

DATE: August 31, 2005

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 03-10435

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued debts during a troubled relationship during the 1995 to 1999 time period that she became responsible for discharging as a single parent following the severance of her relationship with her child's father. Unable to pay off her old debts with her limited resources, she successfully petitioned for Chapter 7 relief in 2004. She is current with her debts and mitigates security concerns associated with her delinquent debts. Applicant successfully refutes allegations of falsification of her public trust position application (SF-85P). Eligibility is granted.

STATEMENT OF CASE

On May 7, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on June 17, 2004, and requested a hearing. The case was assigned to me on November 10, 2004, and was initially scheduled for hearing on December 7, 2004. At Applicant's request (no objection from Department Counsel and good cause shown), the hearing was rescheduled for arch 7, 2005. A hearing was convened on March 7, 2005, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of five exhibits; Applicant relied on one witness (herself) and three exhibits. The transcript (R.T.) of the proceedings was received on March 15, 2005.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested leave to supplement the record to document her bankruptcy

petition. There being no objections from Department Counsel, and good cause being shown, Applicant was granted seven (7) days to supplement the record. The Government was afforded seven (7) days to respond. Within the time permitted, Applicant supplemented the record with a copy of her bankruptcy petition and supporting schedules. The petition is accepted as Applicant's exhibit D.

SUMMARY OF PLEADINGS.

Under Guideline F, Applicant is alleged to have incurred excessive delinquent debts over an eight-year period (11 in all), totaling more than \$7,500.00, and has two outstanding judgments against her: one for \$348.00 and another for \$1,043.00. The SOR alleges she has a \$439.99 net monthly remainder.

Under Guideline E, Applicant is alleged to have falsified her trust position application (SF-85P) of September 2002 by omitting her debts over 180 days delinquent. The falsification allegations are incorporated under Guideline J.

For her response to the SOR, Applicant denied all of the allegations. She claimed to have filed for Chapter 7 bankruptcy in February 2004 and to have been unaware of any debt delinquencies over 180 days.

FINDINGS OF FACT

Applicant is a 29-year-old administrative assistant for a defense contractor who seeks a trustworthiness determination. Separate findings follow.

Between 1995 and 1998 Applicant accumulated a number of debts as a single parent that became delinquent. When her relationship with her son's father didn't last after her son's birth in 1995, she moved to another state to live with her mother. Among her listed debts, 11 were referred for collection and exceed \$7,500.00. The largest of these debts represents a \$5,744.00 deficiency on a car repossession in 1998. After purchasing the car in 1998, she totaled the car in an accident in December 1998 and did not have insurance to get it repaired; so she called the lender and asked the company to come pick it up (*see ex. 2; R.T., at 41-43*). Since she voluntarily returned the car to her lender, she never attempted any repayment arrangements with the lender.

Two of her other listed debts Applicant admits to but was not able to pay with her limited resources (*i.e.*, creditors 1.d and 1.e). Creditor 1.e later obtained a judgment against her for \$489.00 (*R.T., at 47-48*). Applicant believes the creditor garnished her bank account to satisfy the debt, but provides no documentation of such action (*R.T., at 45-48, 67-68*). Others she claims to have paid in full but provides no payment documentation. The remaining listed debts she cannot identify.

Besides her listed delinquent debts, Applicant had two judgments taken against her that were listed in the SOR: one for \$439.00 and another for \$1,043.00. Both represent judgments taken against her by prior landlords. She claims to have paid her share of a judgment taken against her and her sister in 1996 (creditor 1.k) by her apartment landlord, leaving a reduced balance of around \$695.00 owing on the judgment. Whether her sister paid her share of the 1996 judgment or the creditor simply wrote it off is unclear. A reported judgment against Applicant by another landlord for \$2,261.00. Applicant disputes the basis of this judgment (claiming the landlord granted her permission to move out upon 30 days notice) and denies any previous notice of the judgment (*R.T., at 53-54*). Absent any documentation of the judgment's being set aside, though, it stands as a valid judgment against Applicant.

Applicant made no visible progress, however, in addressing her other debts before petitioning for Chapter 7 bankruptcy in February 2004. With an earned net monthly remainder of \$439.00 in 2003, she was still unable to address her delinquent debts. While she did not list either of her two outstanding judgments as a priority claim in her schedule of priority claims filed with her February 2004 bankruptcy petition, only one of the judgments (the one represented by creditor 1.l) is reported with an outstanding balance in her latest credit reports (*see exs. B and C*).

After attending credit counseling in 2001, she elected to petition for Chapter 7 bankruptcy, and even told her prospective employer of her intentions to file for bankruptcy (*R.T., at 74-75*). When she couldn't pay her lawyer the balance of the filing fee he required, she dropped her immediate plans to petition for Chapter 7 bankruptcy. Not until February 2004 did she petition for bankruptcy (*see ex. D*). Two months later (in April 2004), she received her discharge

(see ex. A).

In her bankruptcy petition, Applicant did not list most of the debts covered in the SOR, either because she thought she had paid her omitted ones, or she was not aware of them (see ex. 5; R.T., at 49), and did not list either of her two judgments on her secured claim schedule. Of the listed debts in the SOR, she scheduled only her 1998 repossession delinquency and her creditor 1.d debt. Without documented proof of dispositions of her non-scheduled creditors, it is unclear whether all of her listed debts and judgments have been discharged, or simply written off and deleted from creditor reports.

