

DATE: June 22, 2001

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In Re:

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SSN: -----

Applicant for ADP Position

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ADP Case No. 00-0612

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

William S. Fields, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has mitigated approximately \$8,500 of past due debts owed to ten creditors from the mid-1990's by her recent efforts to pay several of the debts in full and also by the fact that the conditions that resulted in the debts were largely beyond her control. Most of these debts have been written off by the creditors and no longer appear on her credit report. Applicant has shown she has reformed her credit practices as she was able to finance her own home and also stay current on her new obligations. Her increased salary puts her in a better posture to handle her current finances responsibly and to address the minor unresolved debts. Trustworthiness determination granted.

**STATEMENT OF THE CASE**

On December 20, 2000, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, as amended, ¶ 3-601 and ¶ 3-614 of DoD 5200.2-R, and § 2.4 of Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to make or continue a trustworthiness determination for the Applicant or a determination that she is eligible to occupy a critical-sensitive position, and recommended referral to an Administrative Judge to determine whether such a determination should be made, continued, denied, or revoked. (Item 2) In a sworn statement, dated February 1, 2001, the Applicant responded to the allegations set forth in the SOR and waived a hearing. The Applicant received a complete copy of the file of relevant material (FORM), dated February 15, 2001, on March 26, 2001, and received an opportunity to file objections and submit material in refutation, extenuation, or mitigation. The Applicant's response to the FORM, dated April 6, 2001, (Exhibit A) included an updated credit report of March 2, 2001 (Exhibit B). That response was forwarded to Department Counsel on April 16, 2001. On April 17, 2001, he indicated he did not object to the submission of her response. (Exhibit C)

The undersigned Administrative Judge received the case assignment on April 23, 2001. (In the file forwarded to me Exhibits A-C were included in the correspondence file; I have removed them from that file and put them in the

evidentiary file as I considered them as part of her evidence in mitigation.) The SOR consists of allegations predicated on Guideline F (financial considerations).

### FINDINGS OF FACT

The undersigned Administrative Judge completely and thoroughly reviewed the evidence in the record, and upon due consideration of the same, makes the following Findings of Fact:

The Applicant is a 28-year-old employee of a U.S. government subcontractor in State #1. The Applicant completed a Public Trust Position Application in June 1999 to seek an Automated Data Processing (ADP-I) position. She has held a position with this contractor from September 1992 to present. (Items 4, 6)

Since December 1994 she has been separated from her spouse whom she married in August 1993. She originally did not divorce him for financial reasons; in March 2000 she did not know where he was living. Independent of him, she is a single mother of three children who were born in 1990, 1991, 1998 respectively. (Items 4, 6)

SOR ¶ 1 alleged that the Applicant had past due indebtedness to ten creditors: one had a judgment of \$385 entered against her in August 1996, four referred the unpaid accounts to collection agencies (total \$956), one debt for \$618 showed no payments since April 1999, and the remaining creditors had charged off the unpaid amounts as bad debts (total \$7,108). Applicant conceded that in the past she has had trouble with her finances as she was not earning "enough money and was not always receiving my child support payments. Also, I was spending too much and was not being responsible." By March 2000 she was earning more money and was learning how to better manage her money. She was making regular payments of all of her current debts including her car loan, a personal loan, and two credit card accounts. Her net monthly income was close to \$2,000 and her expenses were only \$1241 (as that time she was living with her mother; notable also is a listed monthly church donation of \$290); her monthly debt payments were \$449 which left her a monthly remainder. She had savings of \$1200. (Item 4)

By April 2001 Applicant's salary had increased at her place of employment and she has purchased her own home and is financially responsible for her three children. However she did not submit any details of her current finances in an updated financial statement. (Items 3, 4; Exhibit A) The Applicant's SOR response and reply to the FORM affirmed the following:

She admitted the debt of \$168 to Creditor #1 which was placed for collection in July 1994. (Items 3, 4, 5)

