



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



In the matter of:	)	
	)	
	)	ADP Case No. 08-06837
SSN:	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Paul M. DeLaney, Esq., Department Counsel  
For Applicant: *Pro Se*

September 29, 2009

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the trustworthiness concerns that arise from her longstanding financial problems and her failure to disclose her delinquent debts in a Questionnaire For Public Trust Positions (SF 85P) she submitted in February 2008.

On May 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing its trustworthiness concerns.<sup>1</sup> The SOR alleges security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). On May 28, 2009, Applicant submitted her response to the SOR. She admitted all SOR allegations except those contained in subparagraphs 1.f and 2.a. and she requested a hearing.

The case was assigned to me on July 1, 2009. A notice of hearing was issued on July 15, 2009, scheduling the hearing for August 18, 2009. The hearing was conducted as

---

<sup>1</sup> This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), DoD Regulation 5200.2-R, dated January 1987, as amended (Regulation), and the revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6 and admitted into the record without objection. Applicant testified and submitted nine documentary exhibits that were marked as Applicant Exhibits (AE) 1-9. Department Counsel's objection to AE 1 was sustained. AE 2-9 were admitted into the record without objection. The transcript was received on August 26, 2009.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 46-year-old woman who has been employed as a personal care advocate by a defense contractor since October 2007. In the SF 85P she submitted on February 2, 2008, she listed the following employment history: August 2007 to October 2007: temporary agency; March 2007 to July 2007: unemployment; December 2006 to March 2007: unspecified employment; October to December 2006: customer service representative; May 2003 to August 2006: customer service representative; April 2002 to May 2003: receptionist; January 1999 to March 2002: receptionist; and August 1998 to December 1999: receptionist through a temporary agency. She testified she is currently working part-time as a home health aide in addition to her full-time employment with the defense contractor (Tr. 39). Applicant submitted a number of certificates and other awards that indicate she has been commended for her work performance on a number of occasions.

Applicant graduated from a vocational high school in June 1981, having completed a course in cosmetology. She has been married since October 1988, although she and her husband have frequently lived separate and apart, especially during the first ten years of their marriage. Their most recent separation occurred in or about 2005/06. They are now living together. They have two children, ages 25 and 19. Both children attend college. The youngest child resides with Applicant and her husband.

Applicant testified she has suffered from bipolar disorder since 1984 (Tr. 47-48). She also testified she was not properly medicated for the disorder from 1984 to 2006, and, as a result, she made some unwise choices that contributed to her financial problems (Tr. 47-48).

Applicant filed for bankruptcy protection in April 1999. She testified she and her husband initially filed for Chapter 13 bankruptcy protection but because of poor decisions they had to convert it into a Chapter 7 bankruptcy (Tr. 59). They were awarded a Chapter 7 discharge in July 1999. Applicant was unable to recall how much debt was discharged in the bankruptcy. However, before they filed for bankruptcy, she knows they had two automobiles repossessed.

The debts alleged in SOR subparagraphs 1.c, 1.i, and 1.l are charge off and collection accounts that resulted from deficiencies owing after the resale of additional automobiles repossessed after Applicant was awarded the bankruptcy discharge in 1999. Applicant credibly testified she has only had four vehicles repossessed, two before and two

after she filed for bankruptcy (Tr. 69-71).<sup>2</sup> The debt alleged in subparagraph 1.g, owing in the amount of \$3,254, is also alleged as having arisen from an automobile repossession. Applicant credibly testified that debt actually resulted from her daughter totaling an automobile Applicant purchased in April 2008, and not from a fifth repossession (Tr. 75-76).

SOR subparagraph 1.h alleges a collection account owing in the amount of \$7,412. SOR subparagraph 1.j alleges a charge off account owing in the amount of \$1,968. Each of these accounts has now resulted in judgments being entered against Applicant. The creditor on the account alleged in subparagraph 1.j attached approximately \$1,015 that Applicant had in a bank account leaving about \$800 still owing on the judgment. The creditor alleged in subparagraph 1.h has not begun collection action on its judgment.

Applicant testified the debt alleged in SOR subparagraph 1.f arose from a former landlord's claim for cleaning charges after she vacated an apartment. She denies she owes anything for cleaning the apartment because she properly cleaned it herself before she moved.

The remaining delinquent debts alleged in the SOR consist of eight accounts that have been submitted for collection, owing in the combined amount of \$2,695, and one account that has been charged off in the amount of \$448. Applicant admits she is responsible for these accounts and that no payment has been made on any of them.

