applicant would not be in a position to address her debts. At the same time, the issue before me is whether it is clearly consistent with the national interest for her to hold a position of trust. While she has demonstrated reliability and trustworthiness on the job, it is not enough to overcome the financial considerations concerns.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant

Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

ELIZABETH M. MATCHINSKI
Administrative Judge