

DATE: March 18, 2002

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In Re:

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SSN: -----

Applicant for ADP II/III Position

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ADP II/III Case No. 01-09117

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY-ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On April 9, 1993, the Composite Health Care System Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD C<sup>3</sup>I) 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 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987.

On May 31, 2001, the DOHA issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability, and eligibility for Applicant to hold a sensitive Information Systems Position (ADP-I). The Applicant responded to the SOR in writing on August 9, 2001, and requested an administrative hearing. This case was assigned to the undersigned Administrative Judge on December 5, 2001, to determine whether a determination of trustworthiness should be made or continued, denied or revoked. A Notice of Hearing was issued on January 8, 2002, and the hearing was scheduled for February 6, 2002. A hearing was held at which the Government presented six exhibits. The Applicant presented six exhibits, and testified on her own behalf. She also submitted one Post Hearing Exhibit consisting of three items identified as G, H and I.

The official transcript was received on February 15, 2002.

**FINDINGS OF FACT**

The Applicant is 48 years old, has a high school diploma and some college, and is employed as a Technical Support Specialist by a defense contractor. She is applying for a an ADP-II/III position and access to sensitive personal information in connection with her employment.

The Government opposes the Applicant's request to for a determination of trustworthiness and access to personal

sensitive information on the basis of allegations set forth in the SOR. 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 and access to sensitive personal information because she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant's home life has been turbulent and troubled by numerous difficult relationships with males. From these relationships the Applicant has six children, all of whom she supports. In 1988, as a matter of survival, she wrote bad checks at grocery stores for food. She was arrested on July 19, 1988, and charged with Writing Bad Checks (\$4,000.00 to \$5,000.00), a felony offense. She pled guilty to an amended charge of Issuing Non-Sufficient Funds Checks, and was sentenced to 25 days in jail, six months of community service, placed on probation for three years and ordered to make restitution. At that time, the Applicant was unemployed, on welfare, and taking care of her children. The Applicant eventually found stable employment and did her best to sustain her household.

By 1994, the Applicant had accumulated so much debt that she felt her only option was to file bankruptcy. In September 1994, she filed for Chapter 7 bankruptcy. The debts that were discharged were incurred during her marriage to her second husband who had a drug problem. At some point during their four years of marriage, the Applicant learned that instead of paying the bills, the Applicant's husband was spending their money on drugs. During this period, the Applicant's husband was also diagnosed with colon disease that required expensive medical treatment.

Following the bankruptcy, the Applicant was debt free. She began to rebuild her credit. Unfortunately, however, when credit cards started coming in she began to use them to purchase necessities such as clothes for the children, gas and food. Before long, her credit card debt, and other debt, became excessive and were once again out of control. The following debts remain outstanding:

Subparagraph 1(c) The Applicant is indebted to a hotel in the approximate amount of \$926.00, for a non-sufficient fund check written for \$400.00, on August 20, 1996. The debt remains outstanding. (Tr. pg. 46).

Subparagraph 1(d) The Applicant is indebted to a dentist in the approximate amount of \$68.88, for a delinquent account referred to collection on March 24, 1997. The debt remains outstanding. (Tr. p. 50).

Subparagraph 1(e) The Applicant is indebted to a bank in the approximate amount of \$482.00, a delinquent account charged off as a bad debt in April 1997. The debt remains outstanding. (Tr. p.51).

Subparagraph 1(f) The Applicant is indebted to the Attorney General's Office in the approximate amount of \$156.00, for a delinquent account referred to collection in about July 1997.

The Applicant denies this debt as she does not know what it is for. She has made attempts to contact the Attorney General's Office, but has been without success. (Tr. p. 51, and Applicant's Post Hearing Exhibit). The Government has not shown that this debt is the Applicant's.

Subparagraph 1(g) The Applicant is indebted to a water company in the approximate amount of \$150.83, for a delinquent account referred to collection on October 13, 1997. The Applicant has been in contact with the creditor, but the debt remains outstanding. (Tr. P. 52).

Subparagraph 1(h) The Applicant is indebted to a bank for a delinquent credit card account for an undetermined amount that was charged off to Profit and Loss in October 1997. The debt remains outstanding in the amount of \$1,143.00. (Tr. p. 43).

Subparagraph 1(i) The Applicant is indebted to a cable company in the approximate amount of \$429.12, for an account referred to collection on April 8, 1998. The Applicant states that she has returned the cable boxes to the cable company, and believes that she does not owe any more. (Tr. pp. 54-55). The Government has not shown that the debt remains outstanding.

Subparagraph 1(j) The Applicant is indebted to a check cashing service in the approximate amount of \$158.56, for a delinquent account referred to collection on November 25, 1998. The debt remains outstanding. (Tr. p. 55).

Subparagraph 1(k) The Applicant is indebted to a check cashing service in the approximate amount of \$201.00, for a non-sufficient fund check that was referred to collection in December 1998.

The debt remains outstanding. (Tr. p. 55).

Subparagraph 1(l) The Applicant is indebted to a telephone company in the approximate amount of \$494.37, for an account referred to collection on June 11, 1999. The debt remains outstanding. (Tr. p. 55).

Subparagraph 1(m) The Applicant is indebted for medical services in the approximate amount of \$234.00, for two accounts referred to collection in January 2000. The Applicant denies the debt, as this debt was incurred for medical services rendered to her daughter, who was supposed to be covered by medical insurance that should have paid the debt. (Tr. p. 56). Applicant's Post Hearing Exhibit indicates that this debt is still outstanding. (*See*, Applicant's Post Hearing Exhibit).

