



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



In the matter of:)	
)	
)	ADP Case No. 07-13107
SSN:)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: Pro Se

July 24, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted her Questionnaire for Public Trust Position (SF 85P), on August 14, 2006. On February 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, Financial Considerations; Guideline E, Personal Conduct; and Guideline J, Criminal Conduct, for Applicant. 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 on February 22, 2008, and requested a decision on the written record. On March 27, 2008, Department Counsel prepared a File of Relevant Material (FORM). The FORM was forwarded to Applicant on March 28, 2008. Applicant

signed the receipt on April 7, 2008. Applicant had thirty days from the receipt of the FORM to submit a response. No additional response was submitted. On June 24, 2008, the FORM was forwarded to the hearing office. The case was assigned to me for decision on that date. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive information is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted to SOR allegations ¶¶ 1.a-1.k, and 2.a and 2.b. She neither admits or denies the allegation in ¶ 3.a. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 37-year-old employee of a Department of Defense contractor who is seeking a position of public trust. She has worked for her current employer since January 2006. She is a high school graduate and has some college credit. She is single and has a 15-year-old daughter. (Item 4.)

On August 14, 2006, Applicant submitted a questionnaire for public trust position, Standard Form 85P. She answered, "No" in response to question 22a. which asks, "Your Financial Record. In the last 7 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had a legal judgment rendered against you for a debt? If you answered "Yes," provide date of initial action and other information requested below." She did not list the judgment alleged in SOR ¶ 1.g. She also answered, "No" in response to question 22b, which asks, "Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government.) If you answered, "Yes," provide the information requested below." (Item 4.) She did not list the delinquent debts alleged in SOR ¶¶ 1.a -1.j.

A subsequent background investigation discovered the following delinquent accounts: an \$858 catalogue account charged off as a bad debt in June 2003 (SOR ¶ 1.a; Item 5 at 3; Item 6 at 2.); a \$1,923 credit card account charged off as a bad debt in September 2003 (SOR ¶ 1.b; Item 5 at 3; Item 6 at 2); a \$1,231 credit card account charged off as a bad debt in November 2003 (SOR ¶ 1.c; Item 5 at 3; Item 6 at 1); a \$1,241 credit card account charged off as a bad debt in November 2003 (SOR ¶ 1.d; Item 5 at 3; Item 6 at 2); a \$3,090 credit card account charged off as a bad debt in December 2003 (SOR ¶ 1.e; Item 5 at 3; Item 6 at 2); a \$1,028.36 credit card account charged off as a bad debt in April 2004 (SOR ¶ 1.f; Item 5 at 4; Item 6 at 2); a \$2,034 judgment entered in May 2005 (SOR ¶ 1.g; Item 6 at 1); a \$3,114 account placed for collection in July 2005 (SOR ¶ 1.h; Item 5 at 4; Item 6 at 1); a \$2,798 account, charged off as a bad debt in October 2005 (SOR ¶ 1.i; Item 5 at 3); a \$590 account charged off as a bad debt in December 2005 (SOR ¶ 1.j; Item 5 at 4; Item 6 at 2); and a \$1,608 credit card account placed for collection in July 2006 (SOR ¶ 1.k; Item 6 at 7).

In response to interrogatories, dated November 8, 2007, Applicant indicated that she began to have financial problems while in college. She made poor financial decisions and

over extended herself on credit cards. She indicated that she intended to research her accounts and is considering filing for bankruptcy. (Item 5.)

Applicant claims that all of these debts are old and that she is current on her recent accounts. Her net monthly income is \$1,360. Her monthly expenses are \$1,305. She has \$55 left over each month after expenses. The expenses do not include payments towards her delinquent accounts. (Item 5 at 5.) No proof was provided that any of these accounts were paid or resolved.

