

ADP Case No. 06-21728

SSN: -----

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APPEARANCES

Nichole Noel, Esq., Department Counsel

Pro Se

____ Applicant, a 56-year-old employee of a defense contractor in the medical service field, has been employed since 2006 at \$26,000 per annum. She worked as a civilian employee of the Army for 21 years and held a security clearance for most of that time. She lost her job in 1992 for a medical disability. During unemployment for 13 years she received a small annuity, workers compensation, and public assistance with very little income until becoming able to work and obtaining her present employment. During this period, her income was never more than half her present income and often much less. She accumulated delinquent debts of approximately \$46,000 which, through no fault of her own, she is unable to pay. She has now received credit counseling and has taken steps to file Chapter 7 bankruptcy to resolve the delinquencies. Clearance is granted.

On April 26, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to

Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 trustworthiness determination for an ADP clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether such a clearance should be granted, continued, denied, or revoked.

On May 21, 2007, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on June 20, 2007. A notice of hearing was issued on July 19, 2007, for a hearing on August 7, 2007, which was held that day. The government offered four exhibits and Applicant offered ten exhibits into evidence. All were accepted. The record was left open for two months for Applicant's submission of additional material. The transcript was received on August 20, 2007. Three submissions consisting of one document each were made on September 13, 2007, October 10, 2007, and October 29, 2007. All were admitted in evidence without objection.

FINDINGS OF FACT

_____Applicant admitted seven of the 13 allegations of \$46,000 in delinquent debts with explanatory information for all of them. She denied or questioned six of the allegations with explanatory information based on inadequate information or payments on some of the accounts. She appended to her answer documents relating to Chapter 7 bankruptcy which she is in the process of filing. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 56-year-old customer service representative for a defense contractor health provider. She obtained this employment in November 2005 and began work in January 2006. She has a responsible position working with medical information for military personnel. Her work involves phone contacts with military personnel and their families regarding claims against insurance companies and health service providers. She is highly regarded by her supervisor for being a team player and following the company rules. She exhibits a high degree of integrity doing right by the beneficiary, their family and her employer (Exh. J). She had been an employee of the Army for 21 years since 1971 before she was terminated for medical reasons in 1992. She was physically unable to work since she could neither walk or sit (Exh. A). She had held a security clearance years for almost 20 years.

Until obtaining her present employment, Applicant was unable to work for approximately 13 years for the diagnosed medical reasons. During this period of unemployment, she received some income from various sources. Between 1992 and 1995 she received a government annuity of between \$380 and \$560 per month. In 1995, when the annuity ended, she received Workers Compensation until 2004 which paid her approximately \$1,100 per month. Those payments ended in 2004, and she began receiving adult assistance from her state of residence of \$200 per month. She continued to receive this public assistance until January 2006 when she began her present work. It was during this long period of low income and public assistance that Applicant's financial situation became acute leading to the accumulation of the delinquent debts at issue in this proceeding.

Applicant's delinquent debts include two auto repossessions. The first was for \$9,600 charged off in 2001. She paid \$7,000 for the car two years before it was repossessed for missing three payments. The second one for \$3,400 was charged off in 2005. She attempted to notify the seller that she could no longer pay for it and it was not functioning. They had gone out of business so she still has the inoperable car. Also included is a foreclosure on the mortgage of a mobile home in 2001 for \$22,400. She sold the home to a purchaser to get rid of it and he took possession of it but did not make the payments. These three debts total almost \$35,000 of all the debts alleged in the SOR. There has been no effort by any of these three creditors to collect from Applicant.

A large number of the remaining debts totaling approximately \$7,500 are for medical expenses not covered by her insurance and, the largest two totaling \$6,700, were incurred after losing her insurance coverage (SOR ¶ 1. c.\$172; 1. i.; \$261; 1.l. ;\$348; 1.o.; \$2,400, and 1.p.; \$4,384). Several others are for cash advances and bank delinquencies. (SOR 1.a \$100; 1. b.; \$300; 1.e. \$118; 1.f. \$659; and 1.j. \$801). The last two of these are questionable as to both whether the debt is owed and the amount at issue.

The remaining debts are for a state tax lien for \$439 (SOR ¶ 1.d.) which Applicant has been making monthly payments since August 2007. Also included is lot rent of \$800 (SOR ¶ 1.k.) for her former mobile home. She questions the amount and had offered payment of the amount she believed she owed but it was rejected. She owes a cell phone bill for \$303 (SOR ¶ 1.n.).

Applicant's present salary is \$24,000 per annum with a take home pay of \$968 every two weeks. Her expenses and rent payments are modest, but there is no way she could resolve the delinquent debts on her present salary although she can avoid incurring further debts (Tr. 55 and 56). She has saved funds to hire the credit counseling service which is required by persons petitioning for bankruptcy, has paid them their fee, and is working with them. (Post-hearing submissions No. 1 and 3, and Tr.16). She has been in contact with the bankruptcy court concerning the filing and information which she will submit to them. She does not have sufficient funds to employ an attorney but, is working with the counseling service to file the bankruptcy petition herself.

Applicant has an associate degree in medical administration with a minor in business. She enjoys her present work and is delighted to have employment after years of being on a variety of assistance after she became unable to work. She describes her situation now with what it has been as the difference between "living" and just "surviving". She is anxious to make certain she does not have to go back on any form of public assistance and is motivated to make certain that does not happen. She presented her evidence at the hearing in a systematic manner. I find that she is capable of taking care of the bankruptcy filing with the assistance of her counselor, and will do so for her own long term benefit as well as to insure she maintains her present employment.

Applicant has been separated from her husband for 16 years. She has one adult son for whom she has no responsibilities nor does she receive any income from him.

POLICIES

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). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens “whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.”

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. “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.” DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

“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 security clearance.” DoD 5200.2-R, Appendix 8. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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. *Id.*

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. DoD 5200.2-R, ¶ C8.2.1. Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 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. The same rules apply to trustworthiness determinations.

A person granted access to sensitive information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to sensitive information. The decision to deny an individual a security clearance or a trustworthiness determination is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict

guidelines the President has established for issuing a clearance.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts cited in the SOR prompted the allegation of security concern under Guideline F of the revised Adjudicative Guidelines (AG), since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (AG ¶ 19 c), or evidence of inability or unwillingness to satisfy debts (AG ¶ 19 a).

Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (AG ¶ 20 b), and the person has received counseling and there are clear indications that the problem is being resolved or is under control (AG ¶ 20 c). There is sufficient evidence that the delinquent debts resulted from conditions beyond her control. She was unemployed for 13 years during which time her payments from three separate sources during various periods were inadequate to support even a modest standard of living. During that period she had annual income of between \$2,400 and \$12,000. It was during the period of her lowest income that she incurred a great number of the debts. As a result, she incurred debts that became delinquent which she could not resolve. She now has sufficient income from her employment to live a modest life without the need for government assistance. She has taken the necessary preliminary steps to resolve the delinquent debts through bankruptcy. I am confident she will do so and is capable of following through on the bankruptcy. While this is not the preferred solution for debts, it is the only solution available to her in view of her limited means. Thus, both mitigating conditions are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to sensitive information have an overriding responsibility for the security concerns of the nation. The objective of the process for adjudicating trustworthiness determinations is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to sensitive information. The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant impressed me at the hearing as a proud and competent person who is hard-working and diligent. She is delighted to once again be employed in a job where she is well regarded for her work skills and diligence. Her delinquent debts accumulated as a result of her unemployment for 13 years which resulted in a loss of control of her finances. She now has a good job which pays over twice the amount she received in her best years during the period of unemployment. She is a valued and trusted employee of her present employer

Applicant held a security clearance for almost 20 years during her government employment, and, thus knows the requirements imposed on those who hold a security clearance and can be expected to observe the requirements for protecting sensitive information. With her present employment and her strong desire not to return to public assistance, there is a strong likelihood of success in effective management of her finances.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude in favor of the grant of a security clearance.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

_____ Paragraph 1. Guideline F: FOR APPLICANT

_____ Subparagraph 1.a.:	For Applicant
_____ Subparagraph 1.b.:	For Applicant
_____ Subparagraph 1.c.:	For Applicant
_____ Subparagraph 1.c.:	For Applicant
_____ Subparagraph 1.e.:	For Applicant
_____ Subparagraph 1.f.:	For Applicant
_____ Subparagraph 1.g.:	For Applicant
_____ Subparagraph 1.h.:	For Applicant
_____ Subparagraph 1.i.:	For Applicant
_____ Subparagraph 1.j.:	For Applicant
_____ Subparagraph 1.k.:	For Applicant
_____ Subparagraph 1.l.:	For Applicant
_____ Subparagraph 1.m.:	For Applicant
_____ Subparagraph 1.n.:	For Applicant
_____ Subparagraph 1.o.:	For Applicant
_____ Subparagraph 1.p.:	For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a trustworthy determination for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge