



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



In the matter of:)	
)	
)	ADP Case No. 09-06183
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

March 18, 2011

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 35 accounts which were charged off or placed for collection totaling approximately \$48,000. Four of the accounts totaling approximately \$11,000 are no longer of security concern. Other than a \$40 payment on her water bill, she had not made any payments on the remaining 30 delinquent obligations. She failed to rebut or mitigate the government’s security concerns about her finances. Applicant’s eligibility for access to sensitive information and eligibility for a public trust position is denied.

Statement of the Case

On May 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under financial considerations. 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); Department of Defense (DoD)

Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation), and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On May 26, 2010, Applicant answered the SOR and requested a hearing. On August 12, 2010, I was assigned the case. On August 25, 2010, DOHA issued a Notice of Hearing for the hearing held on September 15, 2010. At the hearing, the Government offered Exhibits (Ex.) 1 through 7, which were admitted into evidence without objection. Applicant testified on her own behalf and provided one document admitted as Ex. A. The record was held open until October 1, 2010 to allow additional information from Applicant. She requested an additional extension which was granted until October 15, 2010. Applicant requested a third extension which was granted until November 1, 2010. Additional material was received and admitted without objection as Ex. B through Ex. I. On September 23, 2010, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's SOR answer, she neither admitted nor denied the allegations in SOR ¶ 1.a. She admitted the factual allegations in SOR ¶¶ 1.c, 1.e, 1.k, 1.l, 1.n, 1.r, 1.s, 1.t, 1.v—1.aa, 1.dd, and 1.ee, and denied the remaining factual allegations. Her admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 40-year-old health care finder¹ who has worked for a defense contractor since November 2008, and is seeking to obtain a position of trust. (Tr. 26) Her current supervisor states Applicant has been a pleasure to work with, a true team player, is very punctual, volunteers for overtime when needed, has excellent organization skills, is always willing to assist others, and is a model for her fellow team mates. (Ex. I) She and her husband have two children ages 14 and 16. (Tr. 31) The office manager in the office where Applicant worked from 1988 until 2005 highly recommends Applicant stating she is very reliable, honest, and an excellent worker and office manager. (Ex. A)

At the end of 2003 or the beginning of 2004, Applicant's husband lost his job as a security officer when the company he was working for went out of business. (Ex. 4) He decided to attend college to get a degree in computer programming. (Ex. 4) He incurred an \$8,364 student loan debt (SOR ¶ 1.gg). After Applicant's joint tax refund was intercepted, approximately \$7,000 remains owing on this debt. Applicant asserts her husband is making timely, monthly payments of \$50 on his student loan account, but provided no documents supporting her assertion. (Tr. 49)

From 1988 until 2005, Applicant was working in a doctor's office 35 to 40 hours a week at \$5 per hour. In 2004, the doctor died and she continued working part-time for the doctor's son and also began working part-time for another doctor. In August 2004,

¹ The job involves finding referrals for active duty service members and their families when a specialist is needed. (Tr. 26)

Applicant and her husband filed for Chapter 13, Wage Earner's Plan, bankruptcy protection. Applicant and her husband had \$93,700 in assets and \$106,400 in liabilities. (Ex. 5) The plan required \$475 monthly payments for 60 months. Two years later, in August 2006, the bankruptcy was dismissed when she and her spouse failed to file their 2004 federal income tax return in a timely manner. (Ex. 5) Because the bankruptcy was dismissed, as opposed to being discharged, there was no release of any of the debts listed in the bankruptcy.

A number of the SOR debts were included in the bankruptcy. During the bankruptcy approximately \$10,000 was paid into the plan. (Ex. 5, page 8). The plan disbursed the following amounts: approximately \$4,200 was paid on a repossessed vehicle. (SOR ¶ 1.i), which left a balance due of approximately \$4,100; approximately \$3,500 was paid to two creditors with secured collateral; \$1,400 was paid to the IRS, which left a balance due of approximately \$1,600; plus attorney fees of approximately \$900. (Ex. 6, Tr. 35, 61) In January 2007, the bankruptcy was terminated. The debts listed in the bankruptcy were never discharged.

In 2005, after Applicant's husband received his degree, he obtained a job as a systems administrator. (Tr. 27) In 2007, he was out of work for three or four months before obtaining another job, which lasted a year or two. (Tr. 28) After being laid off from his job in 2009, he was out of work for six to nine months. Six months ago, he obtained his current job as a system administrator. (Tr. 28)

In 2006, Applicant obtained a job, which lasted one year before she became sick and was laid off due to a reorganization of the company. (Tr. 29) She was unemployed for six months before obtaining a new job, which lasted for four months. That job ended when the company was bought, and she was again unemployed, this time for seven months. (Tr. 30) In November 2008, she obtained her current job.

The person taking care of Applicant's grandmother wrongfully used Applicant's personal information to rent an apartment. (Tr. 39) The rental resulted in a \$1,961 account in collection. (SOR ¶ 1.b) Applicant reported this misuse of her personal information and an investigation is being conducted. Applicant contacted the creditor concerning a \$334 charged-off account (SOR ¶ 1.hh). The account was not in her name, did not list her social security number, her address, or her date of birth. (Tr. 49)

Applicant asserted a number of the debts had been paid or that she called the creditor and they had no record of her owing them money. However, she provided no documentation supporting her assertion. Those debts were: \$1,200 water bill² (SOR ¶ 1.c); \$1,308 debt (SOR ¶ 1.d) for failing to return cable TV equipment, which she asserts she has returned (Tr. 41); \$40 account (SOR ¶ 1.h, Tr.43) ; \$26 credit union account (SOR ¶ 1.v, Tr. 45); and, a \$351 credit union debt. In documents received

²In her response to the SOR, Applicant acknowledged this debt and asserted she had made arrangements to start paying it. (Tr. 39) She asserted she had made a \$40 payment, but never produced any documents showing payment. (Tr. 40) Her current water bill was \$55.49. (Ex. D)

October 30, 2010, she indicated the credit union (SOR ¶ 1.v, \$26) was still investigating her account. (Ex. B)

In April 2009, Applicant was interviewed and asked about the SOR debts. (Ex. 4) Currently, Applicant has no knowledge as to the identity of certain creditors or information concerning the debts or has not contacted the creditors of certain accounts. Those creditors are: \$180 medical debt (SOR ¶ 1.f); \$163 medical debt (SOR ¶ 1.g, Tr. 41); \$716 (SOR ¶ 1.m); \$437 (SOR ¶ 1.n); \$100 laboratory fees (SOR ¶ 1.u); \$60 (SOR ¶ 1.bb, Tr. 47); \$105 (SOR ¶ 1.cc, Tr. 47); \$1,595³ federal income tax debt (SOR ¶ 1.ii); and, \$745 federal income tax debt (SOR ¶ 1.jj).

In November 2009, Applicant asserted she had contacted or would be contacting a number of creditors to attempt to resolve her past due obligations. (Ex. 5) At the hearing, Applicant again asserted she had contacted a number of the creditors and is waiting for a response or would be contacting the creditors in the future. Those creditors and accounts are: \$510 telephone bill (SOR ¶ 1.e), she contacted the creditor, but has yet to make a payment (Tr.41) ; \$191 (SOR ¶ 1.j); \$9,379 mortgage foreclosure (SOR ¶ 1.k); \$1,759 foreclosure account (SOR ¶ 1.l); \$1,900 county taxes (SOR ¶ 1.o); \$3,179 mortgage (SOR ¶ 1.p, Tr. 43); \$6,500 mortgage (SOR ¶ 1.q); \$136 personal loan (SOR ¶ 1.r, Tr. 44); \$195 personal loan (SOR ¶ 1.s, Tr. 44); and, \$431 (SOR ¶ 1.aa) for a personal loan she co-signed with her father. (Tr. 47)

