

DATE: October 30, 2007

In Re:)
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-----) ADP Case No. 06-26297
SSN: -----)
)
Applicant for Trustworthiness Determination)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
DARLENE LOKEY ANDERSON**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Circumstances beyond the Applicant's control caused most of her financial indebtedness. Namely, a bad marriage followed by a separation and divorce, a job lay off, and a cancer diagnosis followed by surgery and radiation treatment. Since then she has consolidated her debts and is paying them off on a regular monthly basis. Under the particular circumstances of this case, she has made a good faith effort to resolve these debts. A determination of trustworthiness and access to sensitive personal information is granted.

STATEMENT OF THE CASE

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulations 5200.2R, Personnel Security Program (Regulation), dated January of 1987.

On May 24, 2007, DOHA, pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I/II/III).

The Applicant responded to the SOR in writing on June 19, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 22, 2007. A notice of hearing was issued on August 30, 2007, scheduling the hearing for September 25, 2007. Applicant requested a continuance in the matter, but good cause had not been shown and the continuance was denied. At the hearing the Government presented eight exhibits. The Applicant presented six exhibits and testified on her own behalf. The official transcript (Tr.) was received on October 3, 2007.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 51 years old and has a high school diploma. She is employed by a defense contractor as a Benefits Service Representative and is seeking to obtain a determination of trustworthiness in connection with her employment.

The Government opposes the Applicant's request for a determination of trustworthiness, on the basis of allegations set forth in the Statement of Reasons (SOR). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, the following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for a determination of trustworthiness because she is financially overextended and at risk to engage in illegal acts to generate funds.

_____The Applicant admits each of the delinquent debts set forth in allegations, 1(a) through 1(i) of the SOR. (See Applicant's Answer to the SOR).

Credit reports of the Applicant indicate that she is indebted to eight separate creditors, totaling an approximate amount of \$11,800.00. (*See* Government Exhibits 2, 3, 5, and 6).

During her marriage, the Applicant and her husband often spent money that they did not have. In June 1996, they filed Chapter 7 Bankruptcy and discharged their debts in October 1996. (*See* Applicant's Exhibit 4). Problems in the marriage concerning their finances continued and the Applicant and her husband separated in December 1997.

From 2002 to 2004, the Applicant worked two jobs to support herself and her children. During this period, all of her bills were paid on time and her credit rating was good. She received no financial assistance from her husband whatsoever. However, due to health reasons, namely high blood pressure, stress and irritable bowel syndrome she was forced to quit one of her jobs in 2004. Then in April 2005, she was diagnosed with breast cancer and was laid off from her other job. She underwent surgery and in January 2006, started radiation treatments. Her unemployment benefits ran out, and she was unable to find work that she was able to do. Since she had no income to support herself or her children, the Breast Cancer Survivors Association assisted her with some of her bills, her rent, utilities, car payment and car insurance for the months of January, February and March 2006. Her other bills simply became seriously delinquent, and these are the debts that are listed in the SOR. (*See* Applicant's Exhibit C).

Several unexpected events occurred that further aggravated her financial situation. She was the victim of check fraud, in the amount of \$2,500.00. Her son with whom she had cosigned for a truck stopped making payments on it and left her responsible for it. The job she eventually got paid substantially less than what she had earned before, so her earnings were still not enough to meet her expenditures.

The Applicant filed for divorce in January 2006, and it became final in September 2006. She started working for her current employer in February 2006. In May 2007, the Applicant applied for and obtained a loan in the amount of \$2,500.00 to assist in paying off some of her debts. At the time, she thought that she could afford to pay for it. She later determined that with everything else she was responsible for, the payments were just too much for her to handle.

In June 2007, she first sought out professional help to assist in resolving her delinquent debts. The financial counselor that she hired lost her paperwork in July 2007, and the matter was delayed by no fault of the Applicants. (*See* Applicant's Exhibit A). In September 2007, the Applicant was actually able to enter into a debt consolidation program that includes each of the debts listed in the SOR. The debt consolidation program will take 38 months to pay off all her debts and requires her to pay \$224.00 per month that is automatically deducted out of her banking account. She started the program in September 2007. (*See* Applicant's Exhibit A).

The Applicant has accumulated no new debt since her job layoff. She is current with all of her regular monthly expenses. She has moved into an affordable apartment and is living well within her means. She plans to continue with the debt payment program until all of her debts are paid off in full.

The Applicant's performance appraisal for the period from April 1, 2006 through March 31, 2007, reflects that she either "meets day to day expectations" or "consistently meets and often exceeds day to day expectations" in every category. (See Applicant's Exhibit D).

E-mail correspondence from coworkers and/or supervisors attest to the fact that the Applicant is a good trainer and is patient, flexible and willing to help others. She is well respected and greatly appreciated for her efforts on the job. She is highly recommended for a position of trust. (See Applicant's Exhibit D).

POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline F (Financial Considerations)

18. *The Concern.* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

19. Conditions that could raise a security concern:

19(a) inability or unwillingness to satisfy debts;

19(c) a history of not meeting financial obligations.

Conditions that could mitigate security concerns:

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 has acted responsibly under the circumstances;

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;

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

_____ In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In the defense industry, a determination of trustworthiness and access to sensitive personal information is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for such access may be involved in instances of financial irresponsibility which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the holding of a determination of trustworthiness. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a determination of trustworthiness.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her determination of trustworthiness eligibility.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. Conditions largely beyond the Applicant's control caused her financial delinquencies. Namely, a bad marriage followed by a separation and divorce, a job lay off, and a cancer diagnosis followed by surgery and radiation treatment. Since then, the Applicant has completed her medical treatment, obtained employment, and financial counseling and she is paying her delinquent debts. What more can we ask under the circumstances. She has entered into a debt consolidation program and is making regular monthly payments toward her debts. She will be completely debt free in 38 months. Under the particular facts of this case, she has made a good faith effort to resolve her debts. Her financial indebtedness is not recurring and she has presented sufficient evidence to demonstrate a track record of financial responsibility.

There is sufficient evidence of financial rehabilitation. Under Guideline F (Financial Considerations), Disqualifying Conditions *19(a) inability or unwillingness to satisfy debts* and *19(c) a history of not meeting financial obligations* apply. However, Mitigating Conditions *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 has acted responsibly under the circumstances,* *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* also apply.

Clearly, her financial problems were isolated to the periods when she was married, ill and/or unemployed. She is now divorced, healthy and gainfully employed. Her finances are in proper order. Her financial problems are not recurring, and the Applicant has initiated a prompt, good faith effort to repay her overdue creditors or otherwise resolve her debts. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that the Applicant has overcome the Government's case opposing her request for a trustworthiness determination. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

- Paragraph 1: For the Applicant.
- Subpara. 1.a.: For the Applicant.
- Subpara. 1.b.: For the Applicant.
- Subpara. 1.c.: For the Applicant.
- Subpara. 1.d.: For the Applicant.
- Subpara. 1.e.: For the Applicant.
- Subpara. 1.f.: For the Applicant.
- Subpara. 1.g.: For the Applicant.
- Subpara. 1.h.: For the Applicant.
- Subpara. 1.i.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent to grant or continue a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I/II/III).

Darlene Lokey Anderson
Administrative Judge