

DATE: September 20, 2007

In Re:)
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SSN: -----)
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Applicant for a Determination of Trustworthiness)
_____)

ADP Case No. 06-26528

**DECISION OF ADMINISTRATIVE JUDGE
DARLENE LOKEY ANDERSON**

APPEARANCES

FOR GOVERNMENT

Jennifer Goldstein, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial indebtedness remains current and she has not made a good faith effort to resolve her debts. Her intentional falsification on her Public Trust Position Application has not been mitigated. A determination of trustworthiness and access to sensitive personal information is denied.

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 April 27, 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 5, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 11, 2007. A notice of hearing was issued on August 3, 2007, scheduling the hearing for August 28, 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 six exhibits. The Applicant called one witness. She also presented thirteen exhibits and testified on her own behalf. The record remained open until September 7, 2007, to allow the Applicant to submit additional documentation. She submitted no additional documentation. The official transcript (Tr.) was received on September 6, 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 26 years old and is recently re-married. She is employed by a defense contractor as a Customer 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 the delinquent debts set forth in allegations, 1(a), 1(d), 1(e), 1(g), 1(h), 1(i), 1(j), 1(k), 1(l), 1(m), 1(n), 1(o), 1(p), 1(q), 1(r), 1(s), 1(t), 1(u), 1(v), 1(w), 1(x), and 1(y) of the

SOR. She denies the delinquent debts set forth in allegations 1(b),1(c) and 1(f). *See Applicant's Answer to the SOR*). With respect to the debts that she denies, the Applicant plans to dispute the debt listed in 1(b). The debts listed in 1(c) and 1(f) the Applicant now realizes she owes.

Credit reports of the Applicant indicate that she is indebted to 26 separate creditors, 19 of which are collection accounts, totaling an approximate amount of \$24,144.00. (*See Government Exhibits 2,3,4, 5, and 6*). Each of the debts remain outstanding and delinquent.

The Applicant has lived on her own since the age of eighteen. At that time, in 2001, she married an active duty Navy sailor, later separated from him and moved in with a boyfriend who beat her. She left him, and returned to her husband to try to restore their relationship. During these relationships, the Applicant opened up credit accounts and when things did not work out, she left without considering the debt she had accumulated.

The marriage was unsuccessful and in April 2007, the Applicant's divorce from her husband was final. She has full custody of a three year old son from the marriage. Her ex-husband provides her with \$300.00 a month in child support. The Applicant attributes her youth, inexperience and irresponsible nature as the reason why she has bad credit. She states that after receiving the SOR, she realized the importance of maintaining good credit. Recently she has contacted several of the creditors and set up payment arrangements, but has not yet made a payment. As to a couple of the debts, she has made a payment or two, but nothing more. She plans to pay off each of her delinquent debts in full.

When asked as to why it has taken so long to begin to handle her finances, she explained that "Honestly, I 'm 26. My mother died when I was young. My grandmother adopted us. She died. I was my own adult. I had to teach myself. No one said, Do this, do that. I learned the hard way. Now this right here, to me is minor compared to the things that could have happened, so now that all this is brought to my attention and I see, Hey, you're an adult. This is gonna follow you. You cant' just say. Okay, I 'm moving out of that apartment on to the next. This follows you." (Tr. pp. 84-85).

Within two weeks of her divorce, the Applicant was remarried to a soldier in the National Guard. He is deploying to Iraq in a couple of days. The Applicant and her new husband both testified that the extra monies he will earn from his overseas deployment will be used to satisfy her delinquent debts.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a determination of trustworthiness because she intentionally falsified material aspects of her personal background during the employment process.

The Applicant completed a Public Trust Position Application (Standard Form 85-P) dated January 11, 2006. Question 20 of the application asked the Applicant if, in the last seven years, she has ever been more than 180 days delinquent on any debts. The Applicant answered, "NO". (*See*

Government Exhibit 1). This was a false answer. The Applicant failed to disclose that she was over 180 days delinquent on the debts set forth in allegations 1(j) through 1(z) of the SOR. (See Government Exhibits 2, 3, 4, 5 and 6 and Applicant's Answer to the SOR).

