

DATE: December 17, 2007

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In re: )  
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 ----- ) ADP Case No. 06-19859  
 SSN: ----- )  
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 Applicant for ADP I/II/III Position )  
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**DECISION OF ADMINISTRATIVE JUDGE  
MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**  
Jeff Nagel, Esq., Department Counsel

**FOR APPLICANT**  
*Pro Se*

**SYNOPSIS**

Applicant has a history of multiple overdue debts. She has been unable to resolve these debts. Mitigation has not been shown. A determination of trustworthiness and access to personal sensitive 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 Regulation 5200.2R, Personnel Security Program (Regulation), dated January of 1987.

On July 17, 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).

In a signed and sworn statement, notarized on September 12, 2007, Applicant responded to the SOR allegations (RSOR) and requested a hearing before a DOHA Administrative Judge.

On October 15, 2007, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on October 24, 2007, and the hearing was conducted in Sacramento, California, on November 15, 2007.

At the hearing, Department Counsel offered nine documentary exhibits (Exhibits 1 through 9) and no witnesses were called. Applicant offered two documentary exhibits (Exhibits A and B) at the hearing and offered her own testimony. The transcript (Tr) was received on December 3, 2007.

### **FINDINGS OF FACT**

In the SOR, the Government alleges concern under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains 30 allegations, 1.a., through 1.dd., under Guideline F. In her RSOR, Applicant admitted all of the SOR allegations. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the live testimony, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 33 years old. She is not married, and she has three children, ages 11, 10, and 5, all of whom live with her. Applicant is a customer Service Representative for a defense contractor who seeks an ADP-I/II/III position on behalf of the Applicant.

#### **Paragraph 1 (Guideline F - Financial Considerations)**

The SOR lists two allegations concerning bankruptcy, 1.a., and 1.b., and 28 allegations of overdue debts, 1.c. through 1.dd., under Adjudicative Guideline F. As stated above, Applicant's

has admitted each of these allegations under Guideline F in the RSOR. At the time of the hearing the only one of the debts that had been resolved or even reduced, is i.z., as discussed below. All of the other debts are still owed in full, and they will be listed in the same order as they were in the SOR:

1.a. Applicant petitioned the United States Bankruptcy Court for a Chapter 7 bankruptcy on December 12, 2006. Her case was dismissed on February 9, 2007, without discharging any of her debts.

1.b. Applicant petitioned the United States Bankruptcy Court for a Chapter 7 bankruptcy on March 28, 2007. Her case was again dismissed without discharging any of her debts on May 8, 2007. Applicant testified that she did not follow through on either of these bankruptcy filings because she believed bankruptcy would limit her ability to purchase items on credit or find a place to live (Tr at 33-34).

- 1.c. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$84.
- 1.d. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$191.
- 1.e. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$2,260.
- 1.f. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$926.
- 1.g. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$457.
- 1.h. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$71.
- 1.i. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$572.
- 1.j. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$97.
- 1.k. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$710.
- 1.l. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$692.
- 1.m. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$747.
- 1.n. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$521.
- 1.o. This overdue debt to Creditor 13 is cited in the SOR in the amount of \$518.
- 1.p. This overdue debt to Creditor 14 is cited in the SOR in the amount of \$50.
- 1.q. This overdue debt to Creditor 15 is cited in the SOR in the amount of \$50.
- 1.r. This overdue debt to Creditor 16 is cited in the SOR in the amount of \$259.

- 1.s. This overdue debt to Creditor 17 is cited in the SOR in the amount of \$153.
- 1.t. This overdue debt to Creditor 18 is cited in the SOR in the amount of \$386.
- 1.u. This overdue debt to Creditor 19 is cited in the SOR in the amount of \$1,482.
- 1.v. This overdue debt to Creditor 20 is cited in the SOR in the amount of \$647.
- 1.w. This overdue debt to Creditor 21 is cited in the SOR in the amount of \$251.
- 1.x. This overdue debt to Creditor 22 is cited in the SOR in the amount of \$658.
- 1.y. This overdue debt to Creditor 23 is cited in the SOR in the amount of \$438.

