



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



In the matter of: )  
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----- ) ADP Case No. 07-09376  
SSN: ----- )  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Nichole Noel, Esq., Department Counsel  
For Applicant: *Pro Se*

April 15, 2008

**Decision**

CURRY, Marc E., Administrative Judge:

On November 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines J, F, and E. 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), 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.

DOHA received Applicant's SOR answer on January 2, 2008. She denied Paragraphs 1 and 3, denied subparagraphs 2.b through 2.c, 2.e, and 2.k through 2.l, admitted the remainder, and requested a hearing. I received the case assignment on January 23, 2008. DOHA issued a notice of hearing on February 20, 2008, and I convened the hearing as scheduled on March 4, 2008. During the hearing, I received three government exhibits and Applicant's testimony. DOHA received the hearing

transcript (Tr.) on March 19, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for occupying a sensitive position is denied.

### **Findings of Fact**

Applicant is a 33-year-old single woman with a child from a prior marriage, age 14. She earned a GED in 1996 and has attended some classes at a technical college. Since September 2005, she has worked for a health insurance company as a customer service representative.

In 1994, Applicant donated her kidney to a family member. Since then, she has experienced a number of recurring side effects that have required medical treatment (Tr. 52). She had another major medical surgery in 2001.

Applicant had health insurance, but was unable to pay the copays and deductibles. Gradually the medical bills grew delinquent. A two-year unemployment between 1999 and 2001 further strained her finances.

By late August 2007, Applicant had accrued approximately \$16,000 of delinquent debt, including delinquent medical bills (SOR subparagraphs 2.a, 2.d, 2.f, 2.j, 2.m, and 2.n), the deficiency on a repossessed car (SOR subparagraph 2.e), three phone accounts (SOR subparagraphs 2.c, 2.k through 2.l), and a department store account (SOR subparagraph 2.b). Applicant's sister opened the phone accounts and the department store account in her name without her knowledge. In October 2007, she contacted the creditors, and negotiated reduced settlement amounts (Tr. 47-48) She wrote the credit reporting company in January 2008 to get them removed from her credit report (Tr. 41).

Applicant also has negotiated reduced a settlement amount for subparagraph 2.c. As for the deficiency resulting from the repossession, she unsuccessfully attempted to negotiate a settlement shortly after the creditor repossessed the car in 2003 (Tr. 23). The original creditor is no longer in business, and she has been unable to locate the current creditor.

The majority of Applicant's delinquencies are the medical bills. Most stem from treatment she received at the same treatment facility.

Currently, Applicant has satisfied none of her delinquencies. Her goal is to begin paying the delinquent utilities and the department store account, then begin paying the larger, medical delinquencies.

In June 2006, Applicant completed a Questionnaire for Public Trust Positions (SF 85P). She listed none of her delinquencies that were more than 180 overdue, as required. At the hearing, she asserted that her omission was unintentional (Tr. 25).

In December 2005, Applicant worked as a manager at a check cashing company. She stole \$1,000 from her employer, then called the police and falsely reported that she was robbed at gunpoint. Later, she was charged with filing a false police report, pleaded guilty, and was ordered to pay restitution. The debts listed in SOR subparagraphs 2.a through 2.h were in delinquent status at the time she stole from her employer.

At the hearing, Applicant denied stealing from her employer, and reiterated that she was robbed at gunpoint. The government propounded interrogatories concerning this incident to Applicant in approximately August 2007.<sup>1</sup> In a signed, sworn response, she explained, among other things, “it was me being stupid - immature . . . Report was filed thinking I wouldn’t get caught . . .” (Exhibit 2). When asked by department counsel to reconcile the discrepancy between her hearing testimony and her interrogatory response, Applicant explained that she was lying when she executed the interrogatory response (Tr. 35-36).

## **Policies**

When evaluating an applicant’s suitability to have access to sensitive information, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

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. According to AG ¶ 2(c), the entire process is a 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.

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 decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, “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, [or] trustworthiness . . .” (AG ¶ 18). Moreover, “an individual

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<sup>1</sup>The interrogatories were undated.

who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*).

Applicant’s financial problems trigger the applicability of AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis” apply.

I have considered all of the mitigating condition and conclude none apply. Although a history of medical problems and a two-year unemployment significantly contributed to the accrual of her delinquencies, and she has recently been researching her debts and negotiating with creditors, she has not yet begun satisfying any. Also, before she began organizing her finances, she stole \$1,000 from a former employer. Applicant has not mitigated the financial considerations disqualifying conditions.

### **Guideline E, Personal Conduct**

Under this guideline, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability [and] trustworthiness . . .” Here, Applicant’s SF 85P omission raise the issue of whether AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant 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.

Applicant committed a crime of dishonesty when she stole from her employer and filed a false police report. Despite pleading guilty to the crime, and later discussing it comprehensively during the investigative process in her response to interrogatories, she denied committing the crime at the hearing. Under these circumstances, her explanation for omitting this information from her SF 85P is not credible. I conclude AG ¶ 16(a) applies without mitigation.

### **Guideline J, Criminal Conduct**

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Applicant’s false report conviction and SF 85P falsification trigger the application of AG ¶ 31(a), “a single serious crime or multiple lesser offenses,” and AG ¶ 31(c) “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.” For the same reasons discussed above, I conclude Applicant has not mitigated the criminal conduct disqualifying conditions.

## **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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) 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 security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant's ongoing financial difficulties and repeated demonstrations of dishonesty render her an unacceptable candidate for occupying a sensitive position. Considering the applicable disqualifying and mitigating conditions in light of the whole person concept, I conclude Applicant's eligibility for occupying a sensitive position must be 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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a - 2.n:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

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

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MARC E. CURRY  
Administrative Judge