

DATE: August 31, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 05-04916

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant works for a defense contractor. She incurred 38 delinquent debts over 13 years totaling \$29,448. She filed Chapter 7 bankruptcy in October 2005, and was discharged in January 2006 of \$65,788.58 in delinquent debt. She did not list her financial delinquencies on her Questionnaire for Public Trust Position in 2004 while knowing she had large amounts of delinquent debt. She did not mitigate the financial considerations and personal conduct trustworthiness concerns. Her eligibility for assignment to sensitive positions is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue eligibility for occupying an Information Systems Position designated ADP I/II/III to support a contract with the Department of Defense. On November 21, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive⁽²⁾. Applicant answered the SOR in writing on December 3, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on February 8, 2006. On March 28, 2006, I convened a hearing to consider whether to grant Applicant eligibility for a position of public trust. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on April 11, 2006.

Applicant was given additional time to submit additional information. Applicant did submit three additional exhibits to Department Counsel who forwarded them to me without objection. I marked the exhibits G, H, and I, and admitted them into evidence.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of

fact:

Applicant is 47 years old, married with five children, and works for a defense contractor in the health care business field. Only two of her children remain living at home, the others being on their own. As part of her employment process, Applicant had to complete a Questionnaire for Public Trust Positions (SF 85P). She completed two of these forms, one on February 10, 2004, and the second one on August 25, 2004. The final question on the form, Question 22.b., asked Applicant if she were then more than 180 days delinquent on any loan or financial obligation. On both forms she answered this question "no" and wrote "N/A" in the other blocks of that question. (Tr. 42-47; Exhibits 1, 2)

Applicant has unpaid delinquent debts since 1993 and continuing to 2006. The SOR alleges 38 debts, some for medical expense co-payments, ranging from \$13.20 dating from 1995 to a high figure of \$394 owed since 2003. Her earliest delinquent debt is \$60.00 dating from 1993 from a medical bill. Of the 38 alleged delinquent debts in the SOR, 24 debts are medically related. The remaining 16 delinquent debts are for credit card debt, cable and cell phone debts, utility bills, and two repossessed cars for about \$7,500. The total debt alleged in the SOR is \$29,448. Exhibit 5, the Government's interrogatory to Applicant, lists all her debts, and the credit card and store purchase debt listed there totals \$26,421. Using Exhibit 5 as the basis for her bankruptcy schedule of delinquent debts, Applicant filed Chapter 7 bankruptcy on October 11, 2005, and was discharged on January 31, 2006. The amount discharged in bankruptcy was \$65,788.58. All the debts listed in SOR were discharged in the Chapter 7 bankruptcy. (Tr. 15-40, 52; Exhibits 1-5, A, G-I, Answer)

Applicant and her husband earned \$50,000 in 2003, \$58,000 in 2004, and \$46,000 in 2005. Between 1996 and 2004 they purchased and owned six automobiles, two of which were later repossessed and for which she owes a deficiency amount (subparagraphs 1.t. for \$7,333 and subparagraph 1.bb. for \$2,168). The last car she purchased was bought new in 2004, and that debt was reaffirmed on January 31, 2006. The debt is \$12,003, and the monthly payment is \$365.52 for that car. Applicant claims her financial delinquencies arose because she had no money to pay her debts, her children took the mail and she never saw the bills, and she had medical problems that caused financial difficulties, but she claimed the medical problems started in 1996 and then later she claimed they started in 1990. She admitted she would be off work a month or two, and she received disability pay of 2/3 regular pay during those periods. She and her husband are buying a house on contract of deed from his father for \$800 per month, and the property is valued at \$125,000. At some times during the past six years she gave her department store credit card to her children and they ran up \$3,000 in debt at that department store (subparagraph 1.q. dating from 2001). She also paid for a cable television service and cell phone service for her married son who is in the Army, and he refuses to pay those bills for his mother, so they appear on her credit report (subparagraphs 1.r. for \$237.19 from 2001, and subparagraph 1.gg. for \$442.22 from 2003). The other debts listed in the SOR she and her husband incurred. (Tr. 22-24, 32-34, 40, 46-53; Exhibits 1-5, Answer)

Applicant deliberately did not list her delinquent debts on her SF-85P because she expected to file Chapter 7 bankruptcy in the time the Government investigator came to interview her, which interview occurred in December 2004. She knew she owed the debts when she completed the two SF 85P. Applicant could not gather the \$600 fee needed to pay the bankruptcy attorney until October 2005 when she did file the Chapter 7 bankruptcy. She also claims she did not know she was over 180 days delinquent on her debts. (Tr. 47; Exhibits 1-3, Answer)

