

DATE: October 15, 2007

In re:)
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 -----) ADP Case No. 06-16942
 SSN: -----)
)
 Applicant for Trustworthiness Determination)
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)

**DECISION OF ADMINISTRATIVE JUDGE
PHILIP S. HOWE**

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 37 years old, married, with three children from her two marriages. She works for a defense contractor in the health insurance business. She filed Chapter 7 bankruptcy in 2001 to discharge about \$22,000 in delinquent debts. Now she owes about \$33,000 in delinquent debts. She repaid some debts, has an installment payment plan for another 28 debts, and has seven debts unpaid, though she and her husband have the savings to repay them over the next year. Applicant did not mitigate the financial considerations trustworthiness concern. Her eligibility for a trustworthiness determination is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trustworthiness for Applicant¹. On August 25, 2006, DOHA issued a Statement of Reasons² (SOR) detailing the basis for its decision—trustworthiness concerns raised under Guideline F (Financial Considerations) the Adjudicative Guidelines of the Directive. Applicant answered the SOR in writing on November 27, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on May 2, 2007. On June 28, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness determination for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on July 11, 2007. Applicant corrected the spelling of her name on her Answer, and I used that spelling in the caption of this decision.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 37 years old, married with three children, and works for a defense contractor in the health insurance industry. Since February 2005, she has worked as an image clerk. She has a second job cleaning various parts of a local hospital. She works from 6 a.m. to 11 p.m. five days a week, and part-time on Sundays, at these two jobs. She has diabetes and high blood pressure. She was married to her first husband from 1993 to 1995, which marriage produced her two oldest children. She married her second husband in November 2004, and has one child from that marriage. (Tr. 33, 35, 36, 45, 46, 70, 71; Exhibit 1)

While a single parent from 1995 to 2004, Applicant filed a Chapter 7 bankruptcy on August 14, 2001. She listed debts totaling \$22,110.42 that were discharged in bankruptcy on November 22, 2001. Currently, she has 43 delinquent debts totaling \$33,302.61 listed in the SOR. She and her current husband earn a net joint monthly income of \$4,500. After paying their bills, including rent, auto purchase payment, insurance, food, child expenses (day care is provided by Applicant's mother who lives with her), and other monthly expenses, Applicant and her husband have about \$1,292 per month of discretionary income. From that amount her husband sends \$200 to his mother in Mexico. Applicant also spends about \$200 monthly on weekly family entertainment excursions for pizza and movies. Their remaining net monthly discretionary income is \$892. This money Applicant's husband sends to a savings account in Mexico. He now has \$4,000 in that account. They do not have a savings account in a U.S. bank. The money sent also pays for medical care for Applicant's

¹Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).

²Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.

father who recently had a stroke. Applicant's husband is an illegal alien in the United States. Applicant claims he overstayed his visa in error. Applicant paid an attorney \$5,000, plus another \$1,200 before this hearing, to represent her husband in an attempt to improve his immigration status to avoid deportation. Applicant also retained an attorney in an attempt to terminate her former husband's visitation and custody rights because he does not pay child support, or have contact with his two children. Applicant did not state what fee she pays that attorney. Applicant's husband has four credit cards which he pays in full each month. (Tr. 33-41, 47-54, 60-63; Exhibits 1-3)

Of her 43 delinquent debts, Applicant repaid eight of them. In February 2006, she paid, the \$124 for an overdrawn check (1.i). She paid the judgment obtained against her by a former landlord in July 2004, by garnishment from her paycheck. That repayment was completed in July 2007 (1.j). She paid in March 2006, four speeding tickets unpaid since 2005, totaling \$432 (1.aa, 1.cc, 1.dd, 1.ee). Finally, she repaid her higher education loans totaling \$1,446 in April 2007 (1.o, 1.p). (Tr. 21, 32, 57, 58; Exhibits 2, 3, A, D-G; Answer)

Applicant has an installment payment plan under her state's law. She paid an attorney \$800 and paid the trustee \$2,500 under the plan (which is not bankruptcy under Federal law) to administer the plan for at least the next two and a half years. Applicant pays the trustee \$603 each month to be divided among four creditors under the plan, who are owed 28 delinquent debts listed in the SOR. Since March 2007, Applicant has made those payments. The first debt in the plan is \$10,183 to a bank for the balance of a loan on a repossessed automobile (1.nn). The second debt is to a telephone service provider for three debts totaling \$1,767 (1.f, 1.g, 1.bb). The third debt is to a pay day loan company for three loans totaling \$2,364.40 (1.l, 1.m., 1.n). The fourth group of debts is owed to a hospital for medical services provided when Applicant did not have medical insurance and suffered two miscarriages in 2004. Those debts total \$12,615.41 (1.d, 1.k, 1.q to 1.y, 1.gg to 1.qq). (Tr. 13-17, 23-27, 45; Exhibits 1-3, B, C, E)

Applicant has not paid seven delinquent debts totaling \$2,751, and are as follows: (1) \$565 to a collector (1.b); (2) a dental bill for \$200 (1.c); (3) a credit card debt of \$425 (1.e) on a card which Applicant no longer has (Applicant does not have any credit cards presently); (4) a car insurance debt of \$170 (1.h); (5) a utility bill of \$303 (1.z); (6) a pay day loan for \$600 (1.ff); and, (7) \$488 to a collector for a check cashing company (1.rr). Applicant has not discussed paying these debts with her husband, in part because, "We have to make payments on stuff." Applicant is not paying these debts until she repays the debts under the installment repayment plan managed by the trustee. She did not include these debts in that plan because her monthly payments would rise to \$900 and be more than she can afford. (Tr. 30, 31, 42, 43, 45; Exhibits 2, 3, E)

POLICIES

As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for

Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. *See* Directive ¶ 2.3. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination.” *See* Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (*See* Directive, Section E2.2.1. of Enclosure 2). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant’s trustworthiness suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive ¶ E2.2.2

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F:Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

“The standard that must 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.” (Regulation ¶ C6.1.1.1) Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. (Regulation ¶ C8.2.1)

CONCLUSIONS

Financial Considerations: Applicant has a history of spending beyond her means and lacks ability to repay the debts. The 2001 Chapter 7 Bankruptcy discharged \$22,110.42 in debts . She accumulated those debts between 1995 and 2001. That is a large sum of delinquent debts for anyone to accumulate.

After her bankruptcy discharge, Applicant proceeded to accumulate another \$33,302.61 in delinquent debt. She obviously has a difficult time managing money. She has taken no courses or credit counseling to learn how to live within her income at age 37. She married again in 2004 to a man whose immigration status now makes him illegal. Between the two of them, they earn \$4,500 per month, for a total of \$56,000 annually. That income should be sufficient for them to live comfortably and pay their debts. Her husband sends their monthly net income s to Mexico to be used for his family. The \$4,000 saved in the Mexican savings account would pay Applicant’s remaining seven delinquent debts of \$2,751.

Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1), and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply. Since 2001, Applicant accumulated substantial debt that she cannot repay. Her payment priorities over the years demonstrate amply her inability to manager money and pay her debts in a reasonable time period.

Applicant repaid some debts, and to establish under her state’s law an installment payment plan protected by that state law. About \$12,000 of Applicant’s debt arose from medical care obtained when Applicant had no medical insurance. She had two miscarriages in 2004. Those expenses are mitigated by those medical emergencies and her present plan to repay them as they represent factors beyond her control. Two Mitigating Conditions (MC) may apply in this case. MC 3 (Conditions resulting in the behavior were beyond Applicant’s control because of unemployment and divorce E2.A6.1.3.3), and MC 6 (Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts E2.A6.1.3.6) are the two MC which might apply.

However, Applicant's history of debt accumulation, being approximately \$55,000 in the past 12 years, shows a significant inability to control her spending. It also shows she accumulates debt much faster than she could ever hope to repay it in a reasonable time or by a reasonable plan.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a" trustworthiness decision. Directive E2.2.1. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." *Id.* In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive ¶ E2.2.1.

Applicant's conduct on debt accumulation and repayment is one of spending more than she earns, and not being able to repay it within a reasonable time. She has engaged in this course of conduct over a 12-year period. The repeated nature of her conduct is serious and shows a lack of control and good judgment. She is mature and should know that such conduct will result in financial difficulties.

The debts listed in the SOR include pay day loans with high interest rates, telephone bills, a utility bill, unpaid rent, and other debts which she could have avoided with a little forethought and planning. However, based on her long history of fiscal irresponsibility and an outstanding balance of about \$27,000, I am not certain that her problems are under control and will not recur. She needs a record of debt repayment performance to persuade me otherwise.

Therefore, after considering all of the evidence and applying all of the DC and MC, and then evaluating the "whole person" that Applicant presented at the hearing, I conclude the financial considerations trustworthiness determination against Applicant. I also conclude the "whole person concept" against Applicant based on her entire history of debt accumulation, demonstrated inability to repay these debts in a timely and reasonable process, and sizeable amount of debt currently remaining to be paid. Applicant's spending priorities contribute to her financial delinquencies, and she has not obtained any professional credit or debt counseling to educate herself so she can avoid the problem in the future.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

 Subparagraph 1.a to 1.rr: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Her application for a trustworthiness determination is denied.

Philip S. Howe
Administrative Judge