



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



In the matter of: )  
 )  
----- ) ADP Case No. 08-05282  
SSN: ----- )  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 27, 2009

**Decision**

HOWE, Philip S., Administrative Judge:

On May 24, 2007, Applicant submitted her Questionnaire for Public Trust Position (SF-85P). On October 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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.

Applicant acknowledged receipt of the SOR on October 29, 2008. She answered the SOR in writing on November 6, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 10, 2008, and I received the case assignment on December 15, 2008. DOHA issued the first Notice of Hearing on January 12, 2009, for a hearing scheduled for January 28,

2009. A severe snow storm occurred that day, preventing her from driving to the hearing site, and Applicant's request for a continuance was granted. On April 27, 2009, the second Notice of Hearing was issued by DOHA for a hearing on May 11, 2009. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified and submitted Exhibits A and B, without objection. DOHA received the transcript of the hearing (Tr.) on May 15, 2008. I granted Applicant's request to keep the record open until June 19, 2009, to submit additional matters. On that day she submitted Exhibit C, without objection. The record closed on June 19, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

### **Findings of Fact**

In her Answer to the SOR Applicant admitted all the factual allegations in ¶ 1 of the SOR, with explanations, except ¶¶ 1.j, which she denied. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is single, has two children, ages 8 and 3, and is 27 years old. She has an associate's degree in surgical technology, and works for a defense contractor in the health services business. Her salary is \$26,000 annually. (Tr. 14-28, 59; Exhibit 1)

Applicant has 14 delinquent debts totaling \$33,675. She began having financial difficulty in 2005 when she became pregnant with her second child. She had to reduce her work hours at the restaurant where she worked, thereby decreasing her income. At the same time, her boyfriend lost his job, and found a job which paid him less than he earned previously. They were renting a house at the time, bought new furniture, and other items. When their income was reduced, Applicant and her boyfriend started living off their credit cards for the next seven months. When their house lease ended, they moved back into her parents' home. Applicant took a year off work, from 2005 to 2006, after her second child was born. She borrowed \$3,000 from her grandparents to rent another house in September 2006. She has repaid \$1,800 of that debt. Applicant separated from her boyfriend in May 2007. Applicant was obligated on the debts after the breakup of this relationship because she had the good credit previously which allowed them to make these purchases. She then lived with her parents until April 2008, when she obtained another rental home which she currently occupies. (Tr. 30-35, 47, 66)

Applicant has no credit cards now. She pays her current monthly bills out of her gross monthly income of \$2,050. She receives child support of \$250 from one former boyfriend, and \$170 from the other father of her first child. She used her 2008 tax refund to pay her rent and child care expenses. (Tr. 70-76)

Applicant owes \$6,690 to a bank for a credit card debt (SOR Para. 1.a) which she incurred when buying necessities when she was unemployed, dating from 2005. The bank obtained a judgment against her, and garnished her wages in the amount of \$444 monthly. That action caused Applicant to consult with a bankruptcy attorney and

she filed Chapter 7 bankruptcy on June 18, 2009. Her former boyfriend filed Chapter 7 bankruptcy on his share of their debts previously (Tr. 41, 48, 68, 79; Exhibits, 2-6, C)

Applicant owes \$145 to a cable television provider (SOR Para. 1.b) and another \$262 to the same provider (SOR Para. 1.c). These debts are unpaid, and Applicant has not made any effort to repay them since they became delinquent in 2005. (Tr. 49, 50; Exhibits 2-6)

Applicant owes \$375 to a satellite television provider (SOR Para. 1.d). She has not made any payments on this debt and it remains unpaid. (Tr. 50-52; Exhibits 2-6)

Applicant owes debts on seven credit cards, dating from 2000 and later. The amounts are \$6,583 (SOR Para. 1.e), \$3,290 (SOR Para. 1.f), \$2,970 (SOR Para. 1.g), \$5,935 (SOR Para. 1.h), \$775 (SOR Para. 1.i), \$1,015 (SOR Para. 1.j), and \$4,749 (SOR Para. 1.l). None of these debts have been paid. (Tr. 52-57; Exhibits 2-6)

Applicant also owes \$675 to a landlord for unpaid rent on the first house she and her former boyfriend rented (SOR Para. 1.k). This debt remains unpaid. (Tr. 56, 57; Exhibits 2-6)

Applicant owes \$130 on an auto insurance policy on one of her former boyfriend's car (SOR Para. 1.m). She has not paid anything on this debt. It has been owed since 2007. (Tr. 58; Exhibits 2-6)

Applicant's final delinquent debt listed in the SOR was for \$81 owed to a telephone company (SOR Para. 1.n). She has not paid this debt after it became delinquent in 2005. (Tr. 58; Exhibits 2-6)

Applicant answered the Questionnaire for Public Trust Positions, Standard Form 85P on May 24, 2007. In response to Question 22 (b), which asked if she were over 180 days delinquent on any loan or financial obligation, she answered "no," although her delinquent debts listed in SOR 1.a, 1.b, 1.e to 1.j, and 1.l to 1.n were more than 180 days delinquent. Applicant misunderstood the question and what her answer should be, because she was paying on her auto loan, which was the only loan she had. Her other debts she did not understand them to be loans or financial obligations. Applicant is credible in her explanation, based on her obvious lack of financial knowledge and sophistication. (Tr. 63; Exhibit 1)

Applicant filed Chapter 7 bankruptcy on June 18, 2009. Her total debt is listed in the bankruptcy schedules at \$39,129.30. There are 19 debts listed in the bankruptcy schedule, whereas there are 14 debts listed in the SOR. (Exhibit C)

Applicant submitted two character reference letters. One letter is from her supervisor which describes her as a top performer in the work unit. The other letter is from a co-worker who has known and worked with her during the past four years. She characterizes Applicant as hard-working, smart and intelligent, and a valuable employee

to her organization. Applicant has had no problems in her work location. (Tr. 80; Exhibits A and B)

### **Policies**

When evaluating an applicant's suitability for a security clearance, 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 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. 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, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information 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 classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified 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 trustworthiness 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.

AG ¶ 19 describes nine conditions that could raise a trustworthiness concern and may be disqualifying. Of these conditions, four are applicable to Applicant's situation.

(a) inability or unwillingness to satisfy debts;

(b) indebtedness caused by frivolous or irresponsible spending and 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;

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

Applicant's actions demonstrate poor self-control and serious lack of financial judgment. Her unpaid debts extending over several years, and her lack of any reasonable plan to repay them, are of serious trustworthiness concern.

Under AG ¶ 19(a), Applicant has 14 delinquent debts totaling \$33,675 listed in the SOR. She has not repaid any of them. Applicant declared she does not have the money to repay these debts.

AG ¶ 19 (b) applies because Applicant and her former boyfriend lived off her credit cards when they were unemployed or underemployed. She did not live within her income, and instead took money through the credit cards which she never had any ability to repay based on her salary history of earning less than \$30,000 annually.

Similarly under AG ¶ 19(c), she has not repaid any of these excessive debts. She has a four-year history of not making any payments on these debts. The debts go back to 2000.

Applicant consistently spent beyond her means to repay the debt. Her debt amount, her declared lack of funds to repay these debts and absence of interest in repaying the debts, coupled with a high debt-to-income ratio, shows AG ¶ 19 (e) is applicable.

AG ¶ 20 provides six conditions that could mitigate security concerns arising under this guideline. Of these six conditions, two apply to the Applicant's situation:

(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; and,

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems were caused by her second boyfriend who left her with his child, and the debts they incurred while furnishing a rental home. Both of them lost their jobs in 2005, and suffered decreased incomes as they sought other employment. Applicant used her credit cards for current purchases while lacking the income to repay those debts in a reasonable time period. Applicant took no steps to repay these debts in the past four years because of her low income and current expenses. Her former boyfriend has not helped her repay any of the debts he incurred with her, and in fact, was discharged in bankruptcy of his obligations for these debts. AG ¶ 20 (b) has limited applicability.

Applicant initiated the Chapter 7 bankruptcy proceeding to eliminate her debts after one credit card creditor obtained a judgment against her, and garnished her wages. The garnishment created a large hole in her monthly income which she used to support herself and her two children. She was compelled to move quickly to resolve these 14 debts by the bankruptcy proceeding. It was the only legal method she had available to resolve the debts, because her income would never have allowed her to repay any of these debts. AG ¶ 20 (d) applies.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the trustworthiness concern pertaining to personal conduct:

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes seven conditions that could raise a trustworthiness concern and may be disqualifying. One of these conditions applies to Applicant's situation:

(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;

Applicant did not disclose on her SF 85P, the Trustworthiness Application, that she had multiple debts delinquent longer than 180 days. However, she did not understand the total nature of the question asked, thinking it referred only to her car loan. She had no other loans outstanding at the time. The phrase "financial obligations" contained in the question did not seem to Applicant to refer to the debts listed now in the SOR. After hearing Applicant's testimony, and observing her demeanor and lack of financial sophistication, coupled with her focus on caring for her children amidst her tumultuous personal life, I find her explanation credible. She did not deliberately mislead the Government, but was innocently confused. Because there is no deliberate falsification, there need not be any mitigating conditions applied.

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination 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) the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense 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. When these problems first began, Applicant was involved first with one man by whom she had a child. Then, she became involved with another man by whom she had another child. During that relationship, they incurred debts furnishing a rental home for their family unit, and became financially delinquent. Both suffered loss of employment in the 2004-2006 time periods. Applicant was left with the debts after the breakup of the second relationship because she had the credit in the past which allowed them to make these purchases. She has not had the income to repay the debts, and could never repay them based on her salary history. Using credit cards for living expenses is irresponsible action, but Applicant explained she had no other recourse. She has now stopped that type of conduct, has no credit cards, and filed Chapter 7 bankruptcy to resolve the debts. The bankruptcy is a legal means to resolve her debts. Caring for her children motivated her spending habits, and trying to live a middle-class life on a lower-than-middle class income also motivated her spending. With the bankruptcy filing, there is no likelihood of recurrence because Applicant has undergone a behavior change, living on a cash basis only. The humiliation of having to explain herself at a hearing also motivates her not to repeat her past conduct. She obviously only wants to live in peace, do her job, and care for her children. I am also persuaded by the comments submitted by her supervisor and her friend who is her co-worker.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a trustworthiness determination. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from her financial considerations and personal conduct issues. I conclude the "whole person" concept for 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, Guideline F: FOR APPLICANT

Subparagraph 1.a to 1.n: For Applicant



Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

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PHILIP S. HOWE  
Administrative Judge