



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



In the matter of:)
)
) ADP Case No. 09-03191
)
)
Applicant for Public Trust Position)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

March 31, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes about \$12,000 in delinquent debt incurred between 2003 and 2006. While her financial struggles were caused in large part by her divorce and job loss, she has made little progress toward resolving her debt. From 2005 to 2008, Applicant was arrested for telephone misuse, theft of a motor vehicle (reduced to unauthorized use of a motor vehicle), fugitive from justice, harassment, contempt of court, and possession with intent to distribute marijuana. On her application for a public trust position, she indicated that she had been convicted of unauthorized use of a motor vehicle in 1997 and omitted her other arrests. Public trust position denied.

Statement of the Case

On January 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR), detailing the trustworthiness concerns under Guideline F, Financial Considerations, Guideline J, Criminal Conduct, and Guideline E, Personal Conduct, which provided the basis for its preliminary decision to deny her eligibility for a public trust position, and to refer the matter to an administrative

judge. DOHA took action 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); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987) as amended; and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on April 26, 2010. She answered the SOR on May 7, 2010, and requested a decision without a hearing. On May 24, 2010, the Government submitted a File of Relevant Material (FORM), consisting of 13 exhibits (Items 1 through 13). DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. No response was received by the July 14, 2010, due date. On August 16, 2010, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Findings of Fact

The SOR alleged under Guideline F, Financial Considerations, that Applicant owed delinquent debt totaling \$15,484 (SOR 1.a-1.q) as of January 2010. Under Guideline J, Criminal Conduct, Applicant was alleged to have been arrested for telephone misuse in October 2005 (SOR 2.a), theft of a motor vehicle (convicted of unauthorized use) (SOR 2.b) and fugitive from justice (SOR 2.c) in January 2007, harassment in February 2007 (SOR 2.d), contempt in March 2008 (SOR 2.e), and possession with intent to distribute marijuana in May 2008 (SOR 2.f). Under Guideline E, Personal Conduct, Applicant allegedly falsified a June 2008 Public Trust Position Application (SF 85P) by indicating one arrest, in May 1997 for unauthorized use of a motor vehicle, when that incident had occurred in 2007 and she had several other arrests, as set forth in SOR 2.a through 2.f (SOR 3.a).

Applicant provided a detailed response in which she admitted still owing the debts in SOR 1.a, 1.b, 1.d-1.h, 1.j-1.l, 1.o, and 1.q. She indicated that the medical debts in SOR 1.d, 1.o, and 1.q should have been billed to her medical insurer, although she paid \$100 by credit card in June 2009 to the creditor hospital. Applicant submitted that the debts in SOR 1.n and 1.p were duplicate listings of the debts in SOR 1.i (which she thought she had paid off) and 1.j, respectively. Applicant maintained that she was making payments on the judgment debt in SOR 1.b and she had settled the debt in SOR 1.c. Applicant did not deny her arrest record, except for the harassment charge in February 2007 that she did not recollect. Applicant denied that she falsified her SF 85P in that she mistakenly entered the wrong date (May 1997 instead of May 2007) for the listed offense of unauthorized use of a motor vehicle. She denied the deliberate omission of her other arrests, and stated, "I just did not think of them because they were not creditable charges to me."

After considering the Government's FORM, including Applicant's detailed explanations of the circumstances that led to her financial problems and her arrests, I make the following findings of fact.

Applicant is a 35-year-old mother of four children; two daughters ages 14 and 11 who live with her ex-husband, and two children ages 4 and 5 with an ex-boyfriend from whom she is seeking child support. (Item 4; 5; 6.) Applicant has been working as a senior administrative assistant since June 2008. (Item 5.) As a Defense Travel System travel administrator, Applicant has access to employee files, personnel information, and bank and government travel card information. (Item 4.)

Applicant apparently married right out of high school in 1993.¹ (Item 5.) From January 1997 to June 1997, Applicant took classes at a local technical school. (Item 5.) She took out student loans totaling \$4,250. (Item 8; 9; 10.) She held temporary employment as an administrative assistant from July 1997 to October 1997 and from January 1999 to September 2000. (Item 5.) In 2000, Applicant began working as an administrative assistant for a child and family development company. In 2004, Applicant and her ex-husband separated. He was not employed or providing child support for their two daughters. (Item 4.) Over the next three years, Applicant had serious financial and legal problems stemming from her divorce and custody issues and a period of unemployment, as follows.

Financial

After Applicant's employer instituted a company-wide 7% reduction in employee wages in April 2004, Applicant had trouble meeting her monthly bills. (Item 6.) Around May or June 2005, she moved from her rented townhouse (SOR 1.a) to an apartment (SOR 1.b) with utilities included in an effort to reduce her living expenses. When she moved, her student loans were delinquent. She also owed back rent (SOR 1.a), a natural gas bill of \$972 (SOR 1.e) and cable television costs of \$363 (SOR 1.f) from her former residence, around \$495 in retail credit card debt (SOR 1.i, duplicated in 1.n), bank overdraft charges of \$542 (SOR 1.g), and telephone charges totaling \$1,954 (SOR 1.c, 1.h, 1.j, 1.k). (Item 4; 7; 9; 10.)

In January 2006, Applicant was laid off from her job with the child and family development company. (Item 1; 4.) Her third child was only five months old. Within a few months, she discovered she was pregnant with her fourth child. She lived off unemployment compensation, which was about half of her previous income, public assistance (Item 6.), and help from her mother and friends. (Item 4.) In March 2006, her former landlord (SOR 1.a) obtained a \$1,845 judgment against her. (Item 8; 9; 10.) Applicant stopped paying on a loan for a used van purchased in 2005, and when she fell three months behind, the vehicle was repossessed. In May 2006, a deficiency

¹ While the dates of Applicant's marriage and divorce are not in the record reviewed, she indicated on her SF 85P that she went by her birth name until May 1993. She listed no other name used apart from her married name, which she retained after her divorce. She graduated from high school in June 1993. (Item 5.) It is reasonable to infer that she married in May or June of 1993.

balance was charged off (SOR 1.l). (Item 6.) In September 2006, Applicant incurred medical debts of \$574 (SOR 1.d) and \$152 (SOR 1.q). (Item 4; 8; 9.) Since she was unemployed and under Medicaid, she assumed that the costs would be covered. (Item 4.)

Applicant was evicted from her apartment in November 2006 for non-payment of rent (SOR 1.b). (Item 4, 6.) Applicant and the father of her two younger children moved to another state to be near her mother, but it did not work out. See Criminal Conduct, *infra*.) Applicant reported on her SF 85P that she worked as an administrative assistant for an organization from March 2007 to June 2007, and as a temporary staffer thereafter until June 2008, when she began working at her current jobsite for a federal contractor. (Item 5.) No information was presented about Applicant's income, but by May 2008, she had paid off her student loan debt after it had been referred for collection. (Item 8; 9; 10.) However, she made little progress toward resolving her other debts despite her full-time employment. As of February 12, 2009, Applicant had filled out an online request for information about debt resolution through a consumer credit counseling service (CCCS). Child support for her two older children, at \$187.50 every two weeks, was being deducted from her pay. She was also paying \$32 per month toward child support arrearage around \$2,707. (Item 6.) In 2009, her income tax refund for 2008 was taken to satisfy the arrearage. (Item 7.)

Applicant wanted to make sure she had a job before she signed any agreement with CCCS to resolve her debts. Her employer's contract at the facility was up for renewal in February 2009. The company lost the contract, but contested the decision, resulting in a 60-day delay. The company did not succeed in renewing the contract, but Applicant was hired by the new contractor in late April 2009. On June 23, 2009, Applicant paid \$100 to the agency collecting the medical debt in SOR 1.d. (Item 4; 7.)

In response to DOHA interrogatories, Applicant indicated on July 20, 2009, that she still had not committed to CCCS because of her job situation and needing to catch up on her rent, utilities, and child support, which she had now done. She expressed her intent to work with CCCS to resolve those debts which she knew were unpaid (SOR 1.a, 1.e-1.h). She also indicated that she had been ordered to appear in court in response to a judgment action by a former landlord (SOR 1.b). She contacted the law firm handling the case and offered to make \$100 monthly payments. The creditor was willing to accept \$300 a month, which she could not afford, given she was supporting two children and paying child support on her income. (Item 7.) In August 2009, the creditor obtained a judgment against her of \$4,613. (Item 8.)

As of May 2010, Applicant had made no payments toward the \$1,845 judgment debt in SOR 1.a, for which she claimed her ex-husband had accepted the responsibility for repayment. She agreed to pay \$200 per month toward the \$4,613 judgment debt in SOR 1.b. She indicated the payments were being made by payroll deduction, although she presented no evidence as to when those payments started. She had settled the debt in SOR 1.c for \$58.52. She made no additional payment on the \$574 medical debt in SOR 1.d after June 2009, and had not made any payments on the remaining \$3,636

SOR debts that she does not dispute (SOR 1.e-1.h, 1.j-1.k). Applicant expressed her intent to resolve those debts and to research those debts that she thought had been paid or charged off to determine whether she was still liable for those debts (SOR 1.d, 1.i, 1.l-1.m, 1.o, 1.q). She believed the debt in SOR 1.i (duplicated in 1.n) had been paid in 2004 before she purchased the used van identified in SOR 1.l (Item 4; 7.), although Equifax was continuing to report the account as past due in the amount of \$549 as of October 2009. As for the charged off balance of her old auto loan (SOR 1.l), the account was listed as charged off with a zero balance. Her credit report did not show a \$2,073 debt owed to the creditor in SOR 1.m. The medical debts in SOR 1.d and 1.o were listed as unpaid collection debts. (Item 8.)

Applicant had until July 14, 2010, to submit proof that she had followed up on her promises that she would work out payment arrangements on her debts with the help of CCCS. The file contains no response. Available credit reports (Item 8; 9; 10.) confirm she has not opened any new credit card or loan accounts in several years.

Criminal Conduct

After her divorce, Applicant became involved with the father of her two younger children. His ex-wife complained to the police that Applicant had made repeated, unwanted telephone calls to her between October 24, 2005 and November 16, 2005. Applicant was summoned to court on a charge of telephone misuse (SOR 2.a), but the charge was not prosecuted (“nolle prosequi”) on December 14, 2005 when the ex-wife did not appear in court. (Item 7; 11.)

After Applicant was evicted from her apartment in November 2006, she moved with her boyfriend from state X to state Y to be closer to her mother. When neither Applicant nor her boyfriend was able to find steady work, Applicant’s mother apparently told her to return to state X and get back on public assistance. According to Applicant, her mother offered to watch her children for her, and she lent her car to Applicant. About a month later, Applicant was stopped by the police in state X on January 3, 2007, for a burned-out headlight. The officer checked her license and discovered there was a fugitive warrant from state Y for theft of a motor vehicle. Applicant was arrested for being a fugitive from justice (SOR 2.c). Applicant was in correctional custody in state X until she was transported to state Y. On February 5, 2007, the charge of fugitive from justice was dismissed. (Item 6; 12.) After spending a week in a detention center in state Y, Applicant was released on personal recognizance, pending her trial on a charge of theft of a motor vehicle. (Item 6.)

On February 26, 2007, a warrant was issued for Applicant’s arrest in state X for harassment: course of conduct, for an incident that allegedly occurred on February 25, 2007 (SOR 2.d). (Item 13.) Applicant contends that it was another example of her mother attempting to make her appear to be unfit to care for her children so that her mother could gain custody. Her mother solicited Applicant’s ex-husband and his girlfriend to tell lies about Applicant. (Item 7.) On April 5, 2007, a “nolle prosequi” was entered on the charge. (Item 13.)

In May 2007, Applicant pleaded guilty in state Y to unauthorized use of a motor vehicle to avoid a trial on a charge of theft of a motor vehicle (SOR 2.b). She was fined \$200, which her mother apparently paid for her, and was placed on six months unsupervised probation. Applicant submits that her mother brought the charge so that she could use it against her to gain custody of her grandchildren. (Item 6.)

In March 2008, Applicant was charged with contempt of court (SOR 1.e). Applicant maintains that her mother had claimed in state Y that she was owed child support from Applicant because she had cared for Applicant's oldest daughter for six months while Applicant was contesting the January 2007 theft of a motor vehicle charge. Applicant failed to appear in court in relation to the child support claim (Applicant maintains she did not receive notice), and she was charged with contempt. Applicant appeared before a magistrate in state X, where she presented evidence that she had been providing for her children since May 2007. In late April 2008, the charge was dropped. (Item 4; 6.)

On May 14, 2008, Applicant was arrested for possession of marijuana with intent to distribute (SOR 2.f). She denies any validity to the charge, and explained that she had been asked to drive a neighbor's son to a nearby city. Because she was not familiar with the city, she sat in the passenger seat while he drove. He apparently did not have a valid driver's license, and when they were stopped for no headlights, they were both arrested. Applicant was detained overnight, but denies any basis for the drug charge. She maintains she was told nothing about the charge, and she was released without explanation the following day when she appeared in court. (Item 4; 6; 7.) Available information does not show a disposition.

