



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



In the matter of:)
)
-----) ADP Case No. 07-11672
SSN: -----)
)
Applicant for Public Trust Position)

Appearances

For Government: Jeffrey A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

October 27, 2008

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On May 8, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that eligibility for occupying an ADP I/II/III position is clearly consistent with the national interest, and recommended referral to an administrative judge to determine whether a trustworthiness determination should be granted, continued, denied or revoked.

Applicant responded to the SOR on June 19, 2008, and requested a hearing. The case was assigned to me on July 23, 2008, and was scheduled for hearing on September 18, 2008. A hearing was held on September 18, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's eligibility for occupying an ADP I/II/III position. At hearing, the Government's case consisted of eight exhibits; Applicant relied on one

witness (herself) and no exhibits. The transcript (R.T.) was received on September 25, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to occupy a public trust position is granted.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Appellant requested leave to supplement the record with documentation of addressing her listed debts. For good cause shown, Applicant was granted seven days to supplement the record. The Government was granted seven days to respond. Within the time permitted, Applicant supplemented the record with her documented entry into a credit counseling program and payment of the required up-front fees to the counseling firm. Her post-hearing exhibit was admitted and considered.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) petitioned for Chapter 7 bankruptcy in April 2001 (discharged in July 2001) and (b) accumulated 27 debts exceeding \$32,000.00.

Under Guideline E, Applicant is alleged to have falsified her security clearance application (SF-85P) by understating her debts over 180 days delinquent when responding to question 20 of the questionnaire.

For her answer to the SOR, Applicant admitted her bankruptcy petition and discharge, most of the listed debts, and her omissions. She denied the allegations covered by subparagraphs 1.e, 1.l, 1.p, 1.t, 1.x, and 1.y. Applicant provided no explanations for her answers.

Findings of Fact

Applicant is a 43-year-old intake representative for a defense contractor who seeks a trustworthiness determination. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant married in December 1995. She has two children from this marriage: ages 12 and 8 (see ex. 1; R.T., at 32). She has permanent custody over both of her children who reside with her.

Applicant was involved in an auto accident in 1996 that required a lengthy period disability (R.T., at 44). With little income from H to help her with household expenses while she was on disability, Applicant could not keep up with her bills (R.T., at 44).

Applicant first separated from her husband (H) in April 2002 and remained separated for about two years (R.T., at 61). She reconciled with H in September 2003

for a brief two-month period before permanently separating in November 2003 (R.T., at 94-95).

Applicant petitioned for divorce from H in February 2004, and received her final divorce decree in March 2006 (R.T., at 29). H is currently on medical disability as a result of an incident in which caused him post traumatic syndrome (R.T., at 30). He pays no child support and provides no financial assistance (R.T., at 32).

During their marriage, Applicant and H accumulated a number of marital obligations. With no financial help from H following their divorce, she fell behind on these marital debts and defaulted. Still unable to resolve these debts in 2001, she petitioned for Chapter 7 bankruptcy in April 2001 (R.T., at 43). The unsecured debts she scheduled in her bankruptcy petition exceeded \$15,000.00 (R.T., at 43). With virtually no assets to cover these debts, her bankruptcy petition became essentially a no-asset case. She received her bankruptcy discharge in July 2001.

Following her bankruptcy discharge, Applicant continued to struggle with her debts. She accumulated a number of debts between July 2001 and April 2008 that she could not resolve with her limited resources and little support from H during their marriage. Applicant's listed delinquent debts (27 in all) exceed \$32,000.00. Some are consumer-related and several involve traffic-related fines (R.T., at 49-50, 71-73). Her consumer debts for the most part were jointly initiated during her marriage to H (R.T., at 37).

One of Applicant's major listed debts represents a judgment taken against Applicant and H for two months of back rent (totaling \$4,527.00) on an apartment she and her husband rented before their separation (R.T., at 76-77, 96-97). Her marriage with H in trouble, Applicant moved out of the apartment with her children in April 2002. H, in turn, stayed behind in the apartment unit for several months before he, too, vacated the premises (R.T., at 56-59). Applicant acknowledged all but a few of the listed debts that she attributes either to H or an unknown party (*i.e.*, creditors 1.c, 1.l (a likely duplicate of 1.h), 1.p, 1.t, 1.x, and 1.y).

Following her separation from H, Applicant was involved in a car accident (in 2005) that prevented her from working for a period of time (R.T., at 31). She struggled thereafter to keep up with her bills with her limited income sources, and fell further behind with her debts without any assistance from H.

Concerned about her unresolved old debts, Applicant initially tried contacting her old creditors individually (R.T., at 65). She had no success contacting them, and turned to a credit counseling firm in 2007 for advice on how to address her delinquent debts (R.T., at 26-28). Before signing up with this debt management firm, though, she checked on their business standing with her state's better business bureau (R.T., at 90-91). She assures she is able to meet her current monthly debts for necessities with her \$1,900.00 of net monthly income (R.T., at 41-42), and can handle monthly payments up to \$250.00 (R.T., at 28, 89-93). Afforded an opportunity to supplement the record, she

documented her executed agreement with the debt management firm she communicated with, her start-up payment to the firm, and a sample letter to credit reporting agencies (see ex. A). Under the payment terms that Applicant arranged with this firm, she will make monthly payments of \$200.00. With these funds, the debt management firm will make pro rata payments to the creditors scheduled by Applicant (ex. A) under a four-year payment plan (R.T., at 46-47).

Asked to complete an SF-85P application for a public trust position in September 2006, Applicant understated her delinquent debts (listing only a 2004 unpaid traffic fine) when answering question 20 (see ex. 1). Applicant assured she was only aware of traffic debt when she answered question 20 (R.T., at 35, 99-102), and had never pulled a credit report on herself (R.T., at 35). Applicant did not intend to omit any delinquent debts from her questionnaire (R.T., at 35-36, 102). She admitted to falsifying her SF-85P in the mistaken belief at the time she executed the questionnaire she had no debts over 180 days delinquent (R.T., at 103). In hindsight after seeing her credit report she realizes she should have listed these other debts as well. It was never her intent to falsify her application or acknowledge any kind of deliberate falsification of her SF-85P (R.T., at 103-05) when responding to the SOR.

While Applicant's negative answers to question 20 of hers SF-85P do not reflect any mention of possible delinquent debts (enforceable or otherwise) either in the question blocs themselves, or in the space for additional comments in question 43, her demonstrated overall honesty and voluntary acknowledgments of her debt delinquencies in her SF-85P, in her SOR responses, and in her hearing testimony, enable her on balance to avert any inferences of knowing and willful omission. Given the age of the debts at the time she completed the her SF-85P, and likely collection bar of the debts in question under her state's controlling statute of limitations, her omissions have plausibility, and under all of the circumstances considered are accepted.

Applicant assures she has received good performance appraisals and has received promotions from her employer (R.T., at 33). She claims to be well regarded by her employer and is considered reliable and trustworthy. She has never been cited for any privacy infractions by her employer and never do anything that could adversely impact her standing with her employer.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation

set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: "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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG ¶ 18.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require

the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is an intake representative for a defense contractor who accumulated numerous debts during periods of medical disability and divorce that imposed added pressures on her fragile finances and parental responsibilities. With the limited resources available to her, she has been able to keep up with her current household expenses and debts, but not much more. While she has heard nothing from her old creditors in many years and is not the subject of any known collection action on her debts, she remains committed to repaying her old debts and has engaged a credit management firm to help her to address her debts. Applicant's finances and debt omissions in her completed SF-85P raise initial security concerns as well.

Applicant's finances

Security concerns are raised under the financial considerations guideline of the Adjudicative Guidelines where the individual applicant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts, which heretofore she has not been in a position to address, warrant the application of two of the disqualifying conditions (DC) of the Adjudicative Guidelines for financial considerations: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶ 19(c) "a history of not meeting financial obligations."

Extenuating circumstances are associated with Applicant's debts covered in her discharged 2001 bankruptcy, and in the ensuing years following her separation and divorce, and medically-related disability associated with her accident. Due to prolonged periods of income shortages caused by a host of contributing factors (lack of financial support from her husband during and after their marriage, significant parenting responsibilities, disability caused by a 2006 traffic accident, and low-paying wages from her current employment, Applicant has not been in a position to make any tangible headway with any of her debts (disputed or otherwise). MC ¶ 20(b) of the financial considerations guideline (*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, and the individual acted responsibly)*) has some applicability to Applicant's situation.

Because of the limited income available to Applicant since her separation/divorce and second accident, she has not heretofore been in a position to address her old debts (disputed or otherwise). Most of Applicant's listed debts (exclusive of her judgment debt) appear to have been placed in collection before 2004, and are likely barred by her state's controlling statute of limitations. None of Applicant's listed medical and consumer debts reflect any collection action by the individual creditors involved. Based on this record, most of Applicant's covered debts appear to be barred from collection by the pertinent four-year statute of limitation in Applicant's state for written agreements.

Statutes of limitation, while considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, have never been equated with good-faith efforts to repay overdue creditors. See, e.g., ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001). Still, they provide effective collection barriers and, like bankruptcy, serve to insulate the debtor from pressures to raise cash to satisfy his or her creditors.

To be sure, Applicant does not assert relevant statutes of limitation in her state in her defense, and has committed to repaying her debts through a debt management firm., a commendable step considering that most of her debts are likely time-barred. With her limited income she has had past difficulty making individual or collective progress (such as use of debt consolidation) on her listed debts. She has since completed a debt management agreement, received limited financial counseling, and tendered the required \$250.00 start-up fee to the debt management firm she enlisted.

Based on Applicant's recent but important first repayment steps, two additional mitigating conditions have some application to Applicant's situation: MC ¶ 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" and MC ¶ 20(d), "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Based on Applicant's credible disputes of several of the listed claims (possibly H's debts incurred after their legal separation), MC 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," has some applicability as well relative to the listed creditors she disputes.

Holding a favorable trustworthiness determination involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access information covered by privacy rights is required precisely to inspire trust and confidence in the holder of the trustworthiness determination.

Both the applicable mitigating conditions of the financial guideline and whole person assessment of Applicant's financial problems and special circumstances as a struggling parent who is addressing her old debts (despite available time bars for most of the listed debts) conduce to dispel concerns about her reliability and trustworthiness.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources she has had to address them with, and the debt management services she has enlisted to address her debts, she mitigates trustworthiness concerns related to her debts. Favorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

Personal Conduct issues associated with Appellant's SF-85P

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under personal conduct guideline, too, as the result of her omissions of her debts in the SF-85P she completed in September 2006. By omitting her debts over 180 days delinquent, Applicant failed to furnish materially important background information about her debts that was needed for the Government to properly process and evaluate his security clearance application. With the core policy concerns of the personal conduct guideline (AG ¶15) being questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, initial security concerns are evident under this guideline.

On the strength of her omissions alone, DC ¶ 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. While Applicant cannot fully explain her understated debts, she probatively demonstrated that she did not deliberately omit her debts when she responded affirmatively to question 20 of the SF-85P. MP ¶ 17(f), "the information was unsubstantiated or from a source of questionable reliability," is fully applicable to Applicant's situation.

Overall, Applicant's omission explanations are persuasive enough to warrant conclusions the falsification allegations relative to her SF-85P omissions of her delinquent debts are unsubstantiated. Considering all of the evidence produced in this record, favorable conclusions warrant with respect to the Guideline E allegations that Applicant knowingly and wilfully omitted her SF-85P debts more than 180 days, delinquent.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Sub-paras. 1.a through 1.bb:	FOR APPLICANT
GUIDELINE E (PERSONAL CONDUCT):	FOR APPLICANT
Sub-para. 2.a:	FOR APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a public trust position. Eligibility for an ADP I/II/III position is granted.

Roger C. Wesley
Administrative Judge