



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



In the matter of:	)	
	)	
	)	ADP Case No. 07-06504
SSN:	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: James B. Norman, Esq., Department Counsel  
For Applicant: *Pro Se*

November 10, 2008

**Decision**

LAZZARO, Henry, Administrative Judge

On April 4, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing to Applicant its trustworthiness concerns.<sup>1</sup> The SOR alleges security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted a response to the SOR that was received by DOHA on April 8, 2008, admitted all allegations and requested a hearing.

The case was assigned to me on July 28, 2008. A notice of hearing was issued on August 15, 2008, scheduling the hearing for September 26, 2008. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4 and admitted into the record without objection. Applicant testified but did not offer any other evidence. The record was held open to provide Applicant the opportunity to submit additional documentary evidence in support of

---

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

her case. Three documents were timely received, marked as Applicant Exhibits (AE) 1-3 and admitted into the record without objection. Department Counsel's forwarding memorandum of AE 1-3 was marked as Appellate Exhibit (App. Ex.) I and is included as part of the record. Department Counsel submitted two other documents with App. Ex. I that were marked as GE 5 & 6 and admitted into the record without objection.<sup>2</sup> The transcript was received on October 10, 2008.

### **Procedural Matters**

\_\_\_\_\_ In her response to the SOR, Applicant admitted the allegation contained in SOR subparagraph 2.a. At the hearing, I clarified the allegation for Applicant. Without objection, she was thereupon given permission to withdraw her admission and deny the allegation.

### **Findings of Fact**

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

Applicant is a 43-year-old single woman who has been working for a government contractor as a help desk analyst since May 2006. Her prior employment history consists of a variety of jobs interspersed with short periods of unemployment. She graduated from high school in 1984, and attended college from 1991 to 1996. She was awarded a bachelor of arts degree in music in May 1996. While attending college, she worked part-time at a bank. She additionally financed her education through student loans.

The SOR alleges and Applicant admits she has nine collection accounts, totaling \$16,015, and five charge off accounts, totaling \$10,162. These accounts include numerous credit card debts that have been delinquent for many years. Applicant completely ignored the debts for years and did not make any payments on them. In addition to the listed debts, Applicant owes \$92,824 on student loans that date back to when she attended college in the 1990s. She has either never made a payment on the loans or not made a payment on them for many years. Payment on the student loans was deferred through at least May 2008. (GE 2)

Applicant filed for Chapter 13 bankruptcy protection in June 2008. She listed creditors holding secured claims in the amount of \$14,000, and creditors holding

---

<sup>2</sup> Department Counsel provided copies of the documents to Applicant along with App. Ex. I. However, he had not requested permission at the hearing to submit any post-hearing documentation nor did he notify Applicant of her right to object to inclusion of the documents in the record. Because one of the documents (GE 6) is also included in AE 3, and the other document (GE 5) is beneficial to Applicant's case and consists of GE 4 with a second page added, I admitted them into the record and will consider them in arriving at a decision.

unsecured nonpriority unsecured claims in the amount of \$126,255 (this amount includes the \$92,824 owed on the student loans). Lawsuits were filed against Applicant in 2006 and 2007 by two of the creditors listed in the SOR. (AE 3)

A 10% repayment plan was confirmed by the bankruptcy court on August 18, 2008, requiring Applicant to pay \$178 every two weeks for 60 months. Payments under the plan are deducted directly from Applicant's salary. If she completes the plan, she should obtain a discharge in or about August 2013.