Personal Conduct

On June 26, 2008, Applicant completed a Questionnaire for Public Trust Positions (SF 85P). She listed only one arrest in response to question 20, "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s)? (Leave out traffic fines of less than \$150.)" (SOR 2.a). She indicated that she had been fined in about May 1997 [sic] for unauthorized use of a motor vehicle. Also, in response to the financial record inquiries, Applicant listed one judgment, for late rent in about August 1997 [sic]. She did not answer 22.b, "Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government." (Item 5.)

On February 12, 2009, a government investigator asked Applicant about her unlisted arrests. She indicated that she made a terrible mistake and meant to indicate that the unauthorized use of a motor vehicle occurred in May 2007. Concerning her failure to disclose the March 2008 contempt charge, Applicant told the investigator that she would have reported it on her SF 85P if she thought it was a serious charge. She considered the charge a ploy from her mother to cause her problems, and furthermore, she was not arrested but rather turned herself in to the police. As for the May 2008

marijuana charge, Applicant related that she still had no idea why she was detained in jail overnight and that she was released by the court the next day without any charges being filed against her to her knowledge. Applicant went on to discuss her debts in detail. She did not volunteer any explanation as to why she listed only one judgment on her SF 85P, and there is no indication that she was asked about it. (Item 6.)

In July 2009, DOHA asked Applicant to explain her omission of the October 2005 telephone misuse and February 2007 harassment charges from her SF 85P and during her interview with the investigator. On July 20, 2009, Applicant responded that she had forgotten about the October 2005 incident “because it was so ridiculous and never went further.” She claimed to have no knowledge of the February 2007 charge and surmised that her mother had solicited Applicant’s ex-husband and his girlfriend to lie about her. (Item 7.)

When she answered the SOR in May 2010, Applicant denied any intentional falsification. She again asserted that the incorrect date for the unauthorized use of a motor vehicle was “honestly” a mistake. As for the rest of her criminal record, she stated, “I just did not think of them because they were not creditable charges to me.” Applicant acknowledges that she made some bad decisions during “a rough time in her life,” but she asserts she has the respect and trust of her coworkers. (Item 4.)

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See 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, 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.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an Applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). 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 overarching adjudicative goal is a fair, impartial and commonsense 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 reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 to obtain a favorable trustworthiness decision.

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. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive 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. Section 7 of Executive Order (EO) 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 about finances 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.

The evidence establishes that as of May 2010, Applicant owed almost \$12,000 in outstanding delinquent debt: two outstanding judgments (SOR 1.a, 1.b); two medical debts (SOR 1.d, 1.o) in collection; bank overdraft charges (SOR 1.g); gas, cable, and telephone debts (SOR 1.e, 1.f, 1.h, 1.j, and 1.k); and a consumer credit card debt (SOR 1.i, duplicated in 1.n). Disqualifying conditions AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply.

While many of her debts were incurred in 2005 after her divorce, AG ¶ 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 current reliability, trustworthiness, or good judgment,” is difficult to apply when the debts are still outstanding. However, her marital separation leading to divorce and unexpected

reduction in her pay were both circumstances in 2004 that implicate mitigating condition AG ¶ 20(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.” AG ¶ 20(b) also applies in extenuation of Applicant’s failure to address her past-due debts due to her layoff and unemployment from February 2006 to March 2007. At the same time, it is difficult to give controlling weight to AG ¶ 20(b) when Applicant has held full-time employment at her present duty location since June 2008, has known of the Government’s concerns about her indebtedness since February 2009, and has made little progress toward resolving her debts as of May 2010.

As of her February 2009 interview, Applicant had initiated contact with CCCS. In July 2009, she told DOHA that she wanted to ensure that her job was stable and she wanted to catch up on her child support, rent, and current utility accounts, before she entered into any repayment arrangements with CCCS. While she indicated that she was in a position to begin addressing her debts, she apparently could not afford the \$300 per month that her former landlord (SOR 1.b) required to avoid a court judgment. By May 2010, she had settled the debt in SOR 1.c by paying \$58.26, only a third of the balance that was owed. She made one payment of \$100 toward her medical debt in June 2009.² She indicates that she agreed to repay the judgment in SOR 1.b at \$200 per month, and that the payments were being automatically deducted from her pay. But she presented no corroborating documentation to show how many payments have been made. Even assuming she has made monthly payments on the debt since September 2009, these payments in response to a court judgment are not considered voluntary. In Applicant’s favor, she is no longer relying on consumer credit for purchases, and she initiated contact with CCCS. But her evidence in mitigation is not enough to satisfy either AG 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,” or AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Promises are not a substitute for a track record of documented repayment.

