



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



In the matter of:)	
)	
-----)	ADP Case No. 07-09085
SSN: -----)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Thomas G. Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

June 9, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant failed to make timely payments on some financial obligations starting in about 2001. Her efforts to address her delinquent debt are very recent and not sufficient to mitigate the trustworthiness concerns. Eligibility for a public trust position is denied.

Statement of the Case

Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) on January 23, 2007. On December 19, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the trustworthiness concerns under Guideline F as the basis for its decision to deny her request for a position of trust. 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 14, 2008, and requested a decision on the written record without a hearing. On March 5, 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 April 12, 2008, due date. On May 27, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness position for her. Based upon a review of the FORM, including Applicant's Answer to the SOR (Item 4), eligibility for a public trust position is denied.

Findings of Fact

DOHA alleged that Applicant owes 16 delinquent debts totaling \$21,557 (SOR ¶¶ 1.a-1.p). In her Answer, Applicant admitted all of the debts without explanation. After a review of the government's FORM, including Applicant's Answer, I make the following findings of fact:

Applicant is 35 years old and an employee of a TRICARE managed care support contractor. She requires access to sensitive health care information in the performance of her duties as a health care finder since January 2007 (Item 5).

Applicant and her spouse were married in 1991. They have three children, who were born in January 1992, June 1996, and April 2003. Shortly before the birth of her second child, Applicant earned her associate's degree. From October 1999 to May 2003, she worked as an accounting clerk for a contractor on a military installation. Following the birth of her third child, she did not work outside the home from June 2003 to August 2004. After a few months as a data entry clerk for an office staffing agency, Applicant began working as a claims processor in December 2004. She started her present employment in January 2007 (Item 5).

On January 23, 2007, Applicant executed a SF 85P on which she responded affirmatively to question 22b, "Are you now over 180 days delinquent on any loan or financial obligation?". She listed two personal loan debts (SOR ¶ 1.e and a loan debt that was not alleged) (Item 5).

A check of Applicant's credit on February 27, 2007, revealed collection balances of \$2,489 (SOR ¶ 1.e) and \$530 on the debts listed on her SF 85P. The credit bureaus reported additional delinquent debt of about \$20,380 (SOR ¶¶ 1.b-1.d, 1.f-1.o), including a \$4,056 auto loan debt (not alleged) charged off in July 2006.¹ Her credit report showed a history of late payments starting in 2001 (Item 8). Applicant expressed

¹Applicant and most likely her spouse took out a joint automobile loan of \$23,412 in August 2000. The monthly car payment was \$470. The credit bureaus reported in February 2007 that a \$4,056 balance was charged off in July 2006 (Item 8).

a willingness to resolve her indebtedness during an interview with an authorized investigator for the Department of Defense held on April 18, 2007 (Item 6).

By letter of July 13, 2007, an assignee for the debt in SOR ¶ 1.m gave Applicant options to satisfy her \$51.55 balance that had been in collection since March 2006. Applicant paid the debt by money order on October 5, 2007 (Item 6). On September 17, 2007, a financial solutions' company informed Applicant that she could resolve her delinquent credit card balance of \$1,980.51 (SOR ¶¶ 1.a and 1.b, same debt)² by opening a new credit card account. The debt balance of her old account would be transferred to this new account and she would be required to make \$35 monthly payments until the balance was paid in full. Applicant accepted the offer but had not made any payments before October 5, 2007 (Item 6). On September 28, 2007, Applicant was offered a settlement of the \$530 loan debt she had listed on her SF 85P. She could make either a one-time payment of \$265, on receipt of which the debt would be considered settled, or pay \$318 through a plan of \$30 minimum payments (Item 6). There is no evidence of any payments.

In about September 2007, DOHA asked Applicant to document satisfaction or payment arrangements of certain debt balances: \$2,489 (SOR ¶ 1.e, updated balance of SOR ¶ 1.f),³ \$2,371 (SOR ¶ 1.f, same debt as ¶ 1.e), \$1,915 (SOR ¶ 1.b), \$30 (not alleged, collection debt duplicated in SOR ¶ 1.d), \$9,690 (SOR ¶ 1.c), \$734 (SOR ¶ 1.o), \$424 (SOR ¶ 1.j), \$336 (SOR ¶ 1.k), \$168 (SOR ¶ 1.n), \$62 (SOR ¶ 1.h),⁴ \$52 (SOR ¶ 1.m), \$530 (not alleged, listed on SF 85P), \$512 (SOR ¶ 1.g), \$238 (SOR ¶ 1.i), \$210 (SOR ¶ 1.l), and \$30 (SOR ¶ 1.d). On October 5, 2007, Applicant indicated she had satisfied only the debt in SOR ¶ 1.m, but the collection agency holding SOR ¶ 1.e had offered to settle for \$934.28 and she was saving the funds needed. She expressed her belief that the debts in SOR ¶¶ 1.e and 1.f were the same debt, and that the \$30 debt in SOR ¶ 1.d was included in the balance of SOR ¶ 1.m. She added that she had accepted a credit card offer to make payments with no interest on the debt in SOR ¶ 1.b, would have to work with her husband about resolving the car note (SOR ¶ 1.c), had contacted the creditor of SOR ¶ 1.h, and was arranging to make \$30 payments in response to an offer to settle the \$530 loan debt for \$318 (not alleged). Applicant furnished copies of the settlement offer on the \$530 loan debt, of the money order satisfying the debt in SOR ¶ 1.m, and of the opportunity to resolve her debt in SOR ¶ 1.b by opening a new credit card account (Item 6).

