

DATE: February 10, 2004

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 02-33385

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 31-year-old computer programmer for a defense contractor who supports four children and was homeless for four years before May 2001. She had several debts some of which have been resolved and others have not. She has developed a plan for repayment and is working on repayment in a systematic manner with the help of a debt consolidation loan and assistance from various organizations. Falsification of the Public Trust Position Application (SF 85 P) was mitigated. Trustworthiness Determination is granted.

STATEMENT OF CASE

On May 20, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Par. 3-614 of DoD Regulation 5200.2-R and Par. 2.4 of 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. The SOR 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 a clearance should be granted, continued, denied, or revoked.

On September 30, 2003, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on November 25, 2003. A notice of hearing was issued on December 1, 2003, and a hearing was held on December 9, 2003. The Government and Applicant each introduced three exhibits at the hearing. All of the exhibits were admitted into evidence. The Applicant testified. The transcript was received on December 22, 2003.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to debts under Guideline F with explanation but denied knowingly

falsifying her Security Clearance Application (SF 86) under Guideline E. Those admissions are incorporated herein as findings of fact.

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 31-year-old computer programmer for a defense contractor who supports four children ages 7, 9, 12, and 15. (TR. 45) She was homeless and lived in several different homeless shelters for four years until May 2001, when she was hired by her present employer. She became homeless after the death of her mother who had been assisting in supporting the family. (TR. 15) A number of debts were incurred during her homeless years. Some of them have been resolved and others have not. Her life has stabilized in the last two years.

Applicant once worked for a credit bureau and has developed a plan for repayment and been in contact with her creditors to do credit repair. (TR. 26) She has obtained a new loan of \$3,000.00 to consolidate debt and the loan company is designating where the funds will go to pay the creditors. (Exh. B) She is current on payments on the consolidation loan and the company is reducing the interest as she shows progress in repayment. The loan company has designated the larger debts for the earliest payment.

Applicant lives in HUD Section 8 housing on a former military base. The Salvation Army is helping with her rent. Her church is providing some assistance with bills. She is receiving a 20% discount on her energy bills for low income assistance.

Applicant worked at a low paying job with a national chain department store while she was living in homeless shelters. She continues to work for the same store part-time one day a week. Her total annual income from both jobs ranges between \$22,000.00 and \$24,000.00. (TR. 17) She has approximately \$900.00 a year to use for payment of her present loans and to repay the remaining old ones. (TR 48)

Applicant receives occasional child support from the father of one child, but it is sporadic because his employment is not regular. (TR. 43) Because of the level of her salary she is ineligible for traditional welfare payments.

The status of the debts is as follows keyed to the paragraph numbers in the SOR:

1a \$93.00 Unpaid; Will be added to payment plan under new loan. (TR. 19)

1b \$322.00 Paid (TR. 21)

1c \$561.00 Incorporated in payment plan under new loan. (TR. 21)

1d \$449.00 Paid (TR. 22)

1e \$954.00 In dispute; not on credit report. (TR 24)

1f \$431.00 Balance \$42.00. \$10.00 deduction each week from pay. (TR. 28)

1g \$653.00 Outstanding but in dispute (TR. 31)

1h \$245.00 Paid (TR. 32)

1i \$339.00 No response to inquiry; Not on credit report. (TR. 35)

1j \$2,800.00 Judgment debt; In dispute. No effort by creditor to collect. (TR. 36)

Applicant has received some debt counseling from a local service in her community but has undertaken on her own to contact creditors and make arrangements for the debt consolidation to resolve the remaining debts and is following their advice. (TR. 53) She recently purchased a 1999 used car to replace a 1990 vehicle that was inoperable. She is current on the automobile payments.

(Exh. B; TR. 63)

Applicant did not include the disputed judgment listed in Par. 1j of the SOR on her SF 85P Application for a trustworthiness determination because she did not know it was outstanding. The case arose over disputed property damage in a run-down property Applicant occupied before becoming homeless that resulted in small claims litigation.

POLICIES

[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968

The applicable Guideline cited in the SOR concerns the following Disqualifying Conditions (DC): Financial Considerations Guideline F:

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 include a history of not meeting financial obligations or an inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns (MC) include the fact that the behavior was largely beyond the person's control, that the person has received counseling, and has initiated good-faith efforts to repay creditors and resolve debts.

The applicable Guideline cited in the SOR concerns the following DC Personal Conduct Guideline E:

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

Conditions that could mitigate security concerns include the fact that the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. A second mitigating condition was the information was not pertinent to a determination of judgment, trustworthiness, or reliability.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

The financial considerations alleged as a Disqualifying Condition (DC) under Guideline F are based on a series of debts that were overdue at the time of the filing of the SOR. Mitigating Condition (MC) 3 is applicable in that the conditions were largely beyond her control.

Applicant is a dedicated young woman who had difficulties from which she is emerging structurally and financially. She has extensive responsibilities for family and is receiving support from others. She has taken appropriate steps to resolve her financial difficulties and has a plan of action that she is following. All of the debts listed on the SOR are either paid, incorporated in the new payment program of debt consolidation, being paid by withholding, or the subject of discussion with the creditor.

The government conceded that the allegation under Guideline E had been mitigated because of the nature of case that gave rise to the judgment and the fact that no effort had been made to collect on the judgment. (TR. 79)

Applicant was very candid and analytical in her appraisal of her past difficulties and her methods of solving her problems. She has taken advantage of opportunities presented to her and sought help from others who could provide it for herself and her children.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that 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.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that he is trustworthy, reliable and that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered 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.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

Subparagraph 1.k.: For Applicant

Paragraph 2 Guideline E: For Applicant

Subparagraph 1.a.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility to occupy a sensitive position requiring an ADP clearance for Applicant.

Charles D. Ablard

Administrative Judge