AG ¶ 20(e), “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,” has only very limited applicability in this case. Applicant believes that she paid the debts in SOR 1.i (duplicated in SOR 1.n) and 1.m; that the medical debts should have been covered by insurance; and that she had no further liability on her old car note in SOR 1.m. In light of Equifax continuing to report the debts in SOR 1.d, 1.i, and 1.p as unpaid, and Applicant not having disproved her liability, AG ¶ 20(e) is not substantiated as to those debts. AG ¶ 20(e) is pertinent to the debts alleged in SOR 1.l and 1.m in that neither creditor appears to be pursuing Applicant for any delinquent balance at this

² The payment was likely applied to the debt in SOR 1.q, given it no longer appears on her credit report. (Item 8.)

point, and to the debts alleged in 1.n and 1.p, which are duplicate listings of the debts in 1.i and 1.j and not additional debts.

Guideline J, Criminal Conduct

The trustworthiness concern about criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant has a record of criminal arrests stemming from personal relationship, child custody, and child support issues. In October 2005, she was charged with misuse of a telephone, according to Applicant on a complaint from her then boyfriend's ex-wife. In January 2007, Applicant was charged with being a fugitive from justice on a charge of theft of her mother's vehicle. In late February 2007, Applicant was charged with harassment, apparently involving her ex-husband and his girlfriend. In March 2008, Applicant faced contempt charges for failure to appear in court on a child support issue. Finally, in an incident that apparently involved a neighbor's son, Applicant was arrested in May 2008 for possession of marijuana with intent to distribute. AG ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted," applies to her arrest record. Applicant has only one conviction on her record, for unauthorized misuse of a motor vehicle. She pleaded guilty in May 2007, allegedly to avoid a trial on the motor vehicle theft charge. AG ¶ 31(a), "a single serious crime or multiple lesser offenses," also applies to that offense.

Three mitigating conditions under AG ¶ 32 are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (c) evidence that the person did not commit the offense;
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) cannot reasonably be applied because of Applicant's criminal conviction for unauthorized use of a motor vehicle in 2007. Applicant provided no corroboration for her assertion that her mother had lent her the vehicle. Applicant's guilty plea provides sufficient basis to conclude that Applicant took the car without authorization or refused to return it when asked.

Conduct that is criminal in nature may be considered for its trustworthiness implications even if the charge has been dismissed or not prosecuted. Available court records indicate that probable cause was found for the charges of telephone misuse in October 2005 (Item 11), fugitive from justice in January 2007 (Item 12), and harassment: course of conduct in February 2007 (Item 13). Yet, the charges were either not prosecuted or dismissed, and the court records available only list the charge and disposition. Applicant, the sole source of detail about the charges, submits the October 2005 charge was ridiculous; she lacked no knowledge of the motor vehicle theft or fugitive charges until she was told when pulled over for a burned-out headlight; and the February 2007 harassment charge likely stemmed from lies told by her ex-husband and his girlfriend to make her appear to be an unfit mother. She was jailed for one month on the fugitive charge, but that alone is not sufficient to prove that she deliberately fled state Y to avoid prosecution for motor vehicle theft. No arrest or court records are in the file that could shed light on the basis for the March 2008 contempt and May 2008 marijuana possession charges. Applicant denies she had notice of the hearing at which she failed to appear, which she indicates concerned a false claim by her mother for child support. Concerning the marijuana offense, Applicant maintains that she was in the wrong place at the wrong time, and to this day, she still does not know why she was detained. It is difficult to believe that Applicant would not have been told why she was held overnight in jail. But concerns about her credibility are not sufficient basis to find her culpable of the conduct that she denies, especially since the charges were dismissed or not prosecuted. Under the circumstances, AG ¶ 32(c), “evidence that the person did not commit the offense,” has some applicability in this case.

Applicant’s unauthorized use of a motor vehicle is established by her conviction. Applicant has accepted no responsibility for the crime. Instead, she claims that her mother had improper motives in filing the criminal complaint (she became angry with Applicant; she made false claims to gain custody of Applicant’s children). AG ¶ 32(d), “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement,” is not met in this case. Applicant indicated in her answer to the SOR (Item 4.) that she has the respect and trust of her co-workers. Her stable employment since 2008 is viewed favorably, but it is not enough to overcome the criminal conduct concern.

