



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



In the matter of:	)	
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SSN: -----	)	ADP Case No. 07-13554
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John Bayard Glendon, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 30, 2009

**Decision**

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's request for eligibility for a position of public trust is denied.

On October 12, 2006, Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) to obtain a position of public trust required as part of her job with a defense contractor. After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request. DOHA subsequently issued to Applicant an undated Statement of Reasons (SOR) alleging facts which have raised security

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

concerns addressed in the revised Adjudicative Guidelines (AG)<sup>2</sup> under Guideline F (financial considerations) and Guideline E (personal conduct).

Applicant responded to the SOR on October 1, 2008, and requested a decision without a hearing. On February 9, 2009, Department Counsel prepared a File of Relevant Material (FORM)<sup>3</sup> in support of the government's preliminary decision. Applicant received the FORM on February 29, 2009, and was given 30 days to file a response to the FORM. She did not submit any additional information and the case was assigned to me on April 27, 2009.

### **Findings of Fact**

The government alleged Applicant owed approximately \$28,485 for 14 delinquent debts listed in SOR ¶¶ 1.a - 1.n. Additionally, the government alleged Applicant's monthly expenses exceed her income. (SOR ¶ 1.o) It was also alleged that Applicant deliberately made false statements to the government when she answered "no" to SF 85P questions 22.a (bankruptcy, judgments, tax liens) and 22.b (loans or financial obligations more than 180 days past due), thereby omitting all mention of any financial problems from her questionnaire. (SOR ¶¶ 2.a and 2.b, respectively) She admitted all of the SOR ¶ 1 allegations, but denied both of the SOR ¶ 2 allegations. In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

Applicant is 27 years old. Since October 2006, she has worked as an appointment specialist for a health care and medical insurance company contracted to manage medical insurance claims and information for TRICARE, the Department of Defense (DoD) medical insurance system for military personnel and their families. Her job requires a trustworthiness determination to ensure she may be entrusted with sensitive personal, medical, and financial information of military members and their dependents. The required background investigation produced a credit report that attributed to her 14 unpaid debts and judgments, which include delinquent personal loans, credit cards, retail accounts, and insurance premiums. Her debts also include unpaid rent obligations and at least one car repossession. None of the debts alleged in the SOR have been paid or otherwise resolved. (FORM, Item 7)

Before issuing the SOR in this case, DOHA adjudicators asked Applicant to update the information in her background investigation by responding to interrogatories. In response, Applicant asserted only that she may file bankruptcy at some point and that she only has enough money each month to cover her current obligations. However, she offered no information about the cause of her debts or to show she has taken any

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<sup>2</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the government's case.

action to resolve her financial problems. (FORM, Item 5) As to the allegation that Applicant's monthly expenses exceed her income, she admits the allegation. However, the FORM does not present any information that would serve as the basis for that allegation.

When Applicant submitted her SF 85P, she did not list any of the debts, judgments, liens or repossessions in her background. She has denied deliberately omitting information about her debts, stating in response to question 8 of the DOHA interrogatories, only that she was "unaware of all debt." (FORM, Item 5)

### **Policies**

Each public trust decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the revised Adjudicative Guidelines (AG).<sup>4</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole person" concept, those factor are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to sensitive information. In this case, the pleadings and the information presented by the parties require consideration of the security concern and adjudicative factors addressed under AG ¶ 18 (Guideline F - financial considerations) and AG ¶ 15 (Guideline E- personal conduct).

A public trust decision is intended to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to sensitive information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke an applicant's public trust position. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the

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<sup>4</sup> Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a public trust position, an applicant bears a heavy burden of persuasion.<sup>6</sup> A person who has access to sensitive information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>7</sup>

## Analysis

### Financial Considerations.

The security concern about Applicant's finances, as stated in AG ¶ 18, is that

[f]ailure 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.

Applicant's admissions in response to the SOR and the government's information presented through the FORM are sufficient to support the allegations in SOR ¶¶ 1.a - 1.o. The facts established require application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). The burden thus shifted to Applicant to present reliable information sufficient to refute, extenuate or mitigate the security concerns raised by the government's information. In response, Applicant did not present any such information. Nothing in this record supports application of any of the mitigating conditions at AG ¶ 20. Accordingly, she has failed to mitigate the government's adverse information about her finances.

### Personal Conduct.

The government presented sufficient information to support, despite Applicant's denials, the allegations that she deliberately falsified her responses to two SF 85P questions about her finances. Available information raises security concerns about Applicant's personal conduct as addressed 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

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<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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.

Applicants are required to provide truthful answers at all times during the investigative and adjudicative process. Withholding relevant information about one's background can potentially impede the government's ability to make an accurate decision about granting access to sensitive information. Applicant claims she was "unaware of all debt." This is simply untenable. The only reasonable conclusion that can be drawn from the available information probative of this issue is that she deliberately lied when she completed the form. Even if she were not aware of ALL of her debts, she surely knew one of her cars had been repossessed and/or that there were collection agencies trying to collect one or more of her delinquent debts. These facts and circumstances require application of the disqualifying conditions at 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*). In response, Applicant has not provided any explanation for her answers. On balance, I conclude Applicant has not mitigated the security concerns about her lack of candor about her finances.

### **Whole Person Concept.**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E and F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 27 years old and presumed to be a mature adult. According to her SF 85P, she has been steadily employed since November 2004. Apart from that, there is no information that might support application of any of the whole person factors. A fair and commonsense assessment<sup>8</sup> of all available information bearing on Applicant's finances and truthfulness shows she has failed to address satisfactorily the government's doubts about her ability or willingness to protect the government's interests as her own. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.<sup>9</sup>

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<sup>8</sup> See footnote 4, *supra*.

<sup>9</sup> See footnote 7, *supra*.

### **Formal Findings**

Formal findings 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
Subparagraphs 1.a - 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant eligibility for a position of trust. Eligibility for access to sensitive information is denied.

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MATTHEW E. MALONE  
Administrative Judge