

DATE: August 31, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 05-06782

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 49-year-old employee of a U.S. government subcontractor. She has been separated from her husband since 1997, has custody of the children, and receives no child support. From about 1999 to 2003, Applicant accumulated approximately \$9,877 in debts. She is unwilling to pay any of the outstanding debts until her divorce is final and the court decides who is responsible for which debts. Applicant has not mitigated the financial considerations and personal conduct security concerns. Eligibility for an ADP I/II/III position is not granted.

STATEMENT OF THE CASE

On September 14, 2004, Applicant applied for a determination of eligibility for assignment to sensitive positions and completed a Public Trust Position Application (SF-85P).⁽¹⁾ On December 7, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary determination that Applicant was not eligible for assignment to an Information Systems Position designated ADP I/II/III.⁽²⁾ The SOR alleges trustworthiness concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

In a sworn, written statement, dated December 28, 2005, Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing.⁽³⁾ Department Counsel prepared the Government's written case on February 22, 2006. A complete copy of the file of relevant material (FORM)⁽⁴⁾ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by April 22, 2006. She did not respond. The case was assigned to me on May 16, 2006.

FINDINGS OF FACT

Applicant admitted some of the factual allegations pertaining to financial conduct under Guideline F (subparagraphs 1.b through 1.f, 1.h, 1.j through 1.n, 1.r, and 1.s). Those admissions are incorporated herein as findings of fact. Applicant

denied the factual allegations pertaining to financial conduct under Guideline F (subparagraphs 1.a, 1.g, 1.i, 1.o, 1.p, 1.q), and personal conduct under Guideline E (subparagraph 2.a). Applicant's admissions are incorporated herein. After a thorough and careful review of the record, I make the following findings of fact:

Applicant is a 49-year-old employee of a U.S. government subcontractor. She has worked for this contractor from June 2004 to present. She completed an SF-85P in September 2004 to seek a customer service representative (ADP-II) position. In March 2005, Applicant was promoted into a position as a customer service supervisor. (5)

Married in December 1977, Applicant and her husband raised three children. The couple separated, however, in January 1997. Her 16-year-old child lives with her and she is raising the child as a single mother. Her other two children are adults and live away from the home. Although she retained legal counsel for a divorce in the late 1990s, she eventually found his fees beyond her budget and terminated his services. (6) Since that time, Applicant has not proceeded with divorce proceedings due to unresolved financial issues.

Applicant's financial situation is due to having solely supported her three children, while living separate and apart from her husband. When Applicant and her husband separated in 1997 not only did they lose the family home, (7) she retained custody of their children. The couple had an informal agreement about child support, but they did not have a plan to deal with their marital debt. Thus, until a court decides which person is responsible for the outstanding debts appearing on Applicant's credit report, she will not assume the debts are her responsibility and will not pay them. A child support order was never implemented in the past. The evidence in the record is void of her husband's financial contribution to the children, if any. She stated the following about her delinquent debt:

Part of the problem with my credit that is being shown as negative is a direct reflection of obligations for myself and my children, through the years that was never decided, by a court of law, which parent would be responsible for which debts. Since the debt was never paid, it remained on my credit report, which is what you are questioning in my trustworthiness determination. (8)

From about 1999 to 2003, Applicant has had past due delinquent debts owed to 19 creditors, totaling approximately \$9,877. Applicant denied four of the debts because they have been paid in full. (9) She is unfamiliar with two of the debts and denied responsibility for them as well. (10) She admits all the 13 other debts listed in the SOR. She plans to seek help from a debt consolidation company once a court decides which debts she is responsible for paying. She believes her spouse should have some responsibility in paying her debts, which includes expenses for their children. (11) Based on the information provided, her husband did have an obligation to support his children, even if a child support order was not in place. However, Applicant's creditors are still waiting to be paid and it is unfair that the creditors are caught between her and her husband's fight with regard to their marital debts.

When completing her SF-85P in September 2004, Applicant responded "no" to Question 20 (*Your Financial Record - 180 Day Delinquencies Are you now over 180 days delinquent on any loan or financial obligation?*). She failed to disclose any of her debts that were 180 days or more delinquent. Regarding Question 20 of the SF-85P, Applicant stated:

I interpreted that statement to ask if I was currently meeting my financial obligations. In my mind, I answered yes. I am not delinquent on any loan or financial obligation over 180 days. I have no Federal government loans. The debt you referred to in this paragraph was a result of old debt from my credit report, unless I am again misunderstanding you.

Although it might be plausible for Applicant to have interpreted the question that way, it is unreasonable for her to believe that her delinquent debt was not to be considered, especially when she has delinquent debt totaling close to \$10,000, which has been outstanding for several years.

