



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



|                                     |   |                        |
|-------------------------------------|---|------------------------|
| In the matter of:                   | ) |                        |
|                                     | ) |                        |
| SSN:                                | ) | ISCR Case No. 08-00673 |
|                                     | ) |                        |
| Applicant for Public Trust Position | ) |                        |

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: *Pro Se*

March 3, 2009

**Decision**

MASON, Paul J., Administrative Judge:

Applicant submitted her Questionnaire for Public Trust Position (SF 85P) on June 11, 2007. On June 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her notarized answer to the SOR on August 22, 2008. Her answer did not include responses to the last six allegations of the SOR. On August 29, 2008, she submitted an addendum with responses to the last six SOR allegations. DOHA issued a notice of hearing on November 5, 2008 for a hearing on November 20, 2008. The hearing was held as scheduled. At the hearing, four exhibits (GE 1 through 4) were admitted in evidence without objection to support the government's case.

Applicant testified and submitted three exhibits. (AE A through C) In the time allowed for Applicant to furnish additional documentation, she submitted AE D through J. The additional documentation provides an additional character statement, payment of two medical bills on December 5, 2008, correspondence from the Internal Revenue Service (IRS), and updated requests for payment from several of the creditors listed in the SOR. DOHA received a copy of the transcript (Tr.) of the proceedings on December 8, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

The SOR alleges 29 debts totaling more than \$23,000.00 under the financial considerations guideline. SOR 1.i. through cc. (22 debts) are delinquent medical accounts representing treatment costs following Applicant's stroke in 2005, and periodic blood tests to ensure the proper blood density in her system. Applicant admitted all allegations except for SOR 1.a. and 1.f. After a thorough review of the record, I make the following findings of fact.

Applicant, 50 years old, divorced, has twin daughters 25 years old, whom she no longer supports. She has been employed as a quality control production clerk since 2001. She also is a manager of a military community services organization. She seeks a public trust position.

Applicant opened two credit card accounts in 2001 or 2002. She was making timely payments on them. Suddenly, she noticed the creditors were charging her late fees and claiming that her payments were delinquent (GE 3).

Some time later in 2001 or 2002, Applicant discovered that her former husband took her credit cards out of state, and used them to pay company bills. He told her the company would repay her, but never did (Tr. 21-22). Knowing her social security number, Applicant believes he opened two new credit card accounts and withdrew money from her bank account (Tr. 44). No additional information was provided. In 2003, Applicant received divorce paperwork in the mail from her former husband (Tr. 35).

The delinquent medical accounts were posted in Applicant's credit report when she could not pay for medical services to treat her stroke in 2005. The cost of inpatient treatment in July 2005 was \$5,494.00 (GE 4). *See also*, SOR 1.h. The follow-up blood tests for her blood disorder amounted to \$28.00 to \$31.00 per test. (Tr. 16, 27-28). GE 4 reflects that inpatient treatment for her stroke occurred in July 2005, followed by 20 medical bill entries reflecting blood tests since then. The most recent medical debt fell delinquent in October 2007. During the time she had the stroke she was working for an interim government contractor, and did not have medical insurance (Tr. 15-16). No additional information was provided. Applicant did not indicate why she has not obtained other medical insurance since then.

Applicant's dispute with SOR 1.a. is that the state tax lien is her former husband's responsibility. She received no correspondence from the state tax authority. Secondly, her state refund was never seized (Tr. 16-18), nor were her wages ever garnished. In September 2005, she told the investigator she believed the tax problem was caused by her former husband failing to pay the taxes for year 2002 (GE 3). In her post hearing submissions, she presented tax documentation from the IRS (AE F). She also provided a one-page document which appears to be a printout from one of the three credit agencies. It shows a state tax lien that was filed in November 1996 (AE J2). While I see an entry for a 1996 tax lien in GE 4 and AE J2, with the same dollar amount as in SOR 1.a., I am not persuaded this lien is Applicant's responsibility. I find for Applicant under this allegation.

