



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ADP Case No. 08-03372  
SSN: )  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 30, 2009

**Decision**

MASON, Paul J., Administrative Judge:

Applicant submitted her Questionnaire for Public Trust Position (PTPA) on December 21, 2006. On October 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F), and personal conduct (Guideline E). 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 November 5, 2008. She requested a decision in her case without a hearing. DOHA mailed a File of Relevant Material (FORM- information provided to an applicant to support the allegations of the SOR) to Applicant on January 22, 2009. She received the FORM on January 26, 2009. Her response to the FORM, which was received on March 13, 2009, has been admitted

in evidence. I was assigned the case on March 27, 2009. Having considered the entire record, Applicant's request for employment in a public trust position is denied.

### **Rulings on Procedure**

Pursuant to ¶ E3.1.17. of DoD Directive 5220.6, section 3 of Item 6 (response to interrogatories), p. 6, is amended by changing the date of February 2, 2007 to December 21, 2006. This change is made to conform the SOR to the correct date Applicant signed her PTPA.

### **Findings of Fact**

The SOR alleges financial considerations because Applicant owes nine delinquent accounts totaling \$19,396. She admitted all the financial allegations. The SOR also alleges personal conduct based on a for PTPA signed by Applicant on December 21, 2006, where she disclosed a judgment in response to question 22.a.,<sup>1</sup> but answered "No" to question 22.b., requiring information about debts at least 180 days delinquent.<sup>2</sup> Applicant acknowledged she omitted the financial information.

Applicant is 51 years old, and has been married since February 1985. She has two children. She has been employed by a defense contractor since 1988. Currently, she is a Quality Analyst II. She seeks a sensitive position.

### **Financial Considerations**

» SOR 1.a. is a judgment amounting to \$6620. The original creditor reported this account delinquent in August 2004, and sold the account to a collection agency in November 2006. A judgment was filed against Applicant in December 2007 (Item 7). She claimed in her response to the FORM (March 13, 2009) that she was negotiating with a collection firm, and had reached an agreement to pay the balance in 30 days. Applicant still owes this account.

» SOR 1b. through SOR 1e. are four medical accounts for \$63, \$71, \$64, and \$51, respectively. These accounts fell delinquent between 2003 and 2005. In July 2008, Applicant indicated in Item 6 (responses to interrogatories) she intended to contact the creditor for payment. She provided no information of taking action on these debts. SOR 1.b. through 1e. are found against Applicant.

» SOR 1.f., \$811. The mail catalogue account was opened in 1998 and became delinquent in 2004. Applicant is still responsible for this account.

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<sup>1</sup> The question requires information about whether the applicant has filed for bankruptcy, or been the subject of a tax lien or legal judgment in the last 7 years.

<sup>2</sup> The question also requires the applicant to disclose any obligations funded or guaranteed by the federal government.

» SOR 1.g. This credit card account of \$2,024 reached delinquent status in November 2001. The account was purchased by a collection agency on February 2008. Applicant received an offer of settlement from the creditor, which she attached to her response to the FORM on March 13, 2009. In the offer of settlement, the collection agency offered Applicant an opportunity to settle the account for \$1,012. Applicant stated she would be taking advantage of the offer in 30 days. There is no evidence that Applicant accepted the offer by paying the settlement amount. This account is resolved against Applicant.

» SOR 1.h. This credit card account of \$3,867 was posted delinquent in March 2002. Applicant provided no information about this account and/or what she intends to do to satisfy the creditor. She remains responsible for the past due debt.

» SOR 1.i. is a credit card account amounting to \$5,815 that became delinquent in September 2006. The past due debt is found against Applicant.

In her responses to interrogatories dated July 15, 2008, Applicant provided proof she satisfied an unlisted debt of \$764 in May 2008, and that she was current on her other debts.

The record is silent on whether Applicant has had financial counseling. Also, the record contains no information explaining Applicant's financial habits. On July 15, 2008, Applicant submitted a financial profile statement (PFS) with her responses to interrogatories (Item 6). She stated her total net income a month is \$7,146, after adding her net monthly income (\$1,217) to her husband's monthly income of \$5,829. She also indicated her monthly expenses totaled \$1,426. After subtracting her monthly expenses of \$1,426 from her total net monthly income of \$7,146, the net monthly income (before monthly debts are subtracted) is \$5,720. After subtracting monthly debts of \$1,151 from \$5,720, the net monthly remainder should equal \$4,569. I do not know why Applicant's computations total a smaller net monthly remainder of \$3,073. The significance of Applicant's PFS is that she has more than \$3,000 in discretionary income (earnings that could be applied for any purpose) available every month after the payment of monthly expenses and debts.

### **Personal Conduct**

On December 21, 2006, Applicant certified and signed a PTPA. In response to question 22.b. of the form requiring information about debts at least 180 days delinquent, Applicant answered "No." In Item 6 (July 15, 2008),<sup>3</sup> Applicant stated in response to why she omitted the overdue debts from her PTPA. She stated, "The debts listed were several years old, and I wasn't aware they were still listed (*Id.*)." The debt in SOR 1.i. became delinquent about three months before Applicant signed her PTPA in

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<sup>3</sup> The date appearing in Item 6 (Responses to Interrogatories) is incorrect. After reviewing Item 5 (PTPA), the correct date is December 21, 2006, and page six of Item 6, section 3 is amended by changing the date February 2, 2007 to December 21, 2006.

December 2006. The past due debt in SOR 1.f. became delinquent in July 2004. I find she intentionally falsified her PTPA on December 21, 2006.