She admitted the debt of \$224 to Creditor #2 (charged off in November 1994) which in March 2000 she said she intended to pay at \$10 per month but has not confirmed that she had in fact paid any of this debt. (Items 3, 4, 5)

She admitted the debt of \$3,490 to Creditor #3 (charged off in December 1995) which was a loan taken to pay her husband's attorney's fees; her husband made the payments up until their separation. A recent credit report that she obtained to finance her home did not include this adverse item, so she did not intend to pay of this debt of her husband's. (Items 3, 4, 5)

She admitted the debt of \$1,952 (charged off in April 1996) to Creditor #4, a federal credit union, for the deficiency balance on an automobile which she voluntarily surrendered; she surrendered the car because it needed a major part fixed. As the lender would not approve a loan of \$800-\$900 for the repair, she could not afford to make payments on a car she could not drive. She did not understand she would be responsible for any additional monies after she returned the car. A recent credit report that she obtained to finance her home did not include this adverse item, so she did not intend to pay it. (Items 3, 4, 5)

She admitted the debt of \$300 to Creditor #5 turned over for collection in August 1995, but claimed it was a prepaid account with money due for minutes before the phone was turned on. (Items 3, 5)

She admitted the debt to Creditor #6 of \$189 turned over for collection in August 1996. (Items 3, 4, 5)

The judgment against her in August 1996 was satisfied and released as she paid the debt of \$145 (not \$385 as alleged)

to Creditor #7. (Answer; Items 3, 4, 5; Exhibit B)

The updated March 2001 credit report showed the debt to Creditor #8 has been deleted from her credit file. She admitted a debt of only \$300 to Creditor #8 for a security credit card account which was the sum she sent before she received the card. The debt of \$444.20 reflected on the credit report shows the amount was charged off. (Answer; Items 3, 4, 5; Exhibit B)

She admitted a debt of \$299 to Creditor #9 but after she co-signed this account for her sister and her sister refused to pay she closed the account in 1995. Applicant does not intend to pay this debt incurred for her sister even though the debt was turned over for collection. (Answer; Items 3, 4, 5)

She paid off her debt to Creditor #10, but asserted that the original amount owed was \$425, not \$618 as alleged. This payment to this company was delayed as she got involved in check cashing loans but has subsequently stopped that practice. The creditor verified that the settlement was accepted on this account. (Answer; Item 4; Exhibit B)

### POLICIES

The Composite Health Care System Program Office, the Directorate for Industrial Security Clearance Review (now Defense Office of Hearings and Appeals), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence entered into a memorandum of agreement (MOA), effective April 9, 1993, under which the Defense Office of Hearings and Appeals (DOHA) is authorized to adjudicate trustworthiness cases involving contractor personnel working on unclassified automated systems in ADP-I and ADP-II sensitivity positions as defined in DoD Regulation 5200.2-R. This Administrative Judge has jurisdiction by virtue of the MOA, Department of Defense Directive 5220.6, dated January 2, 1992 (as amended), and DoD Regulation 5200.2-R, dated January 1987 (as amended). Under the MOA, the procedural provisions of the DoD Directive 5220.6 are applied by DOHA in processing trustworthiness cases. See ADP Case No. 30-1130 (January 4, 2001) at p. 2.

Enclosure 2 of the Directive (32 CFR. part 154 appendix H) sets forth adjudicative guidelines which must be considered in evaluating an individual's security eligibility. The guidelines are divided into those that may be considered in determining whether to deny or revoke a clearance (Disqualifying Conditions or DC) and those that may be considered in determining whether to grant or continue an individual's access to classified information (Mitigating Conditions or MC). In evaluating this case, relevant adjudicative guidelines as set forth below have been carefully considered as the most pertinent to the facts of this particular case.

### **GUIDELINE F - FINANCIAL CONSIDERATIONS**

**An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.**

**Conditions that could raise a security concern and may be disqualifying include:**

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts;

**Conditions that could mitigate security concerns include:**

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The Adjudicative Guidelines contained in enclosure 2 of the Directive provide in part:

Although adverse information concerning a single criterion *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 emotionally unstable behavior.

(Emphasis added.) The Directive also requires assessment, as appropriate, of the factors enumerated in Section 6.3:

- a. Nature and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age 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 consequences involved.
- e. Absence or presence of rehabilitation.
- f. Probability that the circumstances or conduct will continue or recur in the future.

Enclosure 2 to the Directive provides that the adjudicator should consider the following factors:

The nature, extent, and seriousness of the conduct;

The circumstances surrounding the conduct, to include knowledgeable participation;

The frequency and recency of the conduct;

The individual's age and maturity at the time of the conduct;

The voluntariness of participation;

The presence or absence of rehabilitation and other pertinent behavioral changes;

The motivation for the conduct;

The potential for pressure, coercion, exploitation, or duress;

The likelihood of continuation or recurrence.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record. Determinations under the Directive include consideration of the risk that an applicant may deliberately or inadvertently fail to safeguard properly classified information as that term is defined and established under Executive Order 12958, effective on October 14, 1995.

Initially, the Government has the burden of proving controverted facts alleged in the Statement of Reasons. The United States Supreme Court has said:

It is difficult to see how the Board would be able to review security-clearance determinations under a preponderance of the evidence standard without departing from the "clearly consistent with the interests of the national security" test. The clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials. Placing the burden on the Government to support the denial [of a security clearance] by a preponderance of the evidence would inevitably shift the emphasis and involve the Board in second-guessing the agency's national security determinations.

*Dept. of the Navy v. Egan*, 484 U.S. 518, 531 (1988). This Supreme Court guidance in its context concerns the minimum *quantum* of the admissible evidence that must be adduced by the Government in these proceedings to make its case, that is, substantial evidence but something less than a preponderance of the evidence. The burden of going forward with the evidence then shifts to the applicant for the purpose of establishing his or her security eligibility through evidence of refutation, extenuation or mitigation of the Government's case or through evidence of affirmative defenses.

### CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the Applicant successfully rebutted and overcame the Government's case with regard to Guideline F.

The Applicant had a period of time in the early to mid-1990's in which she had several past due debts that she was unable to pay, including two debts she had assumed for her sister and her husband. These financial problems fall within the scope of conditions that could raise a security concern and may be disqualifying include: DC #1 and DC #3, which are identified above.

Her situation was not recent and was in large part attributable to conditions beyond her control (MC [\(1\)](#)): low wages and marital difficulties (*e.g.*, lack or delayed child support, drain on the household finances due to her husband's legal problems, and their separation). These circumstances fall within the scope of MC #1 and #3. Further mitigation is found in her recent payments to resolve the debts to several of the ten creditors listed in the SOR as detailed in the Findings. Most of the other debts have been written off by the creditors and no longer appear on her credit report. She has shown she has reformed her credit practices as she was able to finance her own home and also stay current on her new obligations. Her increased salary puts her in a better posture to handle her current finances responsibly and to address the minor unresolved debts. Her conduct falls within the scope of MC #6. Thus, there are clear indications that the problem is being resolved.

Each clearance decision must take into consideration pertinent factors set forth in Section 6.3 of the Directive and in the adjudicative process discussion at enclosure 2 to the Directive. These factors are identified on page 5 above. The extent of her former indebtedness was not especially serious, and the circumstances surrounding the creation and perpetuation of the indebtedness further lessen the present security concern. Thus, I conclude she has sufficiently met the conditions that mitigate these security concerns. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.j under SOR Paragraph 1.

### FORMAL FINDINGS

Formal findings as required by Enclosure 1 of the Directive (see paragraph (7) of section 3 of Executive Order 10865, as amended) and the additional procedural guidance contained in item 25 of Enclosure 3 of the Directive are:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: 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

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to make or continue a trustworthiness determination for the Applicant that she is eligible to occupy a critical-sensitive position.

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Kathryn Moen Braeman

Administrative Judge

**1. Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation); 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.