Regarding the credit card accounts alleged in SOR 1.b. through 1.d., and SOR 1.g., GE 4 shows the credit cards became delinquent in 2003. Applicant has not been able to repay the credit card accounts because she has not had the money. When she learned she was responsible for all the debts in 2005, she initially tried to avoid the creditors because she was trying to make ends meet (Tr. 36-37).

Applicant has never had counseling (Tr. 37), and could not establish payment plans with her creditors because they wanted their delinquent accounts repaid in a few large payment amounts Applicant did not have (Tr. 38). She indicated she was going to enroll in a credit counseling service in the week following the hearing, but was waiting on her check so she could pay the enrollment fee of \$60.00 (Tr. 39). Applicant's debt counselor reported that she was trying to set up a debt plan for Applicant, and that the process would take time (AE H).

Applicant denied SOR 1.f. because she claims in her government interview in July 2005 that she sold the car to the dealer for \$9,300.00 (Tr. 22-23; GE 3). Further, she indicated the lender agreed that the dealer's sale price of the car was sufficient to release the lien against her (*Id.*). I have reviewed her interview (GE 3) with the letter from the lender (AE J1). The \$9,300.00 was supposed to be paid to the lender, not Applicant. Then, title to the car was to be released to the dealer, not Applicant. However, the government's only evidence to support 1.f. is a credit bureau report (GE 4). I acknowledge the SOR 1.f. collection agency is listed in the exhibit, and that Applicant surmised the collection agency was trying to collect for the car. But, Applicant's speculative testimony is not enough to establish the connection between the collection agency and the car. There is no evidence that ties the collection agency to the car Applicant returned to a dealer in July 2005. Lacking the sufficient quantum of evidence to support the allegation, I find for Applicant under this allegation.

Having weighed and balanced the evidence as a whole, including Applicant's demeanor and candor while testifying, the believability of her testimony is weakened by the fact that the only documented payments of any of the SOR debts occurred on December 5, 2008, about 15 days following the hearing. Yet, at the hearing, Applicant provided the impression that she had been making monthly payments to the medical creditor's collection agency. She stated, "Monthly payments every payday. I make sure

they get paid off the same amount every pay (Tr. 16).” Her personal financial statement (PFS) dated April 2008, appearing in GE 2, reflects that she has \$170.00 remaining every month after deducting her expenses (\$1,370.00) and two monthly debt payments (\$410.00) from her net income of \$1,950.00. Documented payments of only two debts in the SOR undermines Applicant’s credibility.

### **Character Evidence**

Applicant provided several character references and certificates of recognition for her favorable work as a production clerk since 2000. The quality assurance leader indicated in a statement dated November 19, 2008, that based on working with Applicant since 2000, he considers her a valuable asset to his team (AE A). On December 5, 2008, the business manager at Applicant’s employer extolled Applicant’s dedication to team objectives (AE C).

Applicant submitted 16 certificates of recognition for training and/or a good job performance between February 2005 and July 2008.

### **Policies**

On April 9, 1993, the Composite Health Care Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), entered into a Memorandum of Agreement (MOA) which gave DOHA the responsibility to provide trustworthiness determinations for contractor personnel working on unclassified Information Systems Positions as defined in DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987.

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. “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.” The Regulation sets forth personnel security guidelines, disqualifying and mitigating conditions under each guideline. In determining whether the applicant qualifies a sensitive position under the trustworthiness standard, the applicant must be provided the due process procedures contained in DoD Directive 5220.6.

In addition to the disqualifying and mitigating conditions of each security guideline, the general factors of the whole person concept should be applied in deciding whether it is clearly consistent with the national interest to grant an applicant eligibility for assignment to sensitive duties.

When evaluating an applicant’s suitability for a public trust position, 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 a public trust position. These guidelines are flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are sensible, 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 security decision.

