

DATE: February 2, 2005

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In Re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 03-03525

## DECISION OF ADMINISTRATIVE JUDGE

**JOHN G. METZ, JR.**

### APPEARANCES

#### FOR GOVERNMENT

Rita C. O'Brien, Esquire, Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant's financial difficulties are not due to circumstances beyond her control and she has taken no steps to address any of the 14 debts alleged in the SOR, even though she has had positive cash flow since at least October 2002 and five of those debts are less than \$300.00. Falsification of her public trust position application suggests she cannot be relied upon to tell the truth if the truth conflicts with her personal interest. Trustworthiness determination denied.

### STATEMENT OF THE CASE

On 9 April 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.

Applicant appeals the 11 June 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial of her trustworthiness determination because of Financial Considerations, Personal Conduct, and Criminal Conduct. Applicant answered the SOR, and requested an administrative decision on the record, on 1 July 2003 and 26 September 2003. She did not respond to the Government's File of Relevant Material (FORM)--issued 18 December 2003; the record in this case closed 7 February 2004, the day the response was due at DOHA. The case was assigned to me on 15 April 2004 to decide if she is eligible to occupy an Information Systems Position.

### FINDINGS OF FACT

Applicant admitted the allegations of the SOR; <sup>(1)</sup> accordingly, I incorporate her admissions as findings of fact.

Applicant--a 28-year-old employee of a defense contractor--seeks access to sensitive personal information. She has not previously held a position requiring a trustworthiness determination.

In October 2001, Applicant falsified her public trust position application by failing to disclose any of her delinquent accounts. Although she denies failing to disclose the two judgment accounts on the technical ground that she did not know those accounts had gone to judgment, she acknowledges that she was aware that she had these delinquent accounts, as well as the twelve others that she also failed to disclose elsewhere on the application. She falsified her application because she knew that she would not get the public trust job if she disclosed her financial difficulties.

Applicant has 14 delinquent debts, totaling nearly \$11,000.00, none of which have been paid. Except for a \$5500.00 automobile repossession, all of the debts are less than \$700.00 and five are less than \$300.00. Applicant attributes her financial problems to mismanaging her finances, especially after she lost her job. In October 2002, Applicant's personal financial statement showed positive cash flow of \$150.00 per month. However, she was not paying on any of the accounts, despite being able to keep her expenses down since at least March 1996 because she lives at home with her mother. While her answers stated that she expected to start paying some of the delinquent accounts in January 2004, she had not taken any action as of her September 2003 response and did not respond to the FORM with any evidence of payment since September 2003. The record contains no evidence of Applicant's work performance or character.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's eligibility for a trustworthiness position. 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 6.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against eligibility 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 adjudication policy factors are most pertinent to this case:

### **FINANCIAL CONSIDERATIONS (GUIDELINE F)**

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . . divorce or separation).

### **PERSONAL CONDUCT (GUIDELINE E)**

E2A5.1.1. The Concern: 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. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

### **CRIMINAL CONDUCT (GUIDELINE J)**

E2.A10.1.1. The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

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 to establish eligibility 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 to grant or continue eligibility.

Persons seeking trustworthiness positions enter into a fiduciary relationship with the government predicated upon trust and confidence. Where proven facts raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless eligible for a trustworthiness position.

### **CONCLUSIONS**

The government established its Guideline F case and Applicant did not mitigate the trustworthiness concerns. The record evidence clearly establishes her indebtedness and her current inability to address that indebtedness in a systematic fashion. Applicant's financial problems were due to her own financial mismanagement, and she has taken no steps to address even the smallest of her debts, despite having positive cash flow since October 2002 and living with her mother. Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and not isolated; indeed they are ongoing. I resolve Guideline F against Applicant.

The government established its Guideline E case and Applicant did not mitigate the trustworthiness concerns. She falsified her position application because she knew she would not get the job otherwise. In doing so, she demonstrated her willingness to put her personal interest ahead of her obligation to the government. I resolve Guideline E against Applicant.

The government established its Guideline J case and Applicant did not mitigate the trustworthiness concerns. Her deliberate falsification was intended to mislead the government and help her obtain employment she would otherwise not have obtained. The falsification had the potential to affect the government's investigation. I resolve Guideline J against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph a: 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 grant or continue a designation of trustworthiness, suitability, and eligibility for Applicant to hold a sensitive Information Systems Position.

**John G. Metz, Jr.**

**Administrative Judge**

1. She denies failing to disclose her judgments (subparagraph 2.a.) because she was unaware these debts had gone to judgment, but acknowledges that she did not report these debts as past due elsewhere on her application.