

DATE: March 11, 2004

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In Re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 03-03629

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant intentionally provided false, material information about her criminal background on a Public Trust Position Application (PTPA). Determination of Trustworthiness is denied.

**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 (ASDC3I), entered into a Memorandum of Agreement which gave DOHA the responsibility to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2R, *Personnel Security Program*, dated January 1987.

On May 16, 2003, DOHA issued a Statement of Reasons (SOR) to 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 determination of trustworthiness, suitability, and eligibility for applicant to hold a sensitive Information Systems Position (ADP-II/III).

Applicant responded to the SOR in writing on July 7, 2003, and requested a hearing. The case was assigned to the undersigned on December 22, 2003. Notices of Hearing were issued on December 22, 2003 and January 15, 2004, and the hearing was held on February 10, 2004. Following the hearing, applicant submitted a one page document. This document, along with a one page letter from Department Counsel indicating she has no objection to applicant's post-hearing submission, were marked as Exhibit H and admitted into evidence. The transcript was received on March 1, 2004.

**FINDINGS OF FACT**

Applicant is 30 years old and is employed as a Health Survey Specialist. She was formerly employed as a legal

secretary.

Applicant executed a PTPA on January 16, 2002 (Exhibit 1). In response to Question 16, which asked, "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s)? (Leave out traffic fines of less than \$150.00)," applicant stated "no." This response was false because applicant had been arrested, charged with, and/or convicted of (1) Petty Theft in July 1997, (2) Petty Theft in January 1998, (3) Seat Belt Violation and No Insurance in 2000 (she was fined \$316.00), and (4) Speeding in 2001 (she was fined \$173.00).

Applicant testified that she did not disclose the Petty Theft incidents because she was under the impression they were no longer on her record, and if they were no longer on her record, she didn't think she had to disclose them (TR at 10-11, 32-33). In a signed Affidavit that she gave to an OPM Special Investigator in November 2002, she stated that she didn't disclose the Petty Theft incidents because "they were misdemeanors not felony crimes" (Exhibit 2; TR at 42-44). As to the traffic violations, she testified that she did not disclose them because when she read over the question, she "didn't even see the less than \$150.00." Instead, she focused on the "leave out traffic fines" part of the question. She further testified that since she paid the fines off over time by making "little payments here and there," she didn't realize the fines were over \$150.00 (TR at 10-11).

Applicant's father is 54 years old. Although he is a citizen of Mexico, he has lived legally in the U.S. for over 30 years. He owns his own business, which is licensed by the State in which he resides. Applicant's husband is a citizen of Mexico and resides in a state prison in the U.S. He is serving a seven year sentence for molesting applicant's daughter. Applicant has not seen him in two years, and intends to divorce him. Applicant's boyfriend is a citizen of Guatemala. He was raised

in Mexico, where his parents still reside. He has resided in the U.S. on and off during the past several years.

A coworker who has worked closely with applicant for almost three years appeared at the hearing and testified that she is aware of applicant's Petty Theft incidents. She further testified that she would "trust her with everything I have" (TR at 53).

Applicant's supervisor since 1999 has been aware of applicant's Petty Theft incidents from the beginning. She testified that applicant is an exceptional employee, "very dedicated, reliable, trustworthy" (TR at 59).

## **POLICIES**

DoD Regulation 5220.2R sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following conditions are applicable:

### **Foreign Influence**

#### Disqualifying Conditions:

E2.A2.1.2.1: An immediate family member is a citizen of a foreign country.

#### Mitigating Conditions:

E2.A2.1.3.1: The immediate family member is not an agent of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person involved and the United States.

### **Personal Conduct**

#### Disqualifying Conditions

E2.A5.1.2.2: The deliberate omission, concealment, or falsification of

relevant and material facts from any questionnaire used to determine trustworthiness.

### Mitigating Conditions

None.

### CONCLUSIONS

With respect to Guideline E, the evidence establishes that applicant intentionally provided false, material information to the Government on a PTPA she executed in January 2002 when she failed to disclose her two Petty Theft convictions.

(1) The Government relies heavily on the honesty and integrity of individuals seeking access to the personal medical records of Government employees. When such an individual intentionally falsifies material facts about her background, it is extremely difficult to conclude that she nevertheless possesses the judgment, reliability and trustworthiness required of individuals with such access.

In this case, the evidence establishes that applicant, a former legal secretary, is too smart to not have understood that Question 16 required her to disclose the Petty Theft incidents. Her different explanations for not disclosing this information (i.e., the incidents were no longer on her record versus they were misdemeanors, not felonies) only reinforces the conclusion that she deliberately chose not to reveal this criminal conduct to the Government. The fact that applicant is an excellent employee with a reputation for trustworthiness is a strong factor in her favor; however, it is insufficient to overcome the negative security implications from her intentional falsification of the PTPA. Accordingly, it is not now clearly consistent with the national interest to grant her access to sensitive medical records. For this reason, Guideline E is found against applicant.

Applicant has overcome the Government's case under Guideline B. Although her father is a citizen of Mexico, he has lived in the U.S. for over 30 years. There is no evidence that he has any meaningful contact with Mexico or Mexican citizens. Applicant's husband is her husband in name only. He is serving a lengthy prison term and will be divorced from applicant by the time he is released. Applicant's boyfriend is just that: a boyfriend. There is no credible evidence that applicant's ties to him are so strong that he could influence her to do anything, let alone compromise sensitive information.

### FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

GUIDELINE E: 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.

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Joseph Testan

Administrative Judge

1. Because applicant's testimony regarding her failure to list the two traffic incidents was credible and worthy of belief, I conclude that she did not intentionally omit the traffic incidents from the PTPA.