



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



In the matter of:	)	
	)	
	)	ADP Case No. 07-16436
SSN:	)	
	)	
Applicant for Position of Public Trust	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: Pro Se

March 16, 2009

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted a public trust position application, Standard Form 85P (SF 85P), on May 9, 2007. On June 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal 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), 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.

On August 5, 2008, and October 9, 2008, Applicant answered the SOR and requested her case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on December 18, 2008. The FORM was forwarded to Applicant on December 23, 2008. Applicant received the FORM on January 2, 2009. She submitted a response to the FORM on February 10, 2009. Department Counsel noted they did not object to Applicant's response to the FORM on February 18, 2009. The FORM was forwarded to the hearing office on February 20, 2009, and assigned to

me that same date. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, dated October 9, 2008, Applicant admitted SOR ¶¶ 1.a, 1.b and 1.c. Based on her answer to SOR ¶ 2.a, I conclude she denies the allegation under Guideline E. (Item 5)

Applicant is a 62-year-old employee with a Department of Defense contractor seeking a position of public trust. She has been employed with the defense contractor since May 2007. (Item 6)

On May 9, 2007, Applicant completed a Questionnaire for Public Trust Position, SF 85P. She answered "No" in response to question 20, "Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government.)"

Applicant's background investigation revealed the following delinquent accounts: a \$14,626 amount owed towards an automobile loan placed for collection in March 2002 (SOR ¶ 1.a: Item 7 at 4; Item 9 at 5; Item 10 at 2); a \$3,761 student loan account placed for collection in October 2005 (SOR ¶ 1.b: Item 7 at 4; Item 9 at 5; Item 10 at 2); and a \$12,098 student loan account placed for collection in December 2006. (Item 7 at 5: Item 10 at 2)

In her Answer to the SOR, Applicant explained that she did not list her delinquent accounts that were over 180 days old (SOR ¶¶ 1.a – 1.c) in response to question 20 on her trustworthiness application because she did not understand the question. (Item 5.)

In 2002, Applicant's car was stolen. It was found totaled three weeks later. After the insurance claim was paid, she still owed \$7,000 on her automobile loan. She claims that she was unable to make payments due to unemployment. In February 2008, she initially entered into an agreement to repay the automobile loan (SOR ¶ 1.a). Her first payment was due on March 20, 2008. She provided no proof that she actually made payments in accordance with the agreement. (Item 10 at 3)

Applicant owes two student loan accounts (SOR ¶¶ 1.b – 1.c) for a two year junior college program she attended from 1994 to 1996. She made monthly payments on the loans until she lost her job in 2002. Applicant intends to pay off her loans, but does not know when she will be able to afford to make monthly payments towards these accounts. (Item 9 at 5)

As of March 1, 2008, Applicant's net monthly income was \$999.49. Her monthly expenses were \$1,497.83. She also paid \$508 per month to three creditors not alleged in the SOR. She has a negative monthly balance of \$1006.34. (Item 10 at 5)

On March 3, 2007, Applicant separated from her husband and relocated to another state. She and her husband are in the process of divorce. She is trying to do the right things but does not make much money. (Item 10 at 8; Applicant's Response to FORM)

Applicant was unemployed from December 28, 2006, to May 9, 2007. (Item 6 at 2) Although she claims she was unemployed in 2002, her job employment history in response to question 6 on her public trust position application indicates that she was continuously employed from May 1, 2000, to December 28, 2006. (Item 6)

A credit report dated December 18, 2008, revealed three medical accounts that were placed for collection in the amounts of \$336, \$511, and \$397; and a \$492 credit card account that was charged off in May 2008. (Item 12) These accounts became delinquent after the SOR was issued.

In her response to the FORM, Applicant states that she is trustworthy. She has worked for over 40 years and does not have a criminal background. She has experienced financial hardship since separating from her husband and moving to another state. She will try to seek help with a debt counselor. She intends to clean up her debts once her divorce is final. (Response to FORM)

### **Policies**

When evaluating an Applicant's suitability for a position of public trust, 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, which are useful in evaluating an Applicant's eligibility for access to classified information.

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 classified information and/or a position of public trust 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.

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 a position of public trust 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 by granting a position of public trust. 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 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. Between 2002 and 2006, Applicant incurred three delinquent accounts totaling approximately \$30,485. She is incapable of repaying these obligations because her expenses are approximately \$1,000 more than her current monthly income.

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 been unable to enter into repayment agreements pertaining to her delinquent accounts. She continues to incur additional delinquent accounts. Her financial situation is unstable.

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) is considered because Applicant was unemployed for five months prior to being hired at her current place of employment in May 2007. She is in the process of divorcing her husband. However, she has not taken steps to resolve any of the delinquent accounts. She did not make payments towards these delinquent accounts when she was employed full-time between 2002 to 2007. It cannot be concluded that she acted responsibly under the circumstances. FC MC ¶20(b) does not apply.

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. Applicant has not attended financial counseling. It is unlikely that her financial problems will be resolved in the near future based on that fact that she has negative monthly balance of \$1,000 each month, and she incurred several new delinquent accounts after the SOR was issued.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant indicates that she intends to resolve these accounts, but has not entered into any repayment plans with the creditors who own the delinquent accounts. While she entered into a repayment agreement with the creditor in SOR ¶ 1.a in February 2008, she provided no additional evidence indicating that she was making payments under this agreement. I cannot conclude that Applicant initiated a good-faith effort to resolve her overdue accounts.

Applicant's current financial situation remains a trustworthiness concern. She has not mitigated the security concerns raised under financial considerations.

## **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 her delinquent debts that were over 180 days old in response to question 20 on her public trust position application, SF 85P, dated May 9, 2007. Personal Conduct Disqualifying Condition ¶ 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) potentially applies to this allegation. Applicant claims that she did not answer “yes” in response to this question because she misunderstood the question. I find Applicant did not deliberately withhold this information when filling out her application for a position of public trust. I find for Applicant with respect to the personal conduct concern.

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a position of public trust 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. Applicant provided no information about her work performance. At the close of the record, Applicant provided little evidence that she has taken steps to resolve her delinquent accounts. No plans were in place to resolve the delinquent accounts, and it is unlikely Applicant will be able to resolve these accounts in the future because her monthly expenses are more than her monthly income. Applicant failed to mitigate the trustworthiness concerns arising under financial considerations.

### **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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For 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 position of public trust. Eligibility for access to a position of public trust is denied.

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ERIN C. HOGAN  
Administrative Judge