²Per the November 2007 credit report (Item 7), the credit card account in SOR ¶ 1.b reached a high credit of \$930 before it was transferred. A collection agency was reporting an account with a high credit of \$930 had an updated balance of \$2,068 (SOR ¶ 1.a). In the settlement offer (Item 6), the collection agency in SOR ¶ 1.a is listed as the owner of the credit card debt in SOR ¶ 1.b. The principal balance of the debt was \$930.40, which with fees and finances charges had reached \$1,980.51 as of September 2007.

³The debt in SOR ¶ 1.e is likely an updated balance of the delinquent loan alleged in SOR ¶ 1.f, even though the account numbers are not the same. The debt in SOR ¶ 1.f was charged off in the amount of \$2,371 in November 2003, and the collection account in SOR ¶ 1.e was opened in September 2004 with a last activity date in November 2003. Moreover, the original creditor for the debt in SOR ¶ 1.e is named in the February 2007 credit report (Item 8) and its initials match those of the creditor in SOR ¶ 1.f.

⁴Both credit reports (Items 7 and 8) report the debt balance as \$62 rather than the \$52 alleged.

A check of Applicant's credit on November 28, 2007, showed outstanding collection balances of \$2,489 on SOR ¶ 1.e (likely the updated balance of SOR ¶ 1.f) and \$2,068 on SOR ¶ 1.a (updated balance of SOR ¶ 1.b). A recent debt of \$268 on another account (SOR ¶ 1.p) had been charged off in March 2007. The credit bureau had yet to update its records to reflect Applicant's satisfaction of the debt in SOR ¶ 1.m. Two auto lenders were reporting zero balances on charged off debts of \$9,690 (SOR ¶ 1.c) and \$4,056 (not alleged), but there is no proof they have been paid. Her credit report also showed no progress toward resolving the collection debts in SOR ¶¶ 1.h, 1.j, and 1.k (Item 7).⁵

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 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.

⁵The \$30 collection debt in SOR ¶ 1.d does not appear on her latest credit report but there is no evidence from which I could reasonably conclude that the balance was transferred to the creditor named in SOR ¶ 1.m.

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 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 financial delinquency since about 2001. Her credit card account in SOR ¶ 1.b was charged off in March 2002, she made no payments on her auto loan in SOR ¶ 1.c after July 2002, and the \$30 debt in SOR ¶ 1.d was referred for collection in August 2002. Additional delinquent debt was charged off and/or placed for collection in 2003 (SOR ¶ 1.f and the \$530 personal loan debt not alleged), in 2004 (SOR ¶¶ 1.g, 1.h, 1.i, 1.j), in 2005 (SOR ¶ 1.k), in 2006 (SOR ¶¶ 1.l, 1.m, 1.n, 1.o, and the \$4,056 auto loan debt not alleged) and in 2007 (SOR ¶ 1.p). 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 mitigating condition 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”). Applicant fell behind in her payments on two sizeable automobile loans, including SOR ¶ 1.c, but several accounts of less than \$200 also went unpaid. Assuming the amount alleged in SOR ¶ 1.e is an updated balance of the delinquent account in SOR ¶ 1.f, Applicant still accumulated almost \$20,000 in delinquent debt. She has paid only

\$51.55 toward her delinquent debt as of October 2007. Her acceptance of the terms offered to settle the \$530 personal loan debt (not alleged) and the credit card debt (SOR ¶¶ 1.a and 1.b, same debt) are preliminary. Without a track record of regular payments, I am unable to conclude that either AG ¶ 20(c) (“the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control”) or AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) apply.

Applicant has not explained her failure to remain current in her financial obligations. She reported on her SF 85P a period of unemployment from June 2003 to August 2004 following the birth of her youngest child. Her unemployment and the financial burdens of raising children likely had an impact on her financial situation, but I cannot speculate as to the extent. Furthermore, even if I was to find that there were circumstances beyond her control that caused her to fall behind, Applicant has offered no reasonable justification for waiting until October 2007 to respond to one assignee’s effort in July 2007 to collect its debt of only \$51.55 (SOR ¶ 1.m). Based on the limited information available for review, I am also unable to apply 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), and the individual acted responsibly under the circumstances”).

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. The government must be assured that those persons in sensitive positions can be counted on to exercise good judgment at all times. Applicant remains under a significant debt burden that is not likely to be resolved in the near future. She indicated in October 2007 that she was saving money to settle the debt in SOR ¶ 1.e for a reduced payment of \$934.28. If collection of her delinquent auto

loan debt, including the \$9,690 in SOR ¶ 1.c, is not pursued, her debt burden would be reduced by more than half. Yet, it is not clear that she is in a position to make regular payments on her debt. In the absence of a demonstrated ability to handle her finances responsibly, I am unable to conclude that she possesses the requisite good judgment that must be demanded of those in a position of trust.

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:	Same debt as ¶ 1.a
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Same debt as ¶ 1.e
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:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	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