Applicant and her husband owned a home on which they had a primary mortgage and two equity loans. (Tr. 64) The house went to foreclosure. She thought it had gone to a short sale, which eliminated all her obligations on the home when it sold. (Tr. 34) At the hearing, Applicant stated that she would look into the debts associated with her foreclosure. (Tr. 43)

Applicant asserted that her medical insurance should have paid a number of the charged-off accounts. She asserted she would look into a number of the collection accounts. Those accounts are: \$111 (SOR ¶ 1.w, Tr. 45); \$160 (SOR ¶ 1.y, Tr. 46); \$783 (SOR ¶ 1.z, Tr. 46); and, \$243 (SOR ¶ 1.ee, Tr. 46-47, 48).

Applicant made monthly payments on a \$3,000 furniture debt (SOR ¶ 1.x) until that company went out of business ten years ago. (Tr. 45) Her credit bureau report (CBR) lists a \$1,700 charged-off account. Applicant asserted the debt listed in SOR ¶ 1.j (\$191) is the same debt listed in SOR ¶ 1.t (\$195)

Applicant had two vehicles repossessed. A 1998 Mitsubishi was repossessed leaving a \$4,091 debt (SOR ¶ 1.i) and a 1999 Ford was repossessed leaving a \$9,065 debt (SOR ¶ 1.dd). Following the repossession of the Mitsubishi, the creditor demanded a \$4,000 lump-sum payment, which Applicant was unable to pay. In 2008, Applicant contacted the creditor as to the Mitsubishi debt. She asserts the creditor could not locate their account. Two weeks prior the hearing, Applicant contacted the creditor and

³ At the time of her final bankruptcy report, the IRS was owed \$1,595. (Tr. 50)

offered to start paying the debt. (Tr. 42) The creditor was unwilling to accept a monthly \$10 payment. (Tr.42)

As of April 2009, Applicant's and her husband's net monthly income was \$4,700, their household expenses were \$2,517, and their net monthly remainder was \$2,183. (Ex. 4) At the hearing, Applicant stated their household income had gone down \$500 per month. (Tr. 51) Applicant acknowledged she had approximately \$1,000 monthly net income that could be used to address her past due debts. (Tr. 52) The 35 SOR delinquent accounts total obligations in excess of \$48,000.

In her letter received October 30, 2010, Applicant indicates she made a repayment arrangement to pay a creditor \$30 to \$40 per month. (Ex. B) She did not indicate which SOR debt related to this arrangement. She also made a memorandum of her attempts to contact some of the creditors. (Ex. C) She sent a copy of her October 2010 electric utility bill, which she paid. (Ex. E, Ex. F, Ex. G, and Ex. H)

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 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 over-arching 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 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 [sensitive] 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. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk

that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant has a history of financial problems. In 2004, Applicant had to resort to bankruptcy protection. That bankruptcy was dismissed and the debts not discharged. The SOR listed 35 past due obligations totaling approximately \$48,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Of the 35 delinquent accounts, four are no longer of concern. Applicant never had a student loan as alleged in SOR ¶ 1.gg. Her husband is paying \$50 monthly on his \$8,364 student loan debt (SOR ¶ 1.gg). The debts in SOR ¶ 1.b (\$1,961) and SOR ¶ 1.hh (\$334) are the result of another individual's wrongful use of Applicant's personal information to apply for credit. The debts listed in SOR ¶ 1.j (\$191) and SOR ¶ 1.t (\$195) are the same debt. These three debts and the duplication of another total approximately \$11,000 of the \$48,000 of delinquent SOR debt listed in the SOR. I find for Applicant as to these four debts. Also, I do not find against Applicant because she sought Chapter 13 bankruptcy protection. I find for her as to SOR ¶¶ 1.a., 1.b, 1.j, 1.gg, and 1.hh.

