

DATE: November 27, 2006

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In re:

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SSN: -----

Applicant for ADP I/II/III Position

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ADP Case No. 03-21438

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 51 years old and works for a company that administers health benefits for the federal government. From 1999 until 2003, she and her husband experienced a series of events that created significant financial problems that caused her to file bankruptcy. Since November 2003, her finances have been under control. She mitigated the trustworthiness concerns raised by her financial problems. Her eligibility for assignment to a sensitive position is granted.

**STATEMENT OF THE CASE**

On June 1, 2003, Applicant submitted a public trust position application (SF-85P) and resubmitted it on February 16, 2005. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Security Personnel Review Program* (Jan. 2, 1992), as amended (Directive). On June 14, 2006, DOHA issued a Statement of Reasons (SOR), alleging trustworthiness concerns under Guideline F (financial considerations) of the Directive.

In a sworn statement, dated July 3, 2006, Applicant admitted the SOR allegations and requested a hearing. On August 8, 2006, the case was assigned to me, then reassigned to another administrative judge, and reassigned to me on October 11, 2006. A Notice of Hearing was issued on October 12, 2006, setting the case for hearing on October 25, 2006. At the hearing, Department Counsel introduced Government Exhibits (GX) 1 through 8 into evidence without objections. Applicant testified in her case-in-chief and introduced Applicant Exhibits (AX) A through I into evidence without objections. DOHA received the hearing transcript (Tr.) on November 13, 2006.

**FINDINGS OF FACT**

Based on the entire record, including Applicant's admissions in her answer to the SOR and at the hearing, I make the following additional findings of fact:

Applicant is 51 years old. She has been married for 31 years and has five children, one of whom lives at home. Since February 1999, she has worked for a company that administers health benefits for the federal government. She is a Clerk-Level 3 with limited access to sensitive information. (Tr. 19) In February 2003, she submitted a SF-85P, and resubmitted it in February 2005. (GX 1)

In March 2004, Applicant met with a government investigator to discuss her financial problems and credit reports. In a written statement, Applicant indicated her financial difficulties arose after she and her husband purchased a house in July 1999 that strained their budget due to unanticipated repair costs. In 2000, her husband became ill and, in 2001, lost his job as a result of his illness. Later, he began collecting unemployment for a period of time, but it was insufficient to cover their bills. In April 2001, they filed a Chapter 7 bankruptcy that included debts totaling approximately \$148,000, consisting of credit card bills, medical expenses, personal loans, utilities, and two mortgages for about \$100,000. (GX 6; Tr. 26)

In July 2001, Applicant and her husband attempted to preserve their home and executed an agreement to continue paying \$23,500 on their second mortgage. (AX B) That month the court entered an order discharging all of their debts, including the mortgages, but because of a Reaffirming Agreement they signed with one of their mortgagors, they were allowed to remain in their home. (GX 7; Tr. 24) In 2002, her husband became seriously ill and was hospitalized for one month, which created additional financial problems because his unemployment payments terminated. (Tr.22). Although he applied for disability payments in 2002, he did not receive them until August 2003 by which time they were further in debt. (GX 2) The bank foreclosed on the house in November 2003, and they moved to a rental unit. During this period of time, Applicant was essentially the sole provider for the family, earning about \$1,200 a month. (GX 2 at 4; Tr. 22; AX H)

The second mortgage holder obtained a judgment for \$14,463 for deficiencies owed on the mortgage. The debt was charged off in April 2004. Applicant claimed the bank never attended the foreclosure proceedings to assert its additional claims and she has not had any contact with them. She believes both mortgages were paid off after the house was sold. (GX at 7)

Since November 2003, Applicant and her husband have been meeting all of their financial obligations. (AX 2 at 8) They have a combined monthly income of about \$2,700 and have extra money at the end of the month after paying expenses. (Tr. 30-31) Their sole credit card has a \$2,000 balance which they pay on a regular basis along with a car loan. (Tr. 32) They never experienced financial problems until they purchased their previous home in 1999 and her husband's illness. (*Id.*)

Six of Applicant's co-workers provided affidavits, attesting to her trustworthiness and honesty. (AX A-F) Employment Performance Reviews from March 1999 to December 2005 consistently reflect her satisfactory performance, and the most recent annual review notes that she exceeds the company's expectations in the area of quality and quantity of work. (AX I at 1)

## 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) (Aug. 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 guideline 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 following adjudicative guideline is pertinent to an evaluation of this case:

Guideline F - Financial Considerations - A trustworthiness concern may arise when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance request is not necessarily a judgment of the applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying condition and an applicant's present security suitability. *See* ISCR Case No. 95-0611 at 3 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the position of the government. *See* ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *See* 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." (*Id.*)

## CONCLUSIONS

I considered all facts in evidence and the appropriate legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth in the SOR:

The Government's evidence and Applicant's admissions established a potential disqualification under Guideline F. Two disqualifying conditions apply: (1) Financial Consideration Disqualifying Condition (FC DC) 1 (*A history of not meeting financial obligations*), and FC DC 3 (*Inability or unwillingness to satisfy debts*). From 1999 to approximately 2001, Applicant accumulated a significant amount of debt that she was unable to manage or pay until she filed bankruptcy, as noted by her testimony and other documents.

The Government having raised a trustworthiness concern, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I concluded Financial Consideration Mitigating Condition (FC MC) 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*) applies. Applicant

provided evidence that the delinquent debts accumulated after she and her husband purchased a house that required unanticipated repairs, her husband became ill, then lost his job, and eventually was disabled. All of these were factors outside of her control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered FC MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant filed a Chapter 7 bankruptcy in April 2001 in an effort to resolve her debts. In July 2001, she reaffirmed her mortgage, intending to pay the balance and save her home. However, she was unable to maintain the payments due to her husband's health and disability. During this period of time, she demonstrated a good-faith effort to resolve her debts when she filed for bankruptcy and reaffirmed her mortgage.

#### The Whole Person Analysis

In addition to the enumerated disqualifying and mitigating conditions, I considered Applicant's, age, family situation, her seven and half year work history with her present employer, and good performance record. I took into account her credibility and demeanor while testifying, and the fact that she and her husband had a history of managing their finances until they experienced a streak of bad luck in 1999, which they began resolving in November 2003. I also considered her current budget and acute awareness of the potential negative effect additional delinquent debt could have on her employment. After weighing all of these facts and evaluating the evidence in the context of the whole person, I concluded Applicant mitigated the security concerns raised by her financial considerations. Accordingly, both allegations contained in the SOR under Guideline F are decided for her.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph1: Guideline F (Financial Considerations) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: 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 Applicant eligibility for assignment to sensitive duties. Her application for eligibility is granted.

Shari Dam

Administrative Judge