

DATE: October 30, 2006

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In Re:

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SSN: -----

Applicant for ADP I/II/III Public Trust Position

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ADP Case No. 05-06345

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

J. Theodore Hammer, Esq. , Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant failed to mitigate financial concerns arising from delinquent debts exceeding \$9,000.00 including one credit card debt for almost \$8,000.00. No mitigating conditions are applicable Eligibility for a public trust position is denied.

**STATEMENT OF CASE**

On December 12, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to ¶ 3-614, DoD Regulation 5200.2-R and ¶ 2.4 of Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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 trustworthiness determination for an ADP clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether such a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated December 28, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on June 21, 2006. It included an amendment of the SOR to conform to the requirements of an ADP trustworthiness determination rather than a security clearance application. The amendment is granted.

A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within thirty days after receipt. Applicant did not do so. The case was assigned to me on August 22, 2006.

**FINDINGS OF FACT**

Applicant admitted all of the allegations relating to delinquent debts with explanation. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 41-year-old employee of a government contractor providing health service information. The seven allegations in the SOR concern over \$9,000.00 in delinquent debts. Only one of the debts is in excess of \$1,000.00 and it is for almost \$8,000.00 for a credit card debt. The remainder range from \$88.00 to \$780.00, the largest resulting in a judgment. They have been delinquent since 2004.

Applicant's wife started a small business in which both Applicant and his wife invested. A death in the wife's family required her absence and the store failed. However, there is no evidence that the failure of the store had a direct impact on the debts alleged specifically the one credit card debt which constitutes the bulk of the total delinquent debt, and for which Applicant takes responsibility.

He intends to file Chapter 13 bankruptcy and has paid two thirds of the required legal fee to an attorney to do so, but it has not been filed His wife intends to, or may have already, filed for bankruptcy protection for the store debts but those debts, identified in his personal financial statement, do not appear on Applicant's credit report and are not at issue.

### 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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), 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."

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." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"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." DoD 5200.2-R, Appendix 8. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* 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. *Id.*

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. DoD 5200.2-R, ¶ C8.2.1. 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. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted a public trust position 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 such a position.

### CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's seven delinquent debts cited in the SOR prompted the allegation of trustworthiness concern under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise trustworthiness concerns and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.) and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.). Applicant has indicated that payment has been made on one telephone bill and that the largest debt is now reduced by \$1,000.00 but no evidence was offered to establish any payments.

There is no evidence that Applicant's wife's business failure was the cause of the debts at issue in this matter. Thus, there is no evidence to support the application of either cited mitigating condition.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is premature to grant a trustworthiness position.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge