

DATE: August 30, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 05-05379

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has over \$57,000 in delinquent debt. Of that amount, \$30,000 consists of student loans. Several years after graduating from college, she became the provider for her mother and younger sister after their father left the family. After several efforts towards resolving her accounts, she decided to file for Chapter 7 bankruptcy. Her student loans have been consolidated. Her mother and sister are supporting themselves. She is now able to meet her financial obligations. Applicant's eligibility for a assignment to a sensitive position is granted.

STATEMENT OF CASE

On August 23, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan, 1987), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").
[\(1\)](#) On November 23, 2005, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations.

In a sworn statement dated December 26, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on May 24, 2006. A notice of hearing was issued on June 21, 2006, scheduling the hearing for July 10, 2006. The hearing was conducted on that date. The government submitted Government Exhibits (Gov Ex) 1-4 which were admitted into the record without objection. Applicant testified on her own behalf, and submitted Applicant Exhibits (AE) A - D which were admitted into the record without objection. The record was held open until August 1, 2006, to allow Applicant to submit further documents. AE E was timely submitted and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 27, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits to all the SOR allegations. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 28-year-old woman employed as a customer service representative with a Department of Defense contractor who is seeking a position of public trust.⁽²⁾ She has worked for the same employer for the past five years.⁽³⁾ She is single and has no children.⁽⁴⁾ In May 1999, she was awarded a Bachelor of Fine Arts Degree.⁽⁵⁾

On August 23, 2004, Applicant completed a Questionnaire for Public Trust Position (SF 85-P).⁽⁶⁾ Her background investigation revealed 12 delinquent accounts with a total approximate balance of \$57,205.⁽⁷⁾ The accounts included a \$10,487 student loan account (SOR ¶ 1.a); a \$4,550 credit card account which was charged off as a bad debt in April 2002 (SOR ¶ 1.b); a \$6,112 student loan account placed for collection in April 2002 (SOR ¶ 1.c); a \$444 credit card account placed for collection in June 2002 (SOR ¶ 1.d); a \$12,922 credit card account placed for collection in July 2002 (SOR ¶ 1.e); a \$5,911 credit card account placed for collection in August 2002 (SOR ¶ 1.f); a \$2,058 credit card account placed for collection in September 2002 (SOR ¶ 1.g); a \$348 credit card account which was charged off as a bad debt in December 2002 (SOR ¶ 1.h); a \$1,862 credit card account past due since January 2003 (SOR ¶ 1.i); a \$1,216 student loan account placed for collection in April 2003 (SOR ¶ 1.j); a \$3,649 student loan account placed for collection in July 2003 (SOR ¶ 1.k); and a \$7,646 student loan account placed for collection in July 2003 (SOR ¶ 1.l).

In September 2001, Applicant's father left the family and his car dealership went bankrupt. Her mother was unemployed and in poor health. Applicant became responsible for providing for her mother and younger sister. She relied on credit cards for paying living expenses and was unable to make payments on her credit cards and student loan accounts which soon became delinquent.⁽⁸⁾ Her parents divorced in October 2003. She supported her mother and sister until May 2004.⁽⁹⁾

On January 26, 2006, she filed for Chapter 7 bankruptcy. She listed assets of \$23,093 and liabilities of \$110,094.⁽¹⁰⁾ Her debts were discharged on August 8, 2006.⁽¹¹⁾

In January 2006, Applicant consolidated her student loans. Her payments begin on September 14, 2006. She will pay \$240 a month.⁽¹²⁾ In February 2006 and May 2006, she attended financial counseling.⁽¹³⁾ The financial counseling taught her the difference between good debt and bad debt.⁽¹⁴⁾ She follows a budget. After expenses, she has approximately \$40 to \$60 left over each month.⁽¹⁵⁾ She has no open credit card accounts.⁽¹⁶⁾ Her current plan is to pay her debts and not incur additional debt.⁽¹⁷⁾

Applicant's co-workers attest to her good character and work ethic.⁽¹⁸⁾ The Manager, Claims and Services, has worked with Applicant for two years and states she is a dependable and trustworthy individual. She relies on her for many tasks which she completes with quality results. She notes her skills and dedication to the job are exceptional.⁽¹⁹⁾ An associate in the Priority Services Department has worked with Applicant for five years. Applicant has helped her on numerous cases, resolving difficult and sensitive issues. She states that her knowledge and professionalism are beyond reproach.⁽²⁰⁾ Another co-worker states she is proud to be on the same team with Applicant and that she has impeccable character and always treats those around her with respect.⁽²¹⁾ Her closest friend states that she can always count on Applicant during difficult times.⁽²²⁾

POLICIES

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."⁽²³⁾ The President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use,

handling, and protection of classified information." (24)

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (25) The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. (26) The adjudicative guideline at issue in this case is:

Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, is set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (27) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (28) An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. (29)

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. (30) Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (31) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (32) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (33) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (34)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations.

Financial Considerations

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) 1 (*A history of not meeting financial obligations*), and FC DC 3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Applicant has had difficulty meeting her financial obligations since 2001. She incurred 12 delinquent debts with an approximate total balance of \$57,000, including \$30,000 in delinquent student loans.

I considered the Financial Considerations Mitigating Conditions (FC MC) and conclude FC MC 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)*) applies. Applicant became the sole provider for her mother and sister when her father left the family in September 2001. She relied on credit cards to pay their living expenses. Her mother was unemployed and in poor health at the time. Their daily living expenses overwhelmed her and soon her debts became delinquent.

FC MC 4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*) applies. In addition to filing for Chapter 7 bankruptcy protection, Applicant attended financial counseling on two occasions. She has learned from this experience. She consolidated all of her student loans. She has no open credit card accounts. She established a budget and is able to pay all of her expenses. She has been proactive in resolving her financial situation.

FC MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is also applicable. Applicant tried to resolve her delinquent accounts by paying her creditors. The debt was overwhelming so she chose to file for Chapter 7 bankruptcy protection, a legally permissible means to resolve debt. A security concern can potentially remain even after an applicant files for bankruptcy. The reason for the bankruptcy must be considered. In Applicant's case, her financial problems resulted from factors that were beyond her control. After her father left, she did the honorable thing and provided for her mother and younger sister. They are now able to care for themselves. Applicant has taken every action within her means to resolve her debts. No security concern remains due to her filing for bankruptcy.

Although her bankruptcy discharge was recent, Applicant has taken steps to insure that she is able to properly manage her finances in the future. She appears to be a mature and responsible young woman. She has mitigated the security concern under Guideline F. Guideline F is decided for Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthiness determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. Applicant has an exemplary work history. She is loyal to her friends and family. She has taken positive steps to deal with her financial problems. Based on the evidence in the record, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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.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

Subparagraph 1.l: For Applicant

DECISION

In light of all of the evidence presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended.

2. Gov. Ex. 1.

3. Tr. at 14, 22.

4. Tr. at 14.

5. Tr. at 5, 19.

6. Gov. Ex. 1.

7. Gov. Ex. 2, 3, 4; AE B; AE D.

8. Tr. at 14-16, 20, 27; Gov. Ex. 2.

9. Tr. at 28.

10. AE D.

11. AE E.

12. Tr. at 26; AE B.

13. AE C.

14. Tr. at 25.

15. Tr. at 30.

16. Tr. at 25.

17. Tr. at 30.

18. AE A.

19. AE A at 3.

20. AE A at 4.

21. AE A at 1.

22. AE A at 2.

23. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

24. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

25. DoD 5200.2-R, ¶ C6.1.1.1.

26. *Id.* at Appendix 8.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at ¶ C8.2.1.

31. Directive , ¶ E3.1.14.

32. *Id.* at ¶ E3.1.15.

33. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

34. Directive, ¶ E2.2.2.