1.z. This overdue debt to Creditor 24 is cited in the SOR in the amount of \$5,000 for a judgement entered against Applicant in July 2005. Applicant testified that \$41 is deducted from her paycheck every two weeks to pay this debt, and thus far she has paid \$902 on this debt (Exhibit B).

- 1.aa. This overdue debt to Creditor 25 is cited in the SOR in the amount of \$168.
- 1.bb. This overdue debt to Creditor 26 is cited in the SOR in the amount of \$551.
- 1.cc. This overdue debt to Creditor 27 is cited in the SOR in the amount of \$436.
- 1.dd. This overdue debt to Creditor 28 is cited in the SOR in the amount of \$79.

Applicant testified that most of these debts occurred more than five years ago. As discussed above, she has three young children, and she has only received minimal financial support from the man who is the father of the children, and to whom she was never married.

Also, in 1997, Applicant's second child was prematurely born, when Applicant was in her twenty fifth week of pregnancy, Her son weighed only one pound, 14 ounces, and he was extremely ill. This resulted in Applicant being unable to work for approximately one year and ten months to provide care for him (Tr at 23-25).

Applicant further testified that some of these overdue bills listed on the SOR are for medical services which should have been paid by the state medical insurance, but she has not been able to resolve these debts.

Finally, Applicant testified that she has an uncle, who is an attorney and is knowledgeable in finance. She plans to consult him and seek help from him shortly. However, despite the fact that she has been aware of the concern of the Government at least since the interrogatories about finances were propounded to her and to which she responded on March 28, 2007, (Exhibit 2) at the time of the hearing she had not consulted her uncle or requested any kind of help from him.

Applicant submitted a letter from her direct supervisor (Exhibit A) who described Applicant as professional and reliable, and wrote that Applicant "has shown compassion and integrity in her

job duties.”

## POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate concerns. Furthermore, as set forth in the Directive, each decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.”

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline F, which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her suitability for a sensitive Systems Position, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a sensitive Systems Position.

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to Guideline F:

The Government has established its case under Guideline F. The record evidence clearly

establishes Applicant's long history of indebtedness, and there is no evidence that Applicant has resolved these overdue debts or even made an attempt.

Applicant's overall conduct pertaining to her financial obligations falls within Financial Considerations Disqualifying Condition (DC) 19. (a), and DC 19. (c), a history of not meeting financial obligations, and an inability or unwillingness to satisfy debts. While Mitigating Condition (MC) 20. (b) could be argued to apply, because the Applicant's debt arose in part because the father of her children failed to pay child support and one of her children's premature birth forced her to miss almost two years of employment, Applicant has failed to take any action to attempt to resolve these overdue debts, thus failing to act responsibly. Therefore, this Mitigating Condition does not apply in this case. I do not find that any other Mitigating Condition is applicable to this case.

Until Applicant is able to make a good-faith effort to resolve her debts, and she can establish a record of financial responsibility and stability, concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant.

## **FORMAL FINDINGS**

### **Paragraph 1. Guideline F: AGAINST APPLICANT**

Subparagraph 1.a.: Against Applicant  
Subparagraph 1.b.: Against Applicant  
Subparagraph 1.c.: Against Applicant  
Subparagraph 1.d.: Against Applicant  
Subparagraph 1.e.: Against Applicant  
Subparagraph 1.f.: Against Applicant  
Subparagraph 1.g.: Against Applicant  
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Subparagraph 1.w.: Against Applicant  
Subparagraph 1.x.: Against Applicant  
Subparagraph 1.y.: Against Applicant  
Subparagraph 1.z.: Against Applicant

Subparagraph 1.aa.: Against Applicant  
Subparagraph 1.bb.: Against Applicant  
Subparagraph 1.cc.: Against Applicant  
Subparagraph 1.dd.: Against Applicant

**DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I/II/III).

Martin H. Mogul  
Administrative Judge