



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



In the matter of:)	
)	
)	ADP Case No. 07-06350
SSN:)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Nichole Noel, Esq., Department Counsel
For Applicant: *Pro Se*

July 8, 2008

Decision

LAZZARO, Henry, Administrative Judge

On February 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing to Applicant its trustworthiness concerns.¹ The SOR alleges security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted a response to the SOR that she signed on February 28, 2008. Applicant admitted all Guideline F allegations, denied the lone Guideline E allegation, and requested a hearing.

The case was assigned to me on April 21, 2008. A notice of hearing was issued on May 7, 2008, scheduling the hearing for June 3, 2008. The hearing was conducted as scheduled. The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5. GE 1-4 were admitted into the record without objection. Applicant objected to a portion of GE 5. That objection was sustained and the remainder

¹ 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.

of GE 5 was admitted into the record without objection. Applicant testified and submitted seven documentary exhibits that were marked as Applicant's Exhibits (AE) 1-7, and admitted into the record without objection. The transcript was received on June 18, 2008.

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 25 years old, She is employed by a staffing agency and assigned under a contract to a defense contractor where she has worked as a claims analyst since March 2006. She graduated from high school in June 2000. She thereafter attended college and was awarded a bachelor of arts degree with a major in psychology in December 2005. Applicant worked sporadically at fast food restaurants while attending high school and college. Following her college graduation, she worked for short periods of time in a factory and in meat processing plants.

Applicant is single and has one child, age 6. The child's father has been court-ordered to pay \$180 per month as child support. He has failed to make an undetermined number of support payments over the years but Applicant testified she has not bothered to attempt to collect the arrearage owing. (Tr. 31-32)

The SOR alleges nine credit card debts, totaling approximately \$16,000, and one telephone account, owing in the amount of \$1,600, that have either been charged off or submitted for collection. These accounts have been delinquent for many years. Applicant acquired this debt while she was attending school. She testified she never made any payment on some of the credit cards she acquired and used. (Tr. 37) She did not take any action to resolve these debts but instead chose to rely upon the passage of time for them to be removed from her credit reports. None of these accounts are listed in her most recent credit report. (AE 2)

The SOR also alleges eight medical bills, totaling approximately \$1,700, that have been submitted for collection. Each of these debts has been delinquent for many years. Applicant testified she believes some of these accounts do not belong to her and the remainder should have been paid by medical insurance. (Tr. 34-37) She did nothing to satisfy or otherwise resolve any of these accounts until shortly before the hearing when she called a credit reporting service to dispute her liability for the accounts. She testified that if the challenge to her liability for these accounts is successful they will be removed from her credit reports about 45 days after the date of the hearing. (Tr. 34)

Applicant consulted with a consumer credit counseling service a few weeks before the hearing. However, she has not actually entered into a contractual agreement with the service and she doesn't have the disposable income needed to comply with the plan the service proposed on her behalf.

Applicant submitted a Questionnaire for Public Trust Position (SF 85P) in March 2006. In response to a question inquiring whether she was then over 180 days delinquent

on any financial obligation, she answered “No”. This answer was untrue. Applicant’s explanations for her untrue answer is: 1) she was in a hurry; 2) she did not read the question carefully; 3) she had read an earlier question inquiring about whether she had ever filed for bankruptcy protection to which she correctly answered “No”; and 4) she somehow inexplicably concluded that because she answered “No” to the bankruptcy question she should also answer “No” to this question.

POLICIES

Positions designated as ADP I and ADP II are classified as sensitive positions.² 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.³ Trustworthiness adjudications apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management.⁴ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination is made.⁵

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.⁶

The Government is required to present evidence to establish controverted facts alleged in the SOR.⁷ 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.⁸ The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

² Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

³ Regulation ¶ C6.1.1.1.

⁴ Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004.

⁵ Regulation ¶ C8.2.1.

⁶ Section 7 of Executive Order (EO) 10865.

⁷ Directive ¶ E3.1.14.

⁸ 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 either has or had numerous delinquent accounts, totalling over \$19,000, that were either charged off or submitted for collection. She acquired and used credit cards when she clearly lacked the financial resources to make payments on the accounts. She never made any payment on some of the credit card accounts. All of her delinquent accounts remained delinquent for many years. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; DC 19(b): *indebtedness caused by frivolous spending or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant never took affirmative action to resolve any of her delinquent credit card or telephone debt. Instead, she chose to wait until they were removed from her credit reports through the passage of time. Most disturbing about her conduct in regards to that debt is that she acquired at least some of the credit cards lacking both the ability and intent to make payment on them. As to the medical expenses, she failed to take any action to resolve them until shortly before the hearing, and it is unknown whether or not the challenges to those debts will be resolved in her favor. While she discussed her financial situation with a consumer credit counselling service, she has not engaged that service and lacks the financial ability to make the payments that would be required under the plan the service proposed.

Mitigating Conditions (MC) 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*; 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*; MC 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*; and 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* do not apply. The remaining mitigating conditions have no applicability to the facts in this case. Guideline F is decided against Applicant.

Guideline E, Personal Conduct

Personal conduct is always a concern because 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 (sensitive position eligibility) process or any failure to cooperate with the (sensitive position eligibility) process.

Applicant submitted an SF 85P in March 2006, and in response to a question inquiring whether she was then over 180 days delinquent on any financial obligation she answered “No”. This answer was untrue. Her assertions about why she did not report the delinquent debts, namely: 1) she was in a hurry; 2) she did not read the question carefully; 3) she had read an earlier question inquiring about whether she had ever filed for bankruptcy protection to which she correctly answered “No”; and 4) she somehow inexplicably concluded that because she answered “No” to the bankruptcy question she should also answer “No” to this question are not credible. In making that determination, I have considered the substance of her testimony, her appearance and demeanor while testifying, and the nature of the debts in question. Applicant is clearly an intelligent woman with the capacity to read and understand the question at issue and discern the information she was required to furnish. 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. I have considered all mitigating conditions under Guideline E and find none apply. Guideline E is decided against Applicant.

The objective of a trustworthiness determination is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to sensitive information. Indeed, 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, I find Applicant has failed to mitigate the financial considerations and personal conduct security concerns. She has not overcome the case against her nor satisfied her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant access to sensitive information. Guidelines F and E are decided against Applicant.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-r:	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