Applicant submitted character statements from her co-workers. Those statements characterize Applicant as good, honest, compassionate, and a hard worker. She is described as a team player. (Exhibits C to F)

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions the Directive. Therefore, a finding the applicant is eligible for a position of trust may be granted only upon a finding that it is clearly consistent with the national interest to do so. *See* Directive ¶ 2.3. An

applicant has the ultimate burden of persuasion. *See* Directive ¶ E3.1.15.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating an applicant for a position of trust, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an applicant a position of trust is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for granting such a position.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: *The Concern: 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.* E2.A6.1.1

Guideline E: Personal Conduct: *The Concern: A trustworthiness concern may arise when an individual's conduct involves 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.A5.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant is a person who could not control her discretionary spending for the past 13 years and ran up debts of \$65,788.58 in that time. 32 of the 38 delinquent debts listed in the SOR were individually for less than \$500 each. She could have paid them if she were not at the same time buying cars and spending \$26,421 at department and speciality stores, including the \$3,000 she allowed her children to spend on a department store credit card. Applicant never made a good-faith effort to resolve her debts until after she realized her financial situation was a concern to the Government. Then she filed bankruptcy just before the SOR is issued, but even then she had to wait that late to file because she had no money to pay the attorney. Filing bankruptcy at that late date does not mitigate the financial considerations trustworthiness concern.

I do not find Applicant to be credible in her explanations as to why she could not repay her debts in 13 years. None of her explanations persuaded me she mitigated the financial considerations trustworthiness concern. Her spending was out of control and she acted irresponsibly. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1) and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply. While Applicant wants her various operations and time off of various jobs to excuse her financial irresponsibility, I am not persuaded by any of her explanations. She varied the dates she first started having the operations, then blamed her children for hiding the bills so she could not pay them, and also said she had no money to pay the bills. She never seemed to stop spending money, though, including buying cars. She bought a new car in 2004 for about \$17,000 when she owed over \$60,000 to various creditors. For all these reasons, I find no mitigating Conditions (MC) apply here. I conclude the financial considerations trustworthiness concern against Applicant.

Next, Applicant claims she did not lie to the Government on her two SF 85P completed in 2004. Yet she admitted she wanted to file bankruptcy to rid herself of her debts, so she must have known she had a lot of delinquent debt. She could not scrape together the lawyer's fee until October 2005, which is another indication she had money problems. The evidence is crystal clear here--she knew that she had financial delinquencies over 180 days in duration, for example the money she owed on the cars that she allowed to be repossessed in 2001 and 2002. She lied on the trustworthiness forms. DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2) applies. There are no MC that apply to this case. The personal conduct trustworthiness concern I also conclude against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Subparagraph 1.q: Against Applicant

Subparagraph 1.r: Against Applicant

Subparagraph 1.s: Against Applicant

Subparagraph 1.t: Against Applicant

Subparagraph 1.u: Against Applicant

Subparagraph 1.v: Against Applicant

Subparagraph 1.w: Against Applicant

Subparagraph 1.x: Against Applicant

Subparagraph 1.y: Against Applicant

Subparagraph 1.z: Against Applicant

Subparagraph 1.aa: Against Applicant

Subparagraph 1.bb: Against Applicant

Subparagraph 1.cc: Against Applicant

Subparagraph 1.dd: Against Applicant

Subparagraph 1.ee: Against Applicant

Subparagraph 1.ff: Against Applicant

Subparagraph 1.gg: Against Applicant

Subparagraph 1.hh: Against Applicant

Subparagraph 1.ii: Against Applicant

Subparagraph 1.jj: Against Applicant

Subparagraph 1.kk: Against Applicant

Subparagraph 1.ll: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

In light of all of the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Her application for eligibility is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

2. Adjudications are required for all persons applying for security clearances or assignment to sensitive duties. DoD 5200.2-R ¶ C2.1.1 (Jan 1987). ADP I positions are a critical-sensitive; ADP II positions are noncritical-sensitive; ADP III positions are nonsensitive. *Id.* at AP 10.2. DoD contractor personnel are authorized the procedural benefits set forth in DoD Directive 5220.6. *Id.* at C8.2.1. The regulation does not require adjudication for nonsensitive positions such as ADP III. DoD Directive 5220.6 ¶ 2.4 states that the Directive "[p]rovides a program that may be extended to toher security cases at the direction of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I))." Nevertheless, the Deputy Undersecretary of Defense for Counterintelligence and Security ordered that ADP III positions would also require adjudication as if they were sensitive positions., Memo from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004). However, it does not appear that decision was ever sent out for comment or formally published, as required by 5 U.S.C. § 552(a)(1)(D).