Guideline E, Personal Conduct

The trustworthiness concern about personal conduct is set out in AG ¶ 15:

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 listed her conviction for unauthorized use of a motor vehicle on her June 2008 SF 85P, but she indicated that the offense occurred in 1997. She did not disclose any other criminal offenses on her SF 85P, even though the contempt and marijuana charges were very recent. Applicant denies any intentional falsification. Accordingly, the Government has the burden of establishing the applicability of AG ¶ 16(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.

A finding of intentional falsification can be inferred from omission of information that on its face should have been reported. Question 20 on the SF 85P is unambiguous in requiring the disclosure of any arrests, charges, or convictions in the last seven years, and all of the charges in the SOR occurred within the scope of the inquiry. Applicant submits that she “honestly” made a mistake when she dated the unauthorized use of a motor vehicle as “est. 5/97,” and that she did not think of her other arrests when she was completing the SF 85P “because they were not creditable charges to [her].”

Applicant indicated in her answer to the SOR that she went through some very rough years between 2004 through 2008, as shown by her credit history and criminal record. She knew her criminal problems began after her separation in 2004. So it is difficult to believe her explanation of inadvertent mistake when she dated her conviction as 1997, especially when it had been only over a year since her arrest and commitment to a correctional facility while awaiting her transfer to state Y and her trial. Concerning the misuse of the telephone and harassment charges, Applicant indicated in July 2009 that she had forgotten about the October 2005 misuse of the telephone charge, and she denied any recall of the February 2007 harassment. The evidence is insufficient to prove a knowing and willful omission of those charges. However, even if she did not believe she was formally charged with a drug offense in May 2008, she knew she had been charged with being a fugitive in January 2007 and with contempt in March 2008. She spent time in jail on the fugitive charge, and was in court when the contempt charge was dropped. Whether or not she considered the charge against her to be without merit, she had an obligation to disclose it on her SF 85P. AG ¶ 16(a) applies to her misrepresentation of the date of her conviction, and to her omission of the contempt charge.

None of the mitigating conditions are satisfied. No one reviewing her SF 85P would know that she had multiple arrests, or for that matter, that she owed more than one delinquent debt. There is no indication that Applicant attempted to correct the inaccuracies about her police and financial records before her interview of February 2009. AG ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” is not

established without evidence of voluntary correction. AG ¶ 17(c), “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” cannot reasonably apply to the falsification of her application for a public trust position. Moreover, given Applicant’s failure to acknowledge her responsibility for the inaccuracies on her SF 85P, I cannot apply AG ¶ 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.” She has yet to show sufficient reform of the personal conduct concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a public trust position by considering the totality of the conduct and all the relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).³ Applicant’s finances were adversely affected by her divorce and then a lengthy unemployment. Her delay in addressing her delinquent debts is understandable, in light of her being the sole financial support for her two younger children. She is also paying child support for her two older daughters. But Applicant has made several promises to work on her debts that she has not kept. Under the whole-person concept, she clearly exercised poor judgment in using her mother’s car without authorization and in not disclosing accurately her arrest record on her application for a public trust position. Doubts exist about whether she can be counted on to make the sound decisions that must be demanded of those persons in a public trust position.

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

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

³The factors under AG ¶ 2(a) are:

- (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.

Subparagraph 1.c: For Applicant
Subparagraph 1.d: Against Applicant
Subparagraph 1.e: Against Applicant
Subparagraph 1.f: Against Applicant
Subparagraph 1.g: Against Applicant
Subparagraph 1.h: Against Applicant
Subparagraph 1.i: Against Applicant
Subparagraph 1.j: Against Applicant
Subparagraph 1.k: Against Applicant
Subparagraph 1.l: For Applicant
Subparagraph 1.m: For Applicant
Subparagraph 1.n: For Applicant (duplicate of 1.i)
Subparagraph 1.o: Against Applicant
Subparagraph 1.p: For Applicant (duplicate of 1.j)
Subparagraph 1.q: For Applicant

Paragraph 2, Criminal Conduct: AGAINST APPLICANT

Subparagraph 2.a: For Applicant
Subparagraph 2.b: Against Applicant
Subparagraph 2.c: For Applicant
Subparagraph 2.d: For Applicant
Subparagraph 2.e: For Applicant
Subparagraph 2.f: For Applicant

Paragraph 3, Personal Conduct: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Conclusion

In light of 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.

Elizabeth M. Matchinski
Administrative Judge+