Applicant asserted, but failed to document, she had paid four additional debts (SOR ¶ 1.d, \$1,308 for cable equipment she returned; SOR ¶ 1.h, \$40, which she paid years ago; SOR ¶ 1.v, \$26, a credit union debt; and SOR ¶ 1.ff, \$351, which she paid years ago). Even without documentation, I find for Applicant as to these four debts, which total approximately \$2,000. I find for her as to SOR ¶¶ 1.d, 1.h, 1.v, and 1.ff).

Many of the debts were listed in Applicant's 2004 bankruptcy and remain unpaid today. In April 2009, she was made aware of the security concerns raised by her past due unpaid accounts. Since obtaining her current job in November 2008, and currently having approximately \$1,000 per month in net income that could have addressed her past due obligations, she has failed to document she has made any payments on any of the SOR debts. She asserts she had made arrangements to pay the \$1,200 water bill (SOR ¶ 1.c) and made a \$40 payment on this debt. Other than this \$40 payment, she had not made any payments on her past-due delinquent obligations.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(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;

(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;

(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;

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

(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.

The mitigating conditions listed in AG ¶ 20(a) do not apply. Many of the SOR delinquencies existed prior to her August 2004 bankruptcy filing. The debts are numerous and are recent since they remain unpaid. The debts do not appear to have been incurred under unusual circumstances or circumstances that are unlikely to recur.

The conditions in AG ¶ 20(b) partially apply. Both Applicant and her husband experienced periods of unemployment. In 2007, her husband was out of work for three or four months, and in 2009, he was out of work for six to nine months. She was unemployed for six months in 2006, employed four months, and then unemployed for another seven months. Since November 2008, she has been employed at her current job. She has been aware of the government's concern over her finances since her personal interview in April 2009. In November 2009, she was again made aware of the government concerns about her finances when she was asked to answer two sets of written interrogatories concerning her finances. In the past year, she has made one \$40 payment. She has not acted reasonably under the circumstances.

Although a number of the debts are for medical treatment, which Applicant asserts should have been paid by her insurance, there is no showing the debts were incurred for other than routine medical treatment. The five medical debts together total approximately \$1,400. Only the \$783 hospital debt (SOR ¶ 1.z) is large enough to possibly be the result of an "unexpected medical emergency." Applicant did not establish this debt was the result of such an emergency.

The conditions listed in AG ¶ 20(c) do not apply. Applicant has not received counseling nor is she current on her debts. There are no clear indications that the problem is being resolved or is under control.

The conditions listed in AG ¶ 20(d) do not apply. Applicant asserted she had contacted some of her creditors and was attempting to establish a repayment plan. However, she has made a single \$40 payment associated with the repayment

agreements. The single payment does not represent a good-faith effort to repay overdue creditors or otherwise resolve these debts.

The conditions listed in AG ¶ 20(e) apply to the debts listed in SOR ¶ 1.b (\$1,961) and SOR ¶ 1.hh (\$334), which Applicant disputes. As previously stated, I have found for her as to these two debts. For AG ¶ 20(e) to apply to the remaining disputed debts, there must be a reasonable basis to dispute the debts and there must be documented proof to substantiate the basis of the dispute. There is no documentation showing Applicant has disputed the debts with the creditor. The conditions listed in AG ¶ 20(e) apply to the two debts.

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 applicant's conduct and all relevant 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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. Many of the unpaid debts predated Applicant's August 2004 bankruptcy filing. A few of the debts are not her debts. However, she has not established she has made more than a \$40 payment since 2009 when she was made aware of the security concern caused by her delinquent accounts.

Under Applicant's current circumstances, a position of public trust is not clearly consistent with national security. However, if she pays her delinquent obligations, establishes compliance with a repayment plan, or otherwise addresses these obligations, she may well demonstrate persuasive evidence of her eligibility for a public trust position in the future.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a public trust

position. For all these reasons, Applicant has not mitigated the security concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: **AGAINST APPLICANT**

Subparagraphs 1.a and 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e—1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k—1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraphs 1.w—1.ee:	Against Applicant
Subparagraphs 1.ff and 1.hh:	For Applicant
Subparagraphs 1.ii and 1.jj:	Against Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge