



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



In the matter of:)	
)	
)	ADP Case No. 07-08569
SSN:)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: *Pro Se*

December 18, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the trustworthiness concern that arises from her longstanding financial problems, including a Chapter 7 bankruptcy discharge in January 2003, and continuing financial delinquencies thereafter.

On March 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 a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on May 15, 2008. She admitted the allegations contained in SOR subparagraphs 1.a, 1.d, 1.e, 1.f, 1.j, 1.m, 1.n, 1.p and 1.q, denied all other allegations and requested a hearing.

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.

The case was assigned to me on September 9, 2008. A notice of hearing was issued on October 24, 2008, scheduling the hearing for November 14, 2008. An amended notice of hearing was issued on November 10, 2008, rescheduling the hearing to November 13, 2008. The hearing was rescheduled at Applicant's request with the agreement of Department Counsel (Tr. pp. 18-19). The government submitted eight documentary exhibits that were marked as Government Exhibits (GE) 1-8 and admitted into the record without objection. Applicant testified and submitted two documentary exhibits that were marked as Applicant Exhibits (AE) 1 and 2 and admitted into the record without objection.

The record was held open to provide Applicant the opportunity to submit additional documentation in support of her case. Eleven documents were timely received, marked as AE 3-13 and admitted into the record without objection.² Department Counsel's forwarding memorandum was marked as App. Ex. I and is included in the file. The transcript was received on November 21, 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 49 years old. She has been employed as a patient care advocate by a defense contractor since June 2006. She was continuously employed outside the defense industry as a team leader from August 1992 until August 2000, and by a second company that assumed the contract she was working under from August 2000 to August 2004. Although she listed continuous employment with four different employers from the time she was given a severance from her longtime employer in August 2004 until the present, she testified she was unemployed for a short period of time in or about May 2006 (Tr. pp. 39-40).

Applicant has been married since July 1996. She has an 11-year-old daughter. Applicant's husband has been continuously employed by the same employer during their marriage.

Applicant and her husband filed a Chapter 7 bankruptcy petition in July 2002. The petition lists seven creditors owed \$40,500 in unsecured nonpriority claims. Six of those creditors, totaling \$33,500, appear to be credit cards and the seventh, owed in the amount of \$7,000, appears to be a consumer loan. Two automobile loans, totaling \$27,000, and a residential mortgage, owed in the amount of \$150,000, were reaffirmed in the petition. Applicant was granted a discharge in January 2003.

² Applicant's post-hearing submissions, AE 4-13, consist of bank statements verifying various checks having been paid, most with copies of checks included. None of the checks are payable to any creditor alleged in the SOR and few are for a sum that is even closely connected to the amount of any debt alleged in the SOR. Accordingly, Applicant has failed to carry her burden of establishing that any of the checks represent satisfaction, in whole or in part, of any allegation contained in the SOR.

Applicant testified the bankruptcy was caused by bad advice she received while attempting to obtain a debt consolidation loan. The loan officer advised her to not make car payments as they came due and then declined to grant her the consolidation loan she had sought (Tr. pp. 49-52).

The SOR alleges 11 delinquent accounts that have been submitted for collection, totaling \$4,146. In her response to the SOR, Applicant admitted responsibility for seven of those accounts, totaling \$3,197. Four additional accounts were alleged in the SOR that had been charged off, totaling \$12,777. Applicant admitted she was liable for one of those accounts, owed in the amount of \$1,006. Also alleged were one past due account, owed in the amount of \$114, and a judgment, owed in the amount to \$5,265. Applicant denied both of those accounts.

One of the charged off accounts, owed in the amount of \$5,770, represents the balance after the repossession of one of the automobiles. Applicant and her husband reaffirmed in the Chapter 7 bankruptcy petition they filed in 2002. A second charged off account, owed in the amount of \$5,108, was discharged in that bankruptcy. Although Applicant testified she satisfied one or both of the other charged off accounts, she failed to submit proof of any payments having been made. (see: fn 2)

Applicant submitted proof she satisfied the judgment alleged in the SOR. (AE 2 & 3) She borrowed the money to pay the judgment from her parents-in-law. In response to interrogatories she answered in November 2007, Applicant stated she had either satisfied a number of the accounts alleged in the SOR or would make arrangements to pay others. She testified she satisfied the past due account and several of the collection accounts. However, she again failed to submit proof of any payments having been made on any of these accounts. (see: fn 2)

Applicant's need to seek Chapter 7 bankruptcy protection clearly arose from the abuse of credit cards. In an effort to live more frugally, she sold her house and moved into an apartment. However, she and her husband shared the apartment with another person who failed to pay her share of the rent, including after Applicant moved, resulting in the judgment being entered against her. In a continuing effort to live within their income, Applicant and her family are now living with her cousin.

POLICIES

Positions designated as ADP I and ADP II are classified as sensitive positions.³ 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.⁴ Trustworthiness adjudications apply to cases forwarded to DOHA by the Defense Security

³ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁴ Regulation ¶ C6.1.1.1.

Service and Office of Personnel Management.⁵ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination is made.⁶

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.⁷

The Government is required to present evidence to establish controverted facts alleged in the SOR.⁸ 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.⁹ 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 obtained a Chapter 7 bankruptcy discharge in January 2003, that was caused by an abuse of consumer credit. She quickly acquired numerous new delinquent accounts that have been submitted for collection, charged off as bad debts, listed as past due, or that resulted in a judgment being entered against her. She currently has approximately \$12,000 in delinquent debt that remains outstanding. Disqualifying

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

⁶ Regulation ¶ C8.2.1.

⁷ Section 7 of Executive Order (EO) 10865.

⁸ Directive ¶ E3.1.14.

⁹ Directive ¶ E3.1.15.

Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant's financial problems are long standing and unresolved. They were originally caused by an abuse of credit and have never been brought under control despite most of that original debt having been discharged in January 2003. Applicant testified she satisfied a number of the alleged delinquent accounts and the record was held for over three weeks to provide her the opportunity to submit proof in support of that assertion. However, while she submitted bank statements and copies of checks she has written to various creditors, it is impossible to conclude that any of those relate to any debt alleged in the SOR. I have considered all mitigating conditions and conclude that none apply.

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, Applicant has failed to mitigate the financial considerations 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.

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-g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-q:	Against Applicant
Subparagraph 1.r:	For 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

