



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 08-04645  
SSN: )  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: T. Michael Gyles, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 11, 2009

**Decision**

MASON, Paul J., Administrative Judge:

Applicant submitted her Questionnaire for Public Trust Position (PTA) on November 4, 2007. On April 26, 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 September 19, 2008.<sup>1</sup> 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

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<sup>1</sup> Applicant signed her answer and had it notarized a second time on November 7, 2008. The purpose of the second signature and notary stamp is unknown.

allegations of the SOR) to Applicant on December 30, 2008. She received the FORM on January 6, 2009. Her response to the form, which was received on February 4, 2009, has been admitted in evidence. I was assigned the case on February 20, 2009. Having considered the entire record, Applicant's request for employment in a public trust position is denied.

### **Findings of Fact**

The SOR alleges financial considerations because Applicant owes 13 delinquent debts and two judgments. She admitted all the financial allegations which total \$29,869.00. The SOR also alleges personal conduct based on a Questionnaire for a Public Trust Position (PTA) signed by Applicant on November 7, 2007 where she disclosed a judgment in response to question 22.a.,<sup>2</sup> but answered "No" to question 22.b., requiring information about debts at least 180 days delinquent. Applicant admitted she omitted the financial information but denied her omission was deliberate.

Applicant is 50 years old, and has been married since February 1986. She has three children. She is employed by a defense contractor as a CA 3. She seeks a sensitive position.

### **Financial Considerations**

In an attachment to Applicant's answer to the SOR, she explained she has been in very little criminal trouble in her life. She also stated she wanted to pay off as many of her overdue debts as possible when she gets her income tax refund. She first encountered money problems when she lost her job at a pottery in 2001. Her current employment is the first 40-hour job she was employed in the pottery job in 2001. She believes she is a hard worker.

In her interview with an agent from the Office of Personnel Management (OPM) on January 22, 2008, Applicant provided more detail about her financial troubles. Once she lost her pottery job in 2001, her husband did not earn sufficient money to take care of the expenses of three children, rent and automobile. Her mobile home (SOR 1.c, \$9,531.00) mortgage became delinquent in May 2002. In an effort to reduce costs, Applicant's mother, who was suffering from cancer, and her sister moved in with Applicant and her son. Applicant's son tried but could not maintain the mortgage payments because of a job-related injury requiring surgery. His surgery left him unemployed for a year. The mobile home was repossessed and transferred to a collection agency. The amount listed in SOR 1.o. (\$9,682.00) represents the second loan on Applicant's mobile home. This loan became delinquent in November 2007. Applicant claims she continued to pay the mortgage for years even after the mobile home was repossessed. No additional information was provided.

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<sup>2</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.

During the security investigation, Applicant indicated in her response to the FORM she did not know the SOR 1.a. creditor. In her response to the FORM, she stated she knew about the debt, but did not know how the debt was created. She provided no additional information on the current status of the debt.

The judgment listed in SOR 1.e. resulted from a loan Applicant obtained to help her son. Her son could not maintain the payments, and a judgment was entered against Applicant in June 2004. Applicant claims her son is negotiating a settlement with the creditor. No additional evidence was provided to show the status of those negotiations, and Applicant's participation in the negotiations.

Applicant explained that certain of the admitted allegations were for medical bills. Those allegations include SOR 1.b., 1.d., 1.f., 1.j., 1.k., 1.l., 1.m., and 1.n. She determined that SOR 1.h. and 1.i., were fees connected to her defaulted second mortgage listed in SOR 1.o. All allegations listed under paragraph 1 of the SOR are found against Applicant.

In her responses to interrogatories from government (Item 5), dated June 24, 2008, Applicant provided updated information on her financial condition. She explained that she and her husband were working 40 hour weeks; her husband was earning \$13.00 an hour while her earnings were approximately \$10.00 an hour. Applicant realized she should start paying the smaller delinquent debts first. She provided proof of resolving one debt on May 12, 2008 for \$546.00. This creditor is listed 21 times in her credit report (item 7).

### **Personal Conduct**

On November 4, 2007, Applicant certified and signed a PTA. In response to question 22.b. of the form requiring information about debts at least 180 days delinquent, Applicant replied "No." In her answer to SOR 2.a, Applicant stated, "I admit[.] But I did not do it intent[ionally], I was so nervous I didn't even think about it." On the other hand, in her response to the FORM, Applicant initially indicated she did not know about the debts listed in the SOR. In her modified explanation, she indicated that because the accounts were charged off, they were not active. In addition, Applicant explained that because none of the creditors contacted her to settle the overdue debts, she did not consider them current. Applicant's inconsistent explanations for the omitted the information warrant a finding she deliberately omitted financial information from her PTA.

### **Character Evidence**

Applicant indicated the people she works with will all agree she is a real professional who has compiled a good attendance record on the job. However, she provided no evidence, e.g., character statements or letters/certificates of recognition in support of her claim. There is no indication that Applicant has had financial counseling or evidence she has contacted any of the listed creditors or collection agencies, as she

claimed, since the debts became delinquent or as she promised she would do in June 2008, when she provided information about the past due accounts and her earnings.

## **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 seeks or occupies a public trust position has a duty to show she or he can be trusted to handle the responsibilities of the job. The applicant also has a duty to demonstrate she can be trusted to properly handle various responsibilities in their personal lives. Depending on the issues involved in public-trust-position cases, a person must demonstrate she obeys the law. She also must show she does not use drugs or abuse alcohol. Or, an applicant must show they can be trusted to be candid and forthright during all phases of a security investigation. Finally, an applicant must demonstrate she can be trusted to handle her finances in a responsible manner. This means when an applicant determines that bills are falling delinquent, she takes the requisite action to make her debts current or take the appropriate action to regain control of her finances.

The SOR shows that Applicant owes 13 debts and two judgments to eight creditors, and has done nothing to regain control over these debts. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) applies due to Applicant's inability 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.c.) and November 2007 (SOR 1.o).

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. Several of the debts are dated, but SOR 1.o. became delinquent within the last two years. Even though Applicant paid an unlisted creditor in May 2008, there are 13 debts and two judgments remaining to be addressed. The absence of action in paying off these debts casts continuing doubt on Applicant's current reliability, trustworthiness and good judgment.

FC MC 20.b. is applicable to the circumstances of this case because Applicant lost her job in 2001, and was unable to find a 40-hour job until she began working for her current employer in November 2007. In June 2008, Applicant explained dramatic improvement in her financial stability because she and her husband had 40-hour jobs. More important, she claimed that she recognized the need to pay off her delinquent accounts, and by providing documented evidence verifying she settled with an unlisted creditor in May 2008. Based on the totality of the evidence, Applicant's repayment of only one creditor between 2002 and February 2009 (when Applicant submitted her response to the FORM), rules out the favorable application of the second prong of FC MC 20.b. (*and the individual acted reasonably under the responsibly under the circumstances*), thereby diluting the overall weight that is assigned to the mitigating condition.

FC MC 20.c. does not apply. Applicant has had no financial counseling, and still owes all of the listed debts. The same conclusion is made regarding FC MC 20.d. as payment of one of the unlisted creditors from the SOR is insufficient to demonstrate a good-faith effort to satisfy overdue creditors, or to conclude Applicant is really serious about paying off her remaining creditors. In sum, the mitigating evidence under FC MC 20.b. and 20.d. does not overcome the negative evidence presented under FC DC 19.a. and 19.c.

## 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 PTA in November 2007 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*). Applicant had to be thinking about the debts when she supplied the “No” answer, because she referred to them as being charged off and/or not current when she filled out the PTA in November 2007. In addition, when she answered the SOR in September 2008, she initially explained that nervousness caused her to answer in the manner she did. Yet, in her response to the FORM, while she claims she was unaware of the debts, she does not even mention the nervousness explanation she described in her answer. Considering Applicant’s knowledge of the debts when she filled out the PTA, and her unsuccessful efforts to rationalize her deliberate behavior, the PC guideline is resolved against her.

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, and still does not believe she falsified the PTA. PC MC 17.c. does not apply as Applicant attempted to conceal thirteen debts when she certified and signed her PTA in November 2007. 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*) is not applicable as Applicant does not accept she knowingly provided false information on a security form. She has not presented any independent, mitigating character evidence to confidently conclude her dishonest

conduct is unlikely to recur. In sum, Applicant's evidence in mitigation does not meet her responsibility of demonstrating her security suitability under the PC guideline.

### **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)

Applicant owes two judgments and 13 creditors more than \$29,800.00 in debt that dates to 2002. While she repaid a creditor in May 2008, she has done nothing to resolve the other debts, even after she declared in June 2008 she was going to contact the creditors. An applicant who encounters financial problems should take appropriate steps to remedy those problems. Persuasive evidence of sound financial habits is to contact the creditor(s) and negotiate some kind of agreement for repayment. If the creditor does not desire to negotiate, an applicant should seek some professional help such as a consumer credit counseling service for financial advice on how to establish a debt consolidation plan. However, the applicant, not the creditor, has the responsibility to initiate and seek a solution to their financial difficulties. A plan to handle debts, united with a track record that puts the plan in motion, i.e., payments under a debt consolidation plan, goes a long way to demonstrate the applicant is truly committed to eliminating past due debts. Given Applicant's payment of only one unlisted creditors while accumulating more than 13 debts and two judgments between 2002 and May 2008, when she paid the unlisted creditor, coupled with the lack of financial counseling, and her deliberate omission of financial information from her November 2007 PTA, Applicant has not established she is eligible for a public trust position. Accordingly, both guidelines are found against Applicant.



### **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.o. 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