Applicant submitted a budget, dated March 9, 2005, which indicates a net positive balance of \$213 per month. (12)

POLICIES

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in the Regulation. "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."⁽¹³⁾ Appendix 8 of the Regulation sets forth the 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."⁽¹⁴⁾ Each eligibility determination must be a fair, impartial, and commonplace decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation.⁽¹⁵⁾ An administrative judge should consider: (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 the 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.⁽¹⁶⁾

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable determination may be made.⁽¹⁷⁾ In trustworthiness determination cases, the Government initially must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible to occupy an ADP position.⁽¹⁸⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽¹⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁰⁾ "Any doubt as to whether access to classified information is clearly consistent with national interest will be resolved in favor of the national security."⁽²¹⁾ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

Financial Considerations

A trustworthiness concern typically exists for two different types of financial situations: significant unpaid debts and unexplained affluence; this case involves the former. 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, negligent, or careless in properly handling and safeguarding classified information and meeting the fiduciary requests of an ADP position.

From about 1999 to 2003, Applicant had numerous unpaid delinquent debts. Consequently, this gives rise to Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*).

Various conditions can mitigate trustworthiness concerns arising from financial difficulties. Here, Applicant is a prime example of an individual who could benefit from financial counseling. However, she has failed to pursue such counseling. Thus, Financial Considerations Mitigating Condition (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 is under control*) does not apply.

When Applicant and her husband separated in 1997, she retained custody of their children. The couple had an informal agreement about child support, but they did not have a plan to deal with their marital debt. Applicant made it clear that until a court decides which person is responsible for the outstanding debts appearing on Applicant's credit report, she will not assume the debts are her responsibility and will not pay them. There is no timetable provided for a court resolution of their marital financial responsibilities. Moreover, she retained the services of a divorce attorney but could not continue with his services since his fee was too excessive for her budget. She now owes him \$1,661, and in September 1999 the delinquent account was placed for collection.⁽²²⁾ Under these circumstances, FC MC E1.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, but is not dispositive. I have considered the other mitigating conditions and none apply under the facts of this case.

Personal Conduct

Personal conduct is always a trust concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly fulfill the fiduciary requirements of an ADP position. Having financial problems is the type of personal conduct which causes trust concerns. While there are no express disqualifying conditions under personal conduct guideline that cover judgment lapses associated with financial difficulties, the core judgment and reliability concern of the guideline is implicit in Applicant's past troubles with finances.

Applicant answered "no" to question 20 of the SF-85P, which asked: "are you now over 180 days delinquent on any loan or financial obligation." She interpreted this question to mean whether she was 180 days delinquent on her current debts. In her mind Applicant argues, she was not delinquent with her current debts. She claims it did not occur to her that this was talking about any past due delinquent debts, of which she had many. I conclude that her explanation is not credible. Consequently, Personal Conduct Disqualifying Condition E2.A5.1.2. (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. None of the Personal Conduct Mitigating Conditions apply in this case.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Under these circumstances, Applicant has not mitigated the Government's case under either of the pertinent guidelines. Accordingly, I conclude that it is not consistent with the national interest to grant a trustworthiness determination to Applicant.

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 (Financial Considerations): 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

Paragraph 2. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: 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 make or continue a trustworthiness determination for Applicant. Eligibility is denied.

Jacqueline T. Williams

Administrative Judge

1. Gov. Ex. 4 (Public Trust Position Application, dated September 14, 2004).
2. This action was taken under Executive Order 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). The procedural rules set out in the Directive for security clearance cases are applied to ADP trustworthiness determinations. The adjudicative guidelines set out in Department of Defense Regulation 5200-2R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation), are used to make ADP trustworthiness determinations.
3. Gov. Ex. 3 (Applicant's Answer, dated December 28, 2005).
4. The Government submitted 12 exhibits (Gov. Exs. 1-12) in support of the allegations in the SOR.
5. Gov. Ex. 3, note 3, *supra*.
6. Applicant incurred a debt of \$1,661 with her attorney. It was placed in collection as delinquent in September 1999. See Gov. Ex. 3, note 3, *supra*.
7. Gov. Ex. 6 (Affidavit of Applicant, dated March 9, 2005). Applicant stated "[m]y financial accounts became delinquent because I went through a divorce in 1977 and between playing 'catch up' and losing our home and inheriting many bills, I just could not keep up with payments."
8. *Id.*
9. No corroborating evidence was offered.
10. Gov. Ex. 1 (SOR, subparagraphs 1.p and 1.q).

11. Gov. Ex. 9 (Interrogatories, dated September 16, 2005) at 18.
12. Gov. Ex. 7 (Personal Financial Statement, dated March 9, 2005).
13. Regulation ¶ C6.1.1.1.
14. Regulation Appendix 8.
15. *Id.*
16. *Id.*
17. Regulation ¶ C8.2.1.
18. Directive, ¶ E3.1.14.
19. Directive ¶ E3.1.15.
20. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
21. Directive ¶ E2.2.2.
22. Gov. Ex. 3, note 3, *supra*.