



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



In the matter of:	)	
	)	
-----	)	ADP Case No. 08-11621
SSN: -----	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel  
For Applicant: *Pro se*

March 31, 2010

**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for assignment to a public trust position is denied.

**Statement of the Case**

Applicant submitted her Questionnaire for Public Trust Positions (SF 85P) on September 15, 2008. On June 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline F and E. DOHA acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the revised adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant received the SOR on June 19, 2009, answered it on August 20, 2009, and requested a hearing. On October 9, 2009, she withdrew her request for a hearing and requested a determination on the record without a hearing. Department Counsel submitted the government's written case on December 29, 2009. A complete copy of the file of relevant material (FORM) was sent to Applicant on the same day, and she was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's evidence. She received the FORM on January 7, 2010, but did not respond. The case was assigned to me on March 19, 2010.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the delinquent debts alleged in SOR ¶¶ 1.a-1.g and 1.i-1.m and offered explanations. She denied owing the debt alleged in SOR ¶ 1.h, and she denied falsifying her SF 85P as alleged in SOR ¶¶ 2.a and 2.b. Her admissions are incorporated in my findings of fact.

Applicant is a 39-year-old employee of a defense contractor. She has worked for her current employer since September 2006. Her SF 85P indicates that she has been continuously employed since September 1999. She married in June 1970 and has two children, ages 11 and 8. She has never been cleared for a public trust position.

Applicant answered "no" to question 22a on her SF 85P, asking if she had filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had a judgment rendered against her for a debt during the last seven years. She also answered "no" to question 22b, asking if she was then more than 180 days delinquent on any loan or financial obligation. (Government Exhibit (GX) 4 at 7.)

Applicant's credit bureau report (CBR) dated September 16, 2008, reflected an unsatisfied judgment for \$1,515 entered against her in February 2003. (GX 8 at 3). The unsatisfied judgment is alleged in SOR ¶ 1.c. In her answer to the SOR, Applicant denied falsifying her SF 85P and stated that she had forgotten about the unsatisfied judgment.

The same CBR reflected the delinquent debts alleged in SOR ¶ 1.a-1.c and 1.e-1.m. The debts alleged in SOR ¶¶ 1.a-1.g had all been delinquent for more than three years when Applicant submitted her SF 85P. The total of the 13 delinquent debts alleged in the SOR is about \$18,295. Three are for less than \$100 (SOR ¶¶ 1.f, 1.g, and 1.k), and three are for less than \$200 (SOR ¶¶ 1.a, 1.e, and 1.j).

In an affidavit executed on March 15, 2005, Applicant commented specifically on the judgment alleged in SOR ¶ 1.c. She attributed her financial problems to her husband's unemployment in 2001, her unemployment in 1998, and the burden of repaying student loans. (GX 6 at 1-2.) In a statement to a security investigator on October 9, 2008, Applicant stated that her student loans had been consolidated and were in good standing. (GX 5 at 3). In response to DOHA interrogatories on March 5, 2009, Applicant stated she was currently on a medical leave of absence, and she stated

she would take care of the debts alleged in SOR ¶¶ 1.a-1.b, 1.d-1.g, and 1.j-1.l after she returned from medical leave. (GX 5 at 6-9.) She did not state when she expected to return to work. She has not submitted evidence showing resolution of any of the debts.

In Applicant's answer to the SOR, she disputed the medical debt alleged in SOR ¶ 1.h, stating she was unaware of it. She has submitted no evidence of efforts to contact the creditor or to have the data removed from her credit report.

### **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. The standard that must be met for assignment to sensitive duties is that 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." Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

A person who seeks access to sensitive 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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 [sensitive] information will be resolved in favor of national security. The government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

## Analysis

### Guideline F, Financial Considerations

The SOR alleges 13 delinquent debts totaling about \$18,295. The concern under this guideline 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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted all the alleged delinquent debts except the debt alleged in SOR ¶ 1.h. The debt alleged in SOR ¶ 1.h, which she denies, is established by her CBR. Her admissions and her CBR are sufficient to raise the disqualifying conditions in AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations), shifting the burden to her to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

Trustworthiness concerns under this guideline may be mitigated if “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 current reliability, trustworthiness, or good judgment.” AG ¶ 20(a). This mitigating condition is not established, because Applicant's debts are numerous, unresolved, and did not occur under circumstances making them unlikely to recur.

Trustworthiness concerns also may be mitigated if “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.” AG ¶ 20(b). Applicant and her husband both experienced periods of unemployment, but her unemployment was in 1998 and her husband's was in 2001. She has been employed continuously since 1999 and worked for her current employer since September 2006, but she has not resolved any of her delinquent debts, even though half of them are for less than \$200. AG ¶ 20(b) is not established.

Trustworthiness concerns under this guideline also may be mitigated by showing that “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.” AG ¶ 20(c). This mitigating condition is not established because Applicant has not sought or received financial counseling and her financial problems are not under control.

Trustworthiness concerns under this guideline also may be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). This mitigating condition is not established because Applicant has taken virtually no action to resolve her indebtedness.

Trustworthiness concerns under this guideline also may be mitigated by showing “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” AG ¶ 20(e). Applicant disputed the debt in SOR ¶ 1.h in her answer to the SOR, but she presented no documentary evidence of actions to resolve the issue. AG ¶ 20(e) is not established.

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

The SOR alleges Applicant falsified her SF 85P by intentionally failing to disclose the judgment entered against her in February 2003 and numerous debts that were more than 180 days delinquent. The concern under this guideline is set out in AG ¶ 15 as follows:

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 relevant disqualifying condition in this case is “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire.” AG ¶ 16(a).

When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant’s state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

When Applicant was questioned about her delinquent debts in March 2005, she was specifically questioned about the judgment alleged in SOR ¶ 1.c. In her answer to the SOR, she claimed she had forgotten about it when she submitted her SF 85P. Although my ability to judge her credibility is limited because she withdrew her request for a hearing, I find her explanation for not disclosing the judgment implausible and unconvincing on its face. When she responded to DOHA interrogatories in March 2009, she was able to provide details about several of the debts that were more than 180 days

delinquent when she submitted her SF 85P, but she has offered no explanation for not disclosing any of them on her SF 85P. I conclude that AG ¶ 16(a) is raised.

Trustworthiness concerns raised by false or misleading answers on a security clearance application may be mitigated by showing that “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” AG ¶ 17(a). This mitigating condition is not established because Applicant made no effort to correct her omissions before she was confronted with the evidence. No other enumerated mitigating conditions under this guideline are applicable.

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a public trust position by considering the totality of the applicant’s conduct and all the relevant circumstances. An 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for an assignment to a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines F and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature adult, but she has had financial problems for many years and has done little to resolve them. She withdrew her request for a hearing, limiting my ability to assess her sincerity and credibility. She presented no evidence of the quality of her work or her reputation among her supervisors and peers.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns based on financial considerations and personal conduct. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with national security to grant her eligibility for assignment to a public trust position.

**Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.m: Against Applicant

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

Subparagraphs 2.a-2.b: Against Applicant

**Conclusion**

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

LeRoy F. Foreman  
Administrative Judge