Applicant currently attends a local community college. She tuition payments are deferred pending completion of her curriculum. She has another child (a girl, age 9 months), who was fathered by the man she currently lives with (R.T., at 59-60). She plans on marrying this man (who also has a 9-year-old daughter), but so far, she has not. She nets about \$2,000.00 a month and has a current checking balance of \$1,450.00 (R.T., at 61). She and her boyfriend rent their home at the rental rate of \$1,400.00 a month. He has an annual salary of around \$20,000.00 a year as an e-mail promoter for a local club (R.T., at 63). Among her current debts, she is behind only in two monthly car payments (R.T., at 59-60). However, she provides no documented updates on the payment status of her two outstanding judgments and other debts she believes were either paid or incorrectly reported in her previous creditor reports (see ex. 2).

Applicant completed a trust position application (SF-85P) in September 2002. Answering question 20 (inquiring of her debts over 180 days delinquent), she answered "no." In so answering, she omitted all of her delinquent debts listed in the SOR. Applicant attributes her negative answers to her twin beliefs that (a) by the time she filed her anticipated bankruptcy petition (based on advice from her bankruptcy attorney), she would have no debts to list as delinquent (R.T., at 71-72) and (b) she didn't think she had any debts over 180 days delinquent at the time (R.T., at 73). Applicant did not file the bankruptcy petition she anticipated, however, for almost 16 months (in February 2004), and then only listed two of the unsecured debts listed in the SOR. Whether either of these debts were 180 days delinquent is not clear from the credit report. The remaining listed debts in the SOR that Applicant excluded from her bankruptcy petition she either could not identify or believed they were paid. Applicant's understandings of her debts appear to have been confused and based on mistaken misunderstandings about the status of her debts, and not deliberate omissions.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2

of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

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

Personal Conduct

Basis: conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Criminal Conduct

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

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a

security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant accrued numerous delinquent debts during a strained relationship with her child's father, which she severed in 1998. Unable to pay her debts (most of which were attributable to a voluntary car repossession and two old judgments) with the income was able to generate as a single mother following the severance of the relationship, she filed for Chapter 7 bankruptcy in February 2004. She received her bankruptcy discharge in April 2004.

Because Applicant's bankruptcy schedules did not include either her two unsatisfied judgments and many of the creditors listed in the SOR, a question is raised whether these unscheduled creditors are also discharged. While the issue is not a common one, bankruptcy courts that have addressed the question in the past have held affirmatively in no-asset cases like Applicant's, irrespective of scheduling (*see, e.g., In re James*, 184 B.R. 147, 150-51 (ND Ala. 1995)). None of the unscheduled judgment and non-priority creditors have pursued Applicant, and the issue has not been raised by the Government as a source of continuing trust concern. Absent any more authority in the record, these unscheduled claims will be treated as discharged along with the scheduled ones.

Based on Applicant's considerable accumulation of delinquent debt over the more than seven years preceding her Chapter 7 bankruptcy discharge, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for Guideline F apply: E2.A6.1.2 (*A history of not meeting financial obligations*) and E2.A6.1.3 (*Inability or unwillingness to satisfy debts*). Her accrued debts are accompanied, though, by extenuating circumstances (*viz.*, abandonment of her child by the child's father followed by single parenting responsibilities amidst monetary shortfalls).

Applicant's debts are both extenuated and mitigated sufficiently to enable her to take advantage of two of the applicable mitigating conditions of the Guidelines. The financial strains exacerbated by a broken relationship with her child's father as a young adult, and the financial irresponsibilities of her child's father account for her prolonged inability to discharge her debts through non-bankruptcy means. In Applicant's case, extenuation and mitigation are demonstrated sufficiently to enable her to invoke both E2.A6.1.3.3 (*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)*) and E2.A6.1.3.6 (*The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts*) of the Guideline, based on her prevalent financial circumstances between 1996 and 2004, and her final resolution

of her outstanding judgments and debts through her April 2004 Chapter 7 bankruptcy.

Taking into account all of the circumstances surrounding Applicant's 1996-2004 debt problems and her extenuating circumstances that prevented her from taking care of her debts with her limited resources before petitioning for Chapter 7 bankruptcy, Applicant succeeds in mitigating the Government's security concerns. Favorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.m of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F.

Posing potential trust concerns, too, are Applicant's documented omissions of her delinquent debts from her personal trust position application she completed in September 30, 2002. Her omissions are, however, attributable to her confused understanding of the status of her debts at the time, which perpetuated even in the Chapter 7 petition she filed 16 months later. Applicant's explanations of her omissions were persuasive enough to avert inferences of knowing and wilful omission and enable her to refute the allegations of falsification of her SF-85P covered in subparagraph 2.a (governed by Guideline E) and subparagraph 3.a (covered by Guideline J).

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: FOR APPLICANT

Sub-para. 1.i: FOR APPLICANT

Sub-para. 1.j: FOR APPLICANT

Sub-para. 1.k: FOR APPLICANT

Sub-para. 1.l: FOR APPLICANT

Sub-para. 1.m: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

GUIDELINE J (CRIMINAL CONDUCT): FOR APPLICANT

Sub-para. 3.a: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley

Administrative Judge