Applicant initially stated that she did not list the delinquent accounts on her trustworthiness application because they were so old. (Item 5 at 4.) In her response to the SOR, she admits to deliberately failing to list her debts in response to questions 22.a and 22.b on her trustworthiness application. (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 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 over-arching 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 security 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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant has a history of not meeting financial obligations. She admits to having 11 delinquent debts with a total approximate balance of \$19,518.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. Applicant has not

resolved any of the delinquent accounts alleged in the SOR. Her financial issues remain.

FC MC ¶ 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) does not apply. There is no information in the record raising the potential application of this mitigating condition.

FC 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) does not apply. There is nothing in the record which indicated Applicant attended financial counseling. Applicant has not provided evidence indicating that any of her delinquent accounts have been paid and/or resolved. It is unlikely her financial situation will be resolved in the near future.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply because Applicant made not attempt to resolve any of her delinquent accounts.

Applicant has not mitigated the concerns raised under Guideline F.

Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

Conduct involving questionable judgment, 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.

Personal conduct concerns are raised because Applicant failed to list a judgment (SOR ¶¶ 1.g) entered against her within seven years of the date she completed her trustworthiness application in response to question 22a. She also failed to list her delinquent debts that were over 180 days old (SOR ¶¶ 1.a - 1.j) in response to question 22b.

Personal Conduct Disqualifying Condition (PC 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 to Applicant's case. In her response to the SOR, she admits that she deliberately omitted a judgment and her delinquent debts in response to questions 22.a and 22.b on the trustworthiness application.

(Item 3.)

Personal conduct concerns can be mitigated. The following Personal Conduct Mitigating Conditions (PC MC) potentially apply to Applicant's case:

PC MC ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts) does not apply. There is no evidence that Applicant attempted to correct the omission of her financial issues on her trustworthiness application.

PC MC ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) does not apply. Applicant's deliberate omission of her financial difficulties on her trustworthiness application is considered serious. Her failure to provide full disclosure of her financial history raises questions about her reliability, trustworthiness, and good judgment.

PC MC ¶ 17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur) because Applicant did not acknowledge the behavior until she received the SOR. There is nothing in the record evidence to show that Applicant has taken positive steps to prevent this behavior in the future.

Applicant did not mitigate the security concerns raised under personal conduct.

Guideline J, Criminal Conduct

The security concern raised under the criminal conduct guideline is set forth in ¶ 30 of the Revised Adjudicative Guidelines:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

There are two Criminal Conduct Disqualifying Conditions (CC DC) that apply to Applicant's case. They are CC DC ¶ 31(a) (*a single serious crime or multiple lesser offenses*); CC DC ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*). Applicant's deliberate omission of her delinquent debts, including one judgment, on her trustworthiness application violated Title 18 U.S.C §1001. While somewhat redundant to the concerns raised under guideline E, personal conduct, her deliberate omissions on her trustworthiness application raises a concern under criminal conduct because it violates a federal statute. When Applicant signed the trustworthiness application, she certified that "My statements on this form, and any attachments to it, are true, complete, and correct to

the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of Title 18, United States Code.)” (Item Gov 4.) Applicant was on notice that any false information deliberately provided on the application was a crime.

The criminal conduct concern can be mitigated. I find that it is premature to apply Criminal Conduct Mitigating Condition (CC MC) ¶ 32(a) (*so much time has elapsed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment*) because Applicant’s deliberate falsification was recent.

It is premature to apply CC MC ¶ 32(d) (*there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*) for the same reasons mentioned above.

At this time, it is premature to conclude that Applicant has mitigated the criminal conduct concern.

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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Financial consideration concerns remain due to the extensive amount of Applicant’s delinquent debt and her lack of effort towards resolving her delinquent accounts. Her deliberate failure to provide truthful answers about her delinquent debts in response to question 22.a and 22.b on her trustworthiness application raise questions about her reliability, trustworthiness and judgment. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under financial considerations, personal conduct, and criminal conduct.

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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	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.

ERIN C. HOGAN
Administrative Judge