

DATE: June 30, 2006

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In re:

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SSN: -----

Applicant for ADP I/II/III Position

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ADP Case No. 05-06269

**ECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole Noel, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has approximately \$5,561 in delinquent debt to include a tax lien. She is separated from her husband who provides no child support. Although she has taken steps to save expenses by moving in with her in-laws during the week and her mother on the weekends, she took no active steps to resolve the tax debt and other debts until after the hearing. The debts remain unresolved. From 1988 to 2000, she was prosecuted 19 times for writing fraudulent checks. Based on her past financial history, it is too soon to conclude her financial situation is under control. Applicant's eligibility for a assignment to a sensitive position is denied.

**STATEMENT OF THE CASE**

On January 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 October 28, 2005, DOHA issued to 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, Guideline J, Criminal Conduct, and Guideline E, Personal Conduct.

In a sworn statement dated December 22, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on February 17, 2006. A notice of hearing was issued on March 28, 2006, scheduling the hearing for April 11, 2006. The hearing was conducted on that date. The government submitted eight exhibits that were marked as Government Exhibits (Gov Ex) 1-7. The exhibits were admitted into the record without objection. Applicant testified on her own behalf, and submitted no exhibits. The record was held open until April 25, 2006. Applicant timely submitted 7 exhibits that were marked as Applicant's Exhibits (AE) A-G. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on April 26, 2006.

One additional procedural note: Applicant's company contacted me after the hearing to inform me that Applicant's social security number was incorrect on the SOR. I have amended the SOR by correcting her social security number which is 250-53-3230. I did not contact either party for their input since it is an administrative correction.

### FINDINGS OF FACT

In her SOR response, Applicant admits the allegations under Guideline F, ¶¶ 1.a - 1.x and Guideline J, ¶ 2.a but denies the allegation under Guideline E, ¶ 3.a. 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 37 year old woman employed as a tech support analyst with a Department of Defense contractor who is seeking a position of public trust.<sup>(2)</sup> She married her current husband in October 2000.<sup>(3)</sup> In 2003, she separated from her husband.<sup>(4)</sup> She has a 16 year old daughter from a previous relationship. She has two children with her current husband, a son, age six and a daughter, age five.<sup>(5)</sup> Neither father of her children provides regular child support. The father of her 16 year old provides for his daughter's needs on an informal basis.<sup>(6)</sup> Her current husband is a drug addict and provides no child support. She has not attempted to seek court-ordered child support.<sup>(7)</sup>

On January 23, 2004, Applicant completed a Questionnaire for Public Trust Position (SF 85-P).<sup>(8)</sup> In response to question "22b. Your Financial Record: Are you now over 180 days delinquent on any loan or financial obligation?" she answered, "No." A subsequent background investigation revealed Applicant has five delinquent accounts with a total approximate balance of \$5,561.<sup>(9)</sup> The accounts included a \$2,760 balance resulting from an automobile repossession in 1999 (SOR ¶ 1.p); a \$820 consumer loan that was charged off in November 1999 (SOR ¶ 1.q); a \$466 phone bill turned over for collection in February 2000 (SOR ¶ 1.u); a \$1,453 debt owed to the IRS for tax year 2003 (SOR ¶ 1.w); and a \$62 medical account placed for collection in June 2001 (SOR ¶ 1.x).

The current status of the delinquent debts are:

SOR Paragraph	Debt	Status	Record
1.p	\$2,760 automobile repossession in 1999.	Unpaid.	Tr. at 17, 33-37; Gov Ex 4 at 1, Gov Ex 5, 6, 7.
1.q	\$820 consumer loan charge off in November 1999.	Setting up a payment plan, no proof of payments at close of record.	AE B; Tr. at 17; Gov Ex 4 at 2,; Gov Ex 5, 6, 7, 8.
1.u	\$466 telephone bill collection account turned over for collection in February 2000.	Admits debt/telephone company has no records/formally disputed debt after hearing.	Tr. at 18-19; 43-45; AE D; Gov Ex 4 at 4; Gov Ex 5.
1.w	\$1,453 IRS debt, tax year 2003.	Admits debt. After hearing agrees to pay \$1,672, to be paid in full on July 28, 2006. No proof of payment as of close of record.	AE A; AE C; Tr. at 19-21, 45-46; Gov 4 at 5, 15.
1.x	\$62 medical collection account turned over for collection in June 2001.	Paid in full.	AE E; AE G; Tr. at 21, 47-48; Gov Ex 8.

