



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



In the matter of:	)	
	)	
XXXXXX-Xxxxxx-XxXxxxxx	)	ADP Case No. 08-03717
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro se*

August 19, 2009

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 27 March 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, J, and E.<sup>1</sup> Applicant answered the SOR 24 April 2009, and requested a decision without hearing. DOHA assigned the case to me 13 August 2009. The record in this case closed 17 August 2009, the day I overruled Department Counsel’s objection to Applicant’s response (A.E. A) to the government’s File of Relevant Material (FORM).

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<sup>1</sup>DOHA acted under the 9 April 1993 memorandum of agreement between the Composite Health Care System Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD C<sup>3</sup>I) for DOHA to conduct trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987. ADP cases are adjudicated under the policies and procedures established by Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

## Findings of Fact

Applicant admitted the SOR financial allegations, except for SOR 1.b. (allegedly paid) and 1.i. (unknown to her). She admitted a February 2006 arrest for breach of trust (SOR 2.a.). She denied the falsification allegations. She is a 39-year-old receptionist employed by a defense contractor since October 2004. She will have access to sensitive medical data.

The SOR alleges, and government exhibits substantiate, 11 delinquent debts totaling over \$19,000. Applicant admits nine debts over \$18,000. Three of the debts are medical debts totaling less than \$500. She claimed, without corroboration, to have paid one debt for \$165. She has not otherwise paid or arranged payment plans with any of the remaining creditors. She currently lacks the means to repay her delinquent debts.

Although Applicant provides no explanation for her financial problems, her public trust application (Item 5) reflects that she was unemployed between October 2003 and October 2004. Her credit reports (Item 7, 8) show the accounts largely became delinquent between 2003 and 2006. She is also the never-married mother of two children. However, the record also reflects that Applicant made credit purchases for items (automobiles and furniture) when she knew she would be unable to make the required payments.

Applicant's financial problems were so severe that between December 2005 and January 2006, she stole \$2,200 cash from her employer, a major-retailer.<sup>2</sup> She had taken this second job in December 2004. Her employer fired her in January 2006 when her thefts were discovered. The formal charge in February 2006 was breach of trust, to which she pled guilty.

When Applicant applied for a public trust determination in March 2006 (Item 5<sup>3</sup>), she did not disclose her employment with the major-retailer between December 2004 and January 2006, as required by question 11 (employment for the last seven years). She did not disclose that she was fired from this job, as required by question 12 (adverse employment actions for the last seven years). She did not disclose her February 2006 arrest and conviction, as required by question 20 (arrests, charges, or convictions for the last seven years). Finally, she did not disclose that she was currently more than 180 days delinquent on numerous debts, as required by question 22b (currently over 180 days delinquent on any account).

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<sup>2</sup>She inadvertently took home \$600 in large bills in December 2005. She was afraid to turn the money in because of what she thought management might think (Item 6). Nevertheless, she did not return the money but used it instead to pay bills. When she saw how easy it was to steal from her employer she continued to steal money to pay her bills, until she was detected in January 2006.

<sup>3</sup>An application she re-certified in August 2006.

Applicant gives a variety of conflicting explanations for these omissions. During a December 2007 interview with a government investigator, she claimed she omitted her February 2006 arrest because she thought it had been expunged under the state first offender law. However, even if I find this claim credible, the question contains no such exception. She later claimed in her response to the FORM that she was told by the police and her “case manager” that she did not have to disclose the arrest or the other information. Beyond the lack of corroboration, it is not clear whether she means for the term “case manager” to refer to her criminal proceedings or her employer’s guidance on how to complete the application. In any event, Applicant provided no corroboration of any of these claims.

During a January 2008 interview with a government investigator, she claimed to have omitted her employment with the major retailer because she first completed an application in 2004, when she had neither been employed nor fired by this employer. She claimed to not recall any application after 2004. However, the application at issue in this case was first executed by Applicant in March 2006, and later re-certified by her (by her initials) in August 2006. She offered no explanation for omitting her delinquent debts. She described her financial situation as “unfavorable.” She professes her willingness to pay her debts, but acknowledges that she lacks the means to deal with her delinquent debt.

Applicant submitted no character or employment records. The case record reveals that few people are aware of her financial problems, her employment-related issues, and her criminal conviction.

### **Policies**

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an applicant’s suitability for public trust positions. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial commonsense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to sensitive information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guidelines F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct).

Public trust determinations resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s eligibility for public trust positions. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or

mitigate the government's case. Because no one has a right to eligibility the applicant bears a heavy burden of persuasion.

Persons with access to public trust information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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>4</sup>

### Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. While some of Applicant's financial difficulties are reasonably attributable to her year's unemployment between October 2003 and October 2004, she has been both unwilling and unable to take effective action to address her debts despite being employed full time since October 2004, and holding a second job between December 2004 and January 2006. However, her debts were also due to her irresponsible spending when she knew she lacked the means to repay her creditors.<sup>5</sup> Her willingness to steal from her employer suggests she would engage in other illegal activity to augment her income, putting sensitive information at risk.

Applicant potentially meets only one of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.<sup>6</sup> While her unemployment was clearly a circumstance beyond her control, she got a new job in October 2004 and a second job in December 2004, and she has not acted responsibly in addressing her debts since then, having not even resolved several small debts.<sup>7</sup> Further, she is unwilling or unable to live within her means. She worked a second job for the major retailer for more than a year. That additional income was inadequate to address her debts, as evidenced by her stealing from that employer to pay bills. In addition, there is no evidence that she has sought credit counseling or otherwise brought the problem under control.<sup>8</sup> There is very little evidence, and no corroboration,

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<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup>¶ 19.(a) inability or unwillingness to satisfy debts; (b) . . . the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations.

<sup>6</sup>¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur.

<sup>7</sup>¶ 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.

<sup>8</sup>¶ 20.(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

of any good-faith effort to satisfy her debts.<sup>9</sup> Finally, given her unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put her financial problems behind her. I conclude Guideline F against Applicant.

The government established a case for disqualification under Guideline E and J, and Applicant did not mitigate the security concerns. Applicant stole from her employer to address debts that she could not pay otherwise. The thefts were possible because of her position of trust in the company, and demonstrate both poor judgment and untrustworthiness.<sup>10</sup> This was a second job for her, to augment her income from her public trust position. Further, her thefts from her employer go to the heart of security concerns, under financial considerations as well as criminal conduct and falsifications. She stole from her employer to pay bills. There is a risk she could use sensitive information to deal with her debts.

She later deliberately concealed her job with the major retailer, that she was fired for stealing, she was convicted of stealing, and the fact that she had significant delinquent debt.<sup>11</sup> She did so knowing that these issues created major public trust concerns for the government, and believing they might not be discovered because her conviction might have been expunged. She knew that to disclose any one detail about her employment with the major retailer (the employer, the firing, or the conviction) would lead to discovery of the other two details. No other interpretation reconciles all the facts. Applicant's convoluted explanations for her omissions are not credible.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant's falsifications potentially prohibited the government from evaluating her adverse information in a timely fashion.

Record evidence clearly establishes that Applicant intended to conceal her adverse employment history and her financial problems from the government and effect

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<sup>9</sup> 20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>10</sup> ¶ 16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

<sup>11</sup> ¶ 16.(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness.

the course of her background investigation. This conduct violated 18 U.S.C. §1001,<sup>12</sup> whether or not she was successful in effecting the course of her investigation.

Applicant's failure to disclose her adverse employment history and financial problems demonstrates a lack of candor required of public trust personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a public trust decision. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about herself provides some indication of her willingness to report inadvertent violations or other concerns in the future, something the government relies on to perform damage assessments and limit the compromise of sensitive information. Applicant's conduct suggests she is willing to put her personal needs ahead of legitimate government interests. I resolve Guideline E and J against Applicant.

Beyond the specific guidelines alleged by the government, the generally applicable disqualifying and mitigating conditions lead to the same result. Finances, falsifications, and criminal conduct are core security concerns [RAG ¶2(a)(1)]. Her behavior was deliberate and not due to circumstances beyond her control [RAG ¶2(a)(2); RAG ¶2(a)(5)]. Her misconduct was both recent and frequent [RAG ¶2(a)(3)]. Applicant cannot attribute her conduct to youthful indiscretions. Further, honesty is a core requirement for access, and not a difficult concept to understand or hold Applicant's to [RAG ¶2(a)(4).] Rehabilitation or behavioral changes are difficult to measure under these circumstances, given the absence of corroboration of any of her claims [RAG ¶ 2(a)(6)]. She clearly sought to mislead the government about her employment history and financial problems [RAG ¶2(a)(7)]. Applicant's willingness to put her personal needs ahead of legitimate government interests increases her potential vulnerability and she has not demonstrated that the misconduct is unlikely to recur [RAG ¶ 2(a)(8); RAG ¶ 2(a)(9)]. The concern is whether Applicant would disclose situations or circumstances, whether deliberated or inadvertent, that raise security concerns. Overall, the record evidence leaves substantial doubt about Applicant's eligibility and suitability for a public trust position. Accordingly, I conclude Applicant has not mitigated the trustworthiness concerns arising from her falsifications, criminal conduct, and financial problems.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph a-l:	Against Applicant
Paragraph 2 Guideline J:	AGAINST APPLICANT

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<sup>12</sup>¶31.(a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Subparagraph a:                   Against Applicant  
Paragraph 3. Guideline E:       AGAINST APPLICANT  
Subparagraph a-e:               Against Applicant

**Conclusion**

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

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JOHN GRATTAN METZ, JR  
Administrative Judge