### **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.”

A person who occupies a public trust position has a duty to show she or he can be trusted to handle the responsibilities of the job. An applicant also has a duty to demonstrate she can be trusted to properly handle various responsibilities in her personal life. Depending on the issues involved in public-trust-position cases, a person has a duty to obey the law. She also has a duty to refrain from drug use and/or alcohol abuse. Further, an applicant has a duty to be candid and forthright during all phases of a security investigation, including job applications and interviews. Finally, an applicant has a duty to demonstrate she handles her personal, financial obligations in a responsible manner. This means that an applicant must pay all voluntarily incurred debts in a prudent and prompt manner, rather than allow the debts to fall delinquent and/or become judgments that can expose the debtor to garnishment.

The SOR shows that Applicant owes 9 debts totaling \$19,396, and has not repaid the debts. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) applies due to Applicant's inability and/or unwillingness to pay the listed debts. FC DC 19.c. (*a history not meeting financial obligations*) applies as the credit report shows that the debts fell delinquent between 2002 (SOR 1.h.) and September 2006 (SOR 1.i).

I have carefully evaluated the mitigating conditions under the FC guideline. I have concluded that Applicant's answers to the SOR, her 20 years of employment, and her two-page statement in response to the FORM are not sufficient to qualify her for a position of trust. 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*) has only partial application. While five of the debts are dated, meaning that they became delinquent more than five years ago, the delinquent credit card account in SOR 1.i. converted to that status about three years ago. Also, the judgment in SOR 1.a. was filed in December 2007. Applicant's failure to pay any of the debts generates continuing doubt regarding her judgment and reliability.

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*) does not apply to the circumstances in this case. Applicant has been married since 1985, and has worked for her current employer since 1988. She reported no unanticipated events in her life, e.g., sickness or unemployment, that prevented her from paying her debts.

Applicant is unable to take advantage of 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*) as well. Without evidence of financial counseling, there is no credible method to determine the strength of Applicant's financial habits. Without a plan to address the debts, I am unable to conclude Applicant has her financial obligations under control.

FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies when there is evidence to show payment of creditors. Conversely, a claim of negotiating with creditors or receiving some offer of settlement has no probative value unless there is matching evidence of payments. Applicant's net monthly remainder of more than \$3,000 convinces me she has the wherewithal to address the delinquent debts. For example, payment of the four medical debts would have provided some evidence Applicant is serious about eliminating her past due debt. Saving \$1,000 of her monthly remainder for six months would have allowed her to pay off five or six of the listed debts. Applicant's inaction, specifically since July 2008, supports a finding against her under the FC guideline.

## Personal Conduct (PC)

15. *The Concern.* “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.”

Applicant’s “No” answers to the financial question 22.b. (debts at least 180 days delinquent) of her PTPA in December 2006 was a deliberate falsification of relevant facts as defined by PC DC 16.a. (*deliberate omission, falsification of relevant facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness*). There is no limiting language within question 22b. of the PTPA that restricts the applicability of the question to a certain period of time. For example, the question does not only apply to recent debts. Rather, it applies to any debts more than 180 days overdue. By stating she did not provide the debt information because the debts were several years old, Applicant applied a rationalization of age for concealing the debt information. However, the debt in SOR 1.i. became delinquent only three months before she submitted her PTPA. Viewing the totality of the circumstances, I conclude she deliberately falsified the application.

I have carefully considered the following mitigating conditions to determine whether Applicant’s intentional omissions are mitigated: PC MC 17.a. (*the individual made prompt, good-faith efforts to correct the omission or falsification before being confronted with the facts*); 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*); and, PC MC 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*).

PC MC 17.a. does not apply because Applicant never made any prompt, good-faith attempt to correct the false information. Her admission to omitting the financial information did not come until she was confronted with the omission in July 2008. PC MC 17.c. does not apply as Applicant attempted to conceal nine debts when she certified and signed her PTA in December 2006. Her falsification of material information, which is interpreted as an effort on her part to misrepresent her financial status, raises ongoing concerns about her judgment and reliability.

Finally, 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*) has only limited

application. Applicant acknowledges she intentionally provided false information on a PTPA in December 2006. Applicant's admission and remorse for omitting the information, while providing some mitigation, does not entitle her to the full application of PC MC 17.d. Furthermore, the limited mitigation Applicant receives under PC MC 17.c. and 17.d. is insufficient to prevail over PC DC 16.a.

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

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate findings against Applicant under the FC and PC guidelines. 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)

Applicant owes a total of \$19,396 for nine delinquent debts. Some of the debt is more than five years old and may no longer be enforceable by the state limitations statute that require creditors to bring action against debtors within a certain period of time. However, the limitations statute does not assist Applicant anyway as she has done nothing to address any of the nine debts. At age 50, when Applicant prepared her PTPA in December 2006, she was placed on notice that the government was concerned about her debts. Two months before her 52<sup>nd</sup> birthday, Applicant was provided more specific notice by the government of her financial problems, and the measures she had or had not taken to deal with the debts. Yet, her response to the FORM shows her first signs of action to pay off these listed creditors. The presence of an offer of settlement or an intention to pay in the future does not, however, have the same mitigating value that evidence of actual payment does, particularly in Applicant's case with a large monthly remainder that Applicant has chosen not to apply to her delinquent debts. Applicant's 20-year history of employment with her company has been carefully examined, but provides no insight into her overdue indebtedness, and failure to make any effort to repay the debt. With no payments or plan to address her debts, and her deliberate falsification of her delinquent debts, Applicant has not met her burden of showing under the FC and PC guidelines that she is eligible for a public trust position.



### **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. through 1.i. Against Applicant

Paragraph 2 (Personal Conduct, Guideline E): AGAINST APPLICANT

Subparagraph 2.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 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