Applicant's net monthly salary is \$1,961.34. Her recurring monthly expenses are \$1,929. She has approximately \$300 in savings. (AE 1) She testified she decided to file for bankruptcy protection about four years ago but it took her until June 2008 to accumulate the approximately \$1,200-\$1,300 required by the attorney to file a petition. (Tr. pp. 50-51)

Applicant failed to disclose the delinquent accounts listed in SOR subparagraphs 1.d through 1.n in the Questionnaire for Public Trust Positions (SF 85P) she submitted on May 9, 2006, as required. (GE 1) When asked at the hearing why she answered "no" to the applicable question, Applicant testified: "I don't know. I don't remember answering that question." (Tr. p. 49) When asked about the false answer in an interrogatory, Applicant wrote: "I was in the process and still am of filling [sic] Bankruptcy [sic] so I thought since I am doing that I could answer no to that question." (GE 2)

## POLICIES

Positions designated as ADP I and ADP II are classified as sensitive positions.<sup>3</sup> The standard to be met for assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security.<sup>4</sup> Trustworthiness adjudications apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management.<sup>5</sup> Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination is made.<sup>6</sup>

An Administrative Judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines when evaluating an Applicant's suitability for a public trust

---

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

<sup>4</sup> Regulation ¶ C6.1.1.1.

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

<sup>6</sup> Regulation ¶ C8.2.1.

position. The Administrative Judge must also consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The protection of the national security is the paramount consideration, and any doubt concerning personnel being considered for access to sensitive information will be resolved in favor of national security. Decisions are made in terms of the national interest and are not determinations as to the loyalty of the applicant concerned.<sup>7</sup>

The Government is required to present evidence to establish controverted facts alleged in the SOR.<sup>8</sup> The Applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel.<sup>9</sup> The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

## 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 has numerous delinquent accounts, totalling \$26,177 just counting those alleged in the SOR, that have either been charged off or submitted for collection. Two of the accounts led to lawsuits being filed against Applicant. Additionally, she has over \$90,000 in student loans on which payment has been deferred since the 1990s because of her poor financial status. Applicant ignored the delinquent accounts for years and failed to make any effort to resolve them until she finally filed for Chapter 13 bankruptcy protection after receipt of the SOR. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Since graduating from college, Applicant has worked at a variety of jobs interspersed with relatively brief periods of unemployment. She failed to make any payment on the accounts when she was employed, including her student loans, and instead acted

---

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

<sup>8</sup> Directive ¶ E3.1.14.

<sup>9</sup> Directive ¶ E3.1.15.

irresponsibly by allowing them to languish and continue to accrue interest. Accordingly, Mitigating Condition MC 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* is inapplicable.

Applicant filed for Chapter 13 bankruptcy protection in June 2008, and had a plan confirmed in August 2008, that requires her to pay \$178 every two weeks for 60 months. The payments under the plan are deducted directly from her wages and will result in her obtaining a discharge in or about August 2013, if she continues to make the required payments. MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* applies.

Applicant has little discretionary income (\$32.34) left each month after paying her recurring monthly expenses. She has only \$300 in savings. Applicant lacks the ability to make payments on her student loans when and if payment is no longer deferred. I have considered the remaining Guideline F mitigating conditions and conclude none apply.

Applicant demonstrated long-term irresponsibility, unreliability and poor judgment by accumulating debt she could not service, including substantial credit card debt, and thereafter doing nothing to resolve it for years. She finally sought bankruptcy protection in June 2008, but then only after the SOR was issued. It will be almost five years until she obtains a discharge in bankruptcy if she maintains the payments required under the approved plan. Her past conduct does not warrant findings that she has now assumed a financially responsible lifestyle, will continue to make the payments required under the plan, and/or will not accumulate additional excessive debt in the future. Thus, and despite the Chapter 13 bankruptcy plan she is currently making payments under, 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 security clearance process or any failure to cooperate with the security clearance process.

Applicant failed to disclose her numerous delinquent accounts in the SF 85P she submitted in May 2006. She could not provide any reason for the omissions at the hearing. Her explanation in response to an interrogatory to the effect that she didn't think she had to disclose them because she intended to file for bankruptcy sometime in the future is not credible. DC 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personal 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* 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 his 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. Applicant has failed to overcome the case against her or satisfy her ultimate burden of persuasion. It is not clearly consistent with the national security to grant Applicant access to sensitive information.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-n:	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 security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Henry Lazzaro  
Administrative Judge