Subparagraph 1(n) The Applicant is indebted to a medical center in the approximate amount of \$1,007.00, for three delinquent accounts referred to collection in January 2000. The Applicant denies the debt, as this debt was incurred for medical services rendered to her daughter, who was supposed to be covered by medical insurance that should have paid the debt. (Tr. p. 56). Applicant's Post Hearing Exhibits indicates that this debt is still outstanding. (*See*, Applicant's Post Hearing Exhibit).

Subparagraph 1(o) The Applicant is indebted to the U. S. Department of Education in the approximate amount of \$3,737.00, for a delinquent account referred to collection. The debt remains outstanding. (Tr. p. 56).

Subparagraph 1(p) The Applicant is indebted a credit card company in the approximate amount of \$2,010.00, for a delinquent account referred to collection. The Applicant denies this debt, as she believes it was discharged in her 1994 Chapter 7 bankruptcy. Excerpts from the Applicant's 1994 bankruptcy petition do not show that this debt was discharged. (*See*, Applicant's Post Hearing Exhibit).

Subparagraph 1(q) The Applicant is indebted to a credit card company in the approximate amount of \$11,012.00, for a delinquent account referred to collection. The Applicant denies this debt as she believes it was discharged in her 1994 Chapter 7 bankruptcy. Excerpts from the Applicant's 1994 bankruptcy petition do not show that this debt was discharged. (*See*, Applicant's Post Hearing Exhibit).

The Applicant's financial statement of February 16, 2000, indicates that her monthly expenses exceed her monthly income. (*See*, Government Exhibit 4). Since then the Applicant's pay has increased, but her rent and other monthly expenses have also increased. She indicates that after paying her monthly expenses, she has between \$200.00 and \$300.00 left over. (Tr. p. 63 and Applicant's Exhibit C).

The Applicant states that when she receives her income tax refund, she plans to take care of her educational loans, and pay as much of her debt off as she is able. She is also in the process of filing bankruptcy again. Presently, she has paid \$500.00 towards filing her bankruptcy petition, and owes \$200.00 more to her attorney before he will file her bankruptcy petition. She hopes to have it filed soon. (Applicant's Exhibit F and Applicant's Post Hearing Exhibit). The Applicant states that with the sole responsibility of raising her children, she is doing her best to provide for them and pay her bills. Over the years, she has learned the pitfalls of poor financial management.

### Mitigation.

Three Performance Appraisals of the Applicant for the period from March 1999, through January 1, 2002, collectively indicate that the Applicant is professional, responsible, competent and well respected in her position. (Applicant's Exhibits D and E).

A letter of recommendation from her District Manager indicates that the Applicant has his confidence, and the

confidence of the entire staff she works with. The Applicant is considered to be a strong performer and a reliable member of his staff. (Applicant's Exhibit A).

A letter of recommendation from a friend and neighbor indicates that the Applicant is a law abiding, a great parent and active in the community and her church. She is highly trusted. (Applicant's Exhibit B).

### POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

Considering the evidence as a whole, the following adjudicative policy factors are most pertinent to this case:

#### Guideline F (Financial Considerations)

##### Conditions that could raise a security concern:

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

##### Condition that could mitigate security concerns include:

- o 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);

In addition, as set forth in Enclosure 2 of the Directive at page 16-17, in evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following general factors:

- a. The nature, extent, 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 behavioral changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DOD Directive identify personal characteristics and conduct that 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 sensitive personal 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 eligible for a security clearance. Eligibility for access to sensitive personal information is predicated 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 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. 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."

Initially the Government must prove controverted facts alleged in the SOR. If the Government meets that burden, the burden of persuasion then shifts to the Applicant establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest for a determination of trustworthiness and access to sensitive personal information.

### **CONCLUSIONS**

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation, which is sufficient to overcome the Government's case.

The record evidence establishes that the Applicant has been involved in a number of troubled relationships, involving men who were either drug addicts, gamblers or simply irresponsible, that resulted in two divorces, a period of unemployment, and periods where little or no money was coming into the household. Unfortunately, the Applicant has been almost solely financially responsible for raising and supporting her six children. Her priorities have been to take care and provide for her children. Although some of these circumstances were largely beyond the Applicant's control, she is still held responsible for making the decisions that impact her finances. The fact remains, that she has been unable to pay her debts in a timely fashion. She has, at times, taken desperate measures including writing bad checks just to put food on the table for her family. She was arrested, convicted and punished for this criminal conduct. She filed bankruptcy in 1994, in an effort to clear up her debt and start over. But this only resulted in more debt accumulation. The Applicant has taken little action, if any, to get the debt resolved. The debts that remains owing are excessive, and total approximately \$18,000.00. For the debts she claims she has paid and or settled, she has provided no supporting evidence. Under the particular facts of this case, this Administrative Judge has no other alternative than to find her ineligible for a determination of trustworthiness at this time.

In the event that the Applicant handles her current indebtedness, and establishes a good financial record, the Applicant may be eligible for a determination of trustworthiness in the future. At present, however, I find against the Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that the Applicant has not overcome the Government's case opposing her request for a determination of trustworthiness. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 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: For 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.: For the Applicant.
- Subpara. 1.f.: Against the Applicant.
- Subpara. 1.h.: Against the Applicant.
- Subpara. 1.i.: For 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.

**DECISION**

In light of all 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 Applicant to hold a sensitive Information Systems Position (ADP-II/III).

DARLENE LOKEY-ANDERSON

Administrative Judge