The Applicant explained that she was not trying to be dishonest when she answered the question, but was not aware of anything derogatory on her credit report when she filled out the SF-86, implying that she was unaware of her numerous delinquent debts. (Tr. p. 80). She attributes this to simply being irresponsible and inexperienced at keeping track of her financial indebtedness. (See Tr. pp. 80-81). Her credit reports show at least 20 debts that have been in collection, some dating as far back as 2000. (See Government Exhibits 2, 3, 4, 5, and 6).

I find that the Applicant knew or should have known to reveal the truth about her delinquent financial history. The fact that she had never looked at her credit report before does not forgive the fact that she knew that she had opened up numerous credit accounts that she did not pay. She should have revealed this information on her application. Accordingly, I find that the Applicant deliberately attempted to conceal this information from the Government on her Public Trust Position application.

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:

None.

Guideline E (Personal Conduct)

15. *The Concern.* 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 other failure to cooperate with the security clearance process.

16. Condition that could raise a security concern:

16(a) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel 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.

Condition that could mitigate security concerns:

None.

_____ 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 and dishonesty 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) and she has been untruthful on her Public Trust Position application (Guideline E). 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 not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. With respect to her finances, the Applicant has in excess of \$24,000.00 in delinquent debt, that she has not yet started paying. It is recognized that the Applicant experienced some real hardships in life at

a very young age. Along the way, she accumulated lots of debt that she did not pay. She has recently remarried and plans to use her new husband's pay check and the extra allowance that he receives for going to Iraq to pay her delinquent debts. However, at this time the debts remain outstanding and owing. She has plans to pay her debts off and is currently in the process of setting up payment plans and starting the payment process. She has just started to address her debts and has a long way to go before they are resolved. At the present time, she has not presented sufficient evidence to demonstrate a track record of financial responsibility or that she has resolved her financial indebtedness.

Upon review of her financial statement, it appears that she now has some disposable income at the end of the month that she plans to use to pay her past due bills. However, as of yet she has not done so. There is no 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. None of the mitigating conditions apply. Her financial problems remain current, they are not isolated, and the Applicant has not initiated a prompt, good faith effort to repay her overdue creditors or otherwise resolve her debts. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

With respect to Guideline E, the Applicant contends that she did not know about her credit report and what was on it at the time she completed her application for a Public Trust Position. This very well may have been true, but the Applicant knew that she had opened up credit accounts that she did not pay, and she should have revealed these delinquent debts on her application. With the particular evidence that I have been provided, there is no reasonable excuse for her failure to answer the questions truthfully. Consequently, the evidence shows that the Applicant has not been completely honest with the Government regarding her financial history and she sought to conceal the truth. Disqualifying Condition *16(a) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel 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. None of the mitigating conditions are applicable. I find that the Applicant deliberately failed to reveal this information to the Government.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a trustworthiness determination. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 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: Against the Applicant.

Subpara. 1.a.: Against the Applicant.
Subpara. 1.b.: Against the Applicant.
Subpara. 1.c.: Against the Applicant.
Subpara. 1.d.: Against the Applicant.
Subpara. 1.e.: Against the Applicant.
Subpara. 1.f.: Against the Applicant.
Subpara. 1.g.: Against the Applicant.
Subpara. 1.h.: For the Applicant.
Subpara. 1.i.: Against the Applicant.
Subpara. 1.j.: Against the Applicant.
Subpara. 1.k.: Against the Applicant.
Subpara. 1.l.: Against the Applicant.
Subpara. 1.m.: Against the Applicant.
Subpara. 1.n.: Against the Applicant.
Subpara. 1.o.: Against the Applicant.
Subpara. 1.p.: Against the Applicant.
Subpara. 1.q.: Against the Applicant.
Subpara. 1.r.: Against the Applicant.
Subpara. 1.s.: Against the Applicant.
Subpara. 1.t.: Against the Applicant.
Subpara. 1.u.: Against the Applicant.
Subpara. 1.v.: Against the Applicant.
Subpara. 1.w.: Against the Applicant.
Subpara. 1.x.: Against the Applicant.
Subpara. 1.y.: Against the Applicant.
Subpara. 1.z.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not 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