

DATE: February 12, 2004

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 02-31238

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of excessive indebtedness brought on by excessive family medical and dental bills and her husband's periods of unemployment. Unable to pay the bills, she was forced to file for Chapter 7 bankruptcy to discharge all of her unsecured debts. Mitigation is shown. A determination of trustworthiness is granted.

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 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 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987.

On May 16, 2003, the DOHA 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 make or continue a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I).

The Applicant responded to the SOR in writing on July 2, 2003, in which she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on November 18, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on December 4, 2003, and she submitted a reply dated December 23, 2003.

The case was assigned to the undersigned for resolution on January 29, 2004.

FINDINGS OF FACT

The Applicant is 40 years old. She is employed as a Call Center Representative by a defense contractor. She is applying for an ADP-I position with her employer.

The Government opposes the Applicant's request for a determination of trustworthiness, on the basis of allegations set forth in the Statement of Reasons (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 admits to all of the debts listed in the SOR, except subparagraph 1.(d). The Applicant states that she acquired the debt for \$219.00 in 2001, for a car loan. The Applicant asserts that the car dealer purchased the car back from the lender and the debt was satisfied. (*See*, Government Exhibit 3).

The Applicant explains that her delinquent credit accounts were caused by excessive family medical and dental bills. Since 1991, with the birth of her son, (born with a birth defect), she has incurred medical bills related to his condition. Her husband, who suffers from high blood pressure contracted hepatitis at some point, and was unable to work on a regular basis. There were periods where there was no income to support their family. By late 1999-2000, the Applicant's delinquent accounts were simply out of control. (*See*, Government Exhibit 6). With her salary, she continued to try to pay as much and as often as she could, but was unable to keep up with the family's financial obligations. On December 11, 2003, the Applicant filed for Chapter 7 bankruptcy that includes all of her unsecured debt. Each of the creditors listed in the SOR are included in the Chapter 7 bankruptcy petition. (*See*, Applicant's Reply to the FORM). It is anticipated that all of the Applicant's indebtedness will be discharged in April 2004.

POLICIES

The Regulation sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and itigating Factors are found to be applicable in this case:

Guideline F (Financial Considerations)

Conditions that could raise a security concern:

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

Conditions that could mitigate security concerns include:

1. The behavior was not recent;
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 death, divorce or separation);
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In addition, the Regulation states that, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general

factors:

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

The eligibility criteria established in the Regulation identify personal characteristics and conduct which are reasonably related to the ultimate question, of whether it is "clearly consistent with the national interest" to make or continue a determination of trustworthiness.

The Regulation 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 an acceptable security risk. Eligibility for access to classified information is predicted 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 reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

CONCLUSIONS

In the defense industry, the security of sensitive personal information is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per

day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for a determination of trustworthiness and access to sensitive personal information may be involved in financial irresponsibility which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding

of a nexus, or rational connection, between the Applicant's conduct and a determination of trustworthiness. If such a case has been established, the burden then shifts to the Applicant to go

forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving

that it is clearly consistent with the national interest to grant him or her a determination of trustworthiness.

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. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her eligibility for a determination of trustworthiness.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal,

explanation or mitigation that is sufficient to overcome the Government's case.

The evidence shows that the Applicant has a past history of excessive financial indebtedness brought on by circumstances beyond her control. Although she has always tried to pay her bills, extensive family medical and dental problems, as well as her spouse's periods of unemployment, have recently forced her to file Chapter 7 bankruptcy. She has listed each of the creditors listed in the SOR in her Chapter 7 petition. She has made a good faith effort to satisfy her indebtedness. Although it has been a slow process, (getting the money together to file bankruptcy), she has made the necessary effort to rectify her financial problems, and improve her financial affairs. As of April 2004, she will be without delinquent debt and capable of paying her monthly expenses and other incidentals. Although her filing of bankruptcy was done only recently, she appears to now be able to properly manage her finances. The Applicant understands that she must continue to properly manage her finances without incurring excessive new debt. She also understands that she must continue to demonstrate that he is able to properly manage her finances. In this case, mitigating factors 1, 3 and 6 apply under Guideline F. Under the particular facts of this case, I find for the Applicant under Guideline F.

On balance, it is concluded that the Applicant has overcome the Government's case opposing

her request for a determination of trustworthiness. Accordingly, the evidence supports a finding for 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 are:

Paragraph 1: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: For the Applicant.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Subpara. 1.g.: For the Applicant.

Subpara. 1.h.: For the Applicant.

Subpara. 1.i.: For the Applicant.

Subpara. 1.j.: For the Applicant.

Subpara. 1.k.: For the 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 determination of trustworthiness, suitability and eligibility for Applicant to hold an ADP-I position.

DARLENE LOKEY ANDERSON

Administrative Judge