A person who seeks a public trust position enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an around-the-clock responsibility between an applicant and the federal government. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified 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.

## **Analysis**

### **Financial Considerations (FC)**

18. *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.

The SOR lists a delinquent state lien, five credit card creditors, an unknown debt, and 22 medical accounts totaling more than \$23,000.00. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) applies due to Applicant's inability to pay the debts. FC DC 19.c. (*a history not meeting financial obligations*) applies as the credit report shows that the debts fell delinquent between 2003 and October 2007.

Applicant's financial delinquencies may be mitigated by FC mitigating condition (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 reliability, trustworthiness, and good judgment*); FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*); 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*); and, FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

FC MC 20.a. does not apply due to the number of debts and Applicant's failure to take action much earlier than she actually did. FC MC 20.b. is applicable to the circumstances of this case because Applicant suffered a stroke in July 2005 without medical insurance. Since then, she also has had to obtain regular blood tests without medical insurance. However, the mitigating weight that Applicant receives under FC MC 20.b. is reduced by the passage of three years revealing that Applicant has paid only two of the medical debts. Her PFS reflects she had monthly funds available after payment of her expenses and debts. Yet, she decided not to use the funds to pay even some of the smaller delinquent accounts.

FC MC 20.c. does not apply. Applicant has had no financial counseling, and still owes most of the listed debts. Even though Applicant has not incurred any new delinquent debt, there is no evidence showing her present financial problems are under control. The same conclusion is made regarding FC MC 20.d. as payment of only two creditors from the SOR is very little evidence of a good-faith effort to satisfy overdue creditors, or to conclude Applicant is really serious about paying of her remaining creditors. In sum, the mitigating evidence under FC MC 20.b. and 20.d., specifically the character evidence disclosing Applicant's favorable job performance and teamwork attitude, does not overcome the negative evidence presented under FC DC 19.a. and 19.c.

### **Whole Person Concept (WPC)**

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding for Applicant under the FI guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept.

In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

- (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 the participation was 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. AG ¶ 2(a)

I have considered the disqualifying and mitigating conditions in light of the whole person concept. Applicant was abandoned by her husband in 2001 or 2002 while she trying to raise two children. He absconded with her two credit cards, and seriously damaged her credit over the next few years. In July 2005, she had a stroke requiring treatment and regular follow-up blood tests. Throughout the medical ordeal, she had no medical insurance. However, three years have passed since her stroke. While the cost of the inpatient treatment following the stroke was more than \$5,000.00, the cost for the blood test visits have not exceeded \$31.00 a visit.

Applicant was placed on notice in September 2005, June 2007, and April 2008 that her financial difficulties were a concern to the government. At the hearing, she stated she was making monthly payments to the collection agency for the medical debts. Yet, the only documented evidence of payments is the two medical debt payments on December 5, 2008. With documented evidence showing that only two accounts in the SOR have been paid off, and the lack of any plan in place to address the remaining creditors, Applicant's outstanding employment record is not sufficient for me to find in her favor under the FC guideline.

### **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 (Financial Considerations, Guideline F): AGAINST APPLICANT

|                   |                    |
|-------------------|--------------------|
| Subparagraph 1.a. | For Applicant      |
| Subparagraph 1.b. | Against Applicant  |
| Subparagraph 1.c. | Against Applicant. |
| Subparagraph 1.d. | Against Applicant  |

|                               |                   |
|-------------------------------|-------------------|
| Subparagraph 1.e.             | Against Applicant |
| Subparagraph 1.f.             | For Applicant     |
| Subparagraph 1.g.             | Against Applicant |
| Subparagraph 1.h.             | Against Applicant |
| Subparagraph 1.i. through aa. | Against Applicant |
| Subparagraph bb.              | For Applicant     |
| Subparagraph cc.              | For Applicant     |

### **Conclusion**

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

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Paul J. Mason  
Administrative Judge