In addition to the bad decisions she claims to have made as a result of her bipolar disorder, Applicant attributes her financial problems to marital separations, various periods of unemployment she and her husband have experienced, reduced wages they have earned after changing jobs due to layoffs, and medical assistance she had to provide to her mother that caused her to take unpaid leave from work. She sought the assistance of a debt service that did nothing other than submit disputes to credit reporting agencies in an effort to get older accounts deleted from her credit reports.

Applicant does not have any funds in bank or retirement accounts. She has no means to satisfy any of her delinquent accounts. She is contemplating once again seeking bankruptcy protection. Meanwhile, she recently purchased a new automobile at a cost of about \$22,000. Her and her husband's combined monthly automobile payments are about \$825. They also pay \$317 per month for auto insurance. She testified she had to purchase a new car instead of a used car because she did not have any cash available to pay for a used car (Tr. 82).

Applicant failed to disclose that she had debts that were over 180 days delinquent in the SF 85P she submitted on February 2, 2008. She testified she filled the SF 85P out between answering calls at work and didn't realize she had answered the question incorrectly (Tr. 91-92) However, in the SF 85P, Applicant listed a detailed work history,

---

<sup>2</sup> It is impossible to discern from the record evidence whether the debt alleged in subparagraph 1.i or 1.l is a duplicate of the debt alleged in subparagraph 1.c. Accordingly, the larger of the two debts, alleged in subparagraph 1.i, will be found for Applicant.

addresses and phone numbers for residence and work references dating back as far as 1998, and her reported last use of marijuana in 2007.

## POLICIES

Positions designated as ADP I and ADP II are classified as sensitive positions.<sup>3</sup> The standard to 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.<sup>4</sup> Trustworthiness adjudications apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management.<sup>5</sup> Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination is made.<sup>6</sup>

An administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines when evaluating an Applicant's suitability for a public trust position. The administrative judge must also consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The protection of the national security is the paramount consideration, and any doubt concerning personnel being considered for access to sensitive information will be resolved in favor of national security. Decisions are made in terms of the national interest and are not determinations as to the loyalty of the applicant concerned.<sup>7</sup>

The Government is required to present evidence to establish controverted facts alleged in the SOR.<sup>8</sup> 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.<sup>9</sup> The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

---

<sup>3</sup> Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>4</sup> Regulation ¶ C6.1.1.1.

<sup>5</sup> Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004.

<sup>6</sup> Regulation ¶ C8.2.1.

<sup>7</sup> Section 7 of Executive Order (EO) 10865.

<sup>8</sup> Directive ¶ E3.1.14.

<sup>9</sup> Directive ¶ E3.1.15.

## Analysis

### Guideline F, Financial Considerations

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 sensitive information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . . (Adjudicative Guideline [AG] 18)

Applicant filed for Chapter 13 bankruptcy protection but had to have it converted to a Chapter 7 bankruptcy in April 1999. She was awarded a Chapter 7 bankruptcy discharge in July 1999. She had two cars repossessed before she filed for bankruptcy and she had two more cars repossessed since receiving the bankruptcy discharge. She has two delinquent accounts that have recently resulted in judgments being entered against her. The creditor on one of those judgments seized all the funds Applicant had in her bank account to partially satisfy the judgment. The other judgment creditor has not begun collection proceedings. Finally, Applicant has nine additional delinquent accounts, owing in the combined amount of \$3,143, that have either been submitted for collection or charged off. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant attributes her financial problems to periods of unemployment, decreased income due to the change of jobs caused by layoffs, her bipolar disorder, marital separations, and her need to take unpaid leave from work to care for her mother. However, it cannot be said that she acted responsibly under the circumstances, as best evidenced by the repeated repossession of automobiles and Applicant's recent purchase of yet another automobile that she obviously is not going to be able to afford and somehow make an attempt to satisfy her delinquent creditors. Accordingly, Mitigating Condition (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. The remaining mitigating conditions have no applicability to the facts of this case.

### Guideline E, 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 failure to cooperate with the security clearance process. (Adjudicative Guideline [AG] 15)

Applicant failed to disclose her many delinquent debts in the SF 85P she submitted in February 2008. Her explanation that the omission was inadvertent because she filled out the SF 85P between telephone calls while working is not credible considering the detailed information she provided in that SF 85P about her employment history, residential and job references, and her last reported use of marijuana. DC 16(a): *deliberate omission*,

*concealment, or falsification of relevant facts from any personal security questionnaire, personal history statement, of similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. No mitigating condition applies.

The objective of a trustworthiness determination is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to sensitive information. The “whole person” concept recognizes we should view a person by the totality of her acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, Applicant has failed to mitigate the financial considerations and personal conduct security concerns. She has not overcome the case against her or satisfied her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant access to sensitive information.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-q:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Henry Lazzaro  
Administrative Judge