Between May 1988 to March 2000, Applicant was charged with fraudulent check offenses on 19 occasions. Between 1988 to 1992, she was arrested 13 times for Fraudulent checks (SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, and 1.m). During this time period, Applicant was irresponsible with finances. She would spend her paycheck within a day or two of receiving it. She did not understand the consequences of writing fraudulent checks.<sup>(10)</sup> Between 1992 to

1994, she was arrested two times for fraudulent checks (SOR ¶¶ 1.n and 1.o).<sup>(11)</sup> Between February 1, 2000 to March 21, 2000, she was arrested and/or charged with fraudulent checks on four occasions (¶¶ 1.r, 1.s, 1.t and 1.v).<sup>(12)</sup> She was living on her own at the time with two children and was going through a difficult time.<sup>(13)</sup>

In 1999, her automobile was repossessed since she was unable to keep up with the payments due to having a low paying job and two children to support.<sup>(14)</sup> She has attempted to contact the creditor to resolve this account but has been unsuccessful in locating someone who has the authority to settle the account.<sup>(15)</sup> The debt alleged in SOR ¶ 1.q was a consumer loan to pay off some other bills. She was unable to keep up with the payments. After the hearing, she submitted a statement indicating she intends to enter into a payment plan with this company.<sup>(16)</sup> She admits to having a delinquent telephone bill when she moved out of her apartment in 1998.<sup>(17)</sup> When she contacted the telephone company, they told her they had no record of a delinquent account on file.<sup>(18)</sup> After the hearing, she formally disputed the telephone bill entry on her credit report.<sup>(19)</sup> Applicant testified at hearing that the \$62 medical bill was for her daughter and should have been covered by Medicaid.<sup>(20)</sup> After the hearing, she submitted a receipt showing that she paid the debt.<sup>(21)</sup>

The IRS debt was the result of claiming her daughter as a dependent on her 2003 federal income tax returns after her husband had claimed her daughter as a dependent. She admits this is her debt. She became aware of this tax debt in September 2004 when she was contacted by the IRS.<sup>(22)</sup> In January 2006, she contacted the IRS to start payment arrangements.<sup>(23)</sup> At the hearing, she testified that she set up a payment plan with the IRS for \$25 a pay period. She was waiting for the agreement to be notarized.<sup>(24)</sup> After the hearing, she agreed to pay the IRS \$1,672 by July 28, 2006.<sup>(25)</sup> There is no evidence of any payments being made towards this debt.

In order to save on expenses, Applicant lives with her in-laws during the week and with her mother during the weekends.<sup>(26)</sup> Applicant provided a financial worksheet on October 8, 2004. After expenses, she has approximately \$281 left over each month after expenses.<sup>(27)</sup> Applicant submitted several performance reports from her current employer indicating that she either meets or exceeds standards.<sup>(28)</sup>

## **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."<sup>(29)</sup> 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."<sup>(30)</sup>

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."<sup>(31)</sup> The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.<sup>(32)</sup> The adjudicative guidelines at issue in this case are:

**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.

Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Criminal Conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets and/or sensitive information. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are 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."<sup>(33)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(34)</sup> 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.<sup>(35)</sup>

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.<sup>(36)</sup> 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.<sup>(37)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>(38)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(39)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(40)</sup>

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 and Guideline J - Criminal Conduct.

### **Financial Considerations**

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*); FC DC E2.A.1.2.2 (*Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Applicant has a history of not meeting her financial obligations since 1988 when she began to write fraudulent checks. She testified that she had the money when she began writing fraudulent checks back in 1988 and 1989 but she spent her money foolishly. Between 1988 and 2000, she had been prosecuted for fraudulent check offenses 19 times. In addition to the fraudulent check offenses, she has five delinquent accounts, including a tax lien. The total approximate amount of the debt is \$5,561. She has a history of not meeting her financial obligations.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant has several debts that remain unpaid. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*).

FC MC 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)*) applies, in part. Applicant separated from her husband in 2003. Her husband is a drug addict and provides no support to Applicant and her two younger children. She has struggled financially as a result. However, most of her delinquent debts became delinquent prior to her marriage. Based on the record evidence, only the tax lien and the \$62 medical bill arose after her marriage.

I cannot apply FC MC E2.A6.1.3.4 (*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*) since Applicant has not attended financial counseling and much of the debt remains unresolved. FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) cannot be applied as well. Although she has paid off one of the debts and indicated that she has entered into repayment plans for two of the debts, she provided no proof that any payments have been made towards these payment plans. Her settlement agreement with the IRS was entered into after the hearing. She did not provide a copy of a payment agreement with the other creditor. The debt related to the automobile repossession remains unresolved. Based on Applicant's past financial history, it is too soon to conclude that her financial situation will be resolved.

Although Applicant struggles financially to provide for her three children, she took little action to resolve her delinquent accounts until the hearing. Most of these accounts were several years old. Her delinquent debts and her 19 fraudulent check charges between 1988 to 2000 indicate a pattern of financial irresponsibility. She has failed to mitigate the security concern under Guideline F. Guideline F is decided against Applicant.

## **Criminal Conduct**

Applicant's 19 fraudulent check charges indicate a history of criminal conduct since 1988. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) apply.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*), CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), and CC MC E2.A10.1.3.3 (*There is clear evidence of successful rehabilitation*). I find CC MC E2.A10.1.3.1 applies since Applicant has not been charged with a criminal offense since 2000. I conclude the criminal behavior is not recent. I cannot apply CC MC E2.A10.1.3.2 since the crime was not an isolated incident. I conclude CC MC E2.A10.1.3.3 applies since her last offense occurred over six years ago. Under the criminal conduct concern, there is evidence of successful rehabilitation.<sup>(41)</sup> I find for Applicant under Guideline J.

## **Personal Conduct**

Applicant did not list all of her delinquent debts on her January 23, 2004, Questionnaire for Public Trust Position Application (SF 85 P) in response to question 22b. She explained that she misunderstood the question. She was also unaware of the delinquent debts until she was shown a copy of her credit report during her background investigation. I find that she did not intentionally falsify her Questionnaire for Public Trust Position Application (SF 85 P). I find for the Applicant under Guideline E.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy 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. An applicant with a good or even exemplary work history may engage in conduct that has negative trustworthy implications. Although Applicant's loyalty to the United States is not in question, I am persuaded by the totality of the evidence that she failed to mitigate the trustworthiness concerns regarding Guideline F based on her financial history and delayed action towards resolving her delinquent accounts. It is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

### **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: 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.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: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a: For Applicant

### **DECISION**

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

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended.
2. Gov Ex 1 and 2.
3. Gov Ex 1 at question #14.
4. Tr. at 23.
5. Tr. at 10, 24.
6. Tr. at 24.
7. Tr. at 25.
8. Gov Ex 2.
9. Gov Ex 5-8.
10. Tr. at 27-31.
11. Tr. at 32.
12. Tr. at 38-39.
13. Tr. at 39.
14. Tr. at 33.

15. Tr. at 36.

16. AE B.

17. Tr. at 18-19; 43-45.

18. Tr. at 44-45.

19. AE D.

20. Tr. at 21, 47-48.

21. AE E; AE G.

22. Gov Ex 4 at 5.

23. Tr. at 45-46.

24. Tr. at 20.

25. AE A; AE C.

26. Tr. at 25-26; AE B.

27. Gov 4 at 8.

28. AE F.

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

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

31. DoD 5200.2-R, ¶ C6.1.1.1.

32. *Id.* at Appendix 8.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at ¶ C8.2.1.

37. Directive , ¶ E3.1.14.

38. *Id.* at ¶ E3.1.15.

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

40. Directive, ¶ E2.2.2.

41. (Applicant's history of fraudulent check offenses remains a concern under Guideline F.)