

DATE: August 10, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 05-06902

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 41-year-old female working for a government contractor involved in the medical insurance field. In response to allegations that she had 19 delinquent accounts, amounting to over \$13,500 in debt, she admitted to 13 of the debts and only provided proof that two had been addressed. By failing to mitigate security concerns regarding her finances, Applicant failed to demonstrate assigning her to sensitive duties is clearly consistent with the interests of the national government. Eligibility for an ADP I/II position is denied.

STATEMENT OF THE CASE

On February 15, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary determination that she was not eligible for assignment to information systems positions designated ADP I/II.⁽¹⁾ The SOR alleges security concerns under Guideline F (Financial Considerations). Specifically, it alleges that Applicant is indebted to at least 19 creditors⁽²⁾ in an amount exceeding \$13,500. This debt raises security concerns regarding her trustworthiness.

In her answer, dated March 3, 2006, Applicant admitted the SOR allegations set forth in sub-paragraphs 1.a, 1.b, 1.g, 1.i, 1.j, 1.k, 1.m, 1.n, 1.o, 1.p, 1.q, 1.r, and 1.s, and requested a determination based on the written record. The government submitted its File of Relevant Material (FORM) on May 18, 2006. In its FORM, the government moved to amend the SOR to the extent that the amount allegedly owed on the account noted in sub-allegation 1.c. be changed to \$800 from the amount of \$1,039.89 originally set forth.⁽³⁾ On June 28, 2006, Applicant responded to the FORM by submitting one annotated page of her current credit bureau report, with a hand-written comment concerning the debt noted at sub-allegation 1.m. Applicant's response was admitted without objection by the government, and I was assigned this case on July 17, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and submissions, I make the following findings of fact:

Applicant is a 41-year-old production control specialist working for a defense contractor involved in the health insurance field. She is a divorced mother of three who earned her general equivalency diploma (GED) in October 2001. Her work history includes experience in quality control and restaurant management.

In preparing her response to the SOR and to the FORM, Applicant chose not to submit any narrative statements or other information regarding either her finances or her financial life. Instead, she offered the following with regard to those debts alleged in SOR for which she denies liability, claims the obligation has been paid, or admits liability with comment:

Regarding sub-allegations 1.c - 1.f, Applicant generally denies these debts without any offer of documentary proof that the obligations have been satisfied or formally disputed.

Regarding sub-allegation 1.h (\$151 for a cable account placed in collection in about February 2002), Applicant submitted a Customer's Receipt of a United States Postal Service money order in the amount of \$152, dated February 8, 2006, as proof of payment of this debt.

Regarding sub-allegation 1.i (\$271 for a medical provider, placed in collection in about July 2003), Applicant submitted proof of payment for the purchase of a money order in the amount of \$40.25, made out to an entity described by three initials. At the bottom of a receipt indicating that, as part of a \$256 state tax refund which the state applied to an outstanding debt to a state agency/medical provider, she noted that \$231 of that refund went toward her \$271 medical debt.

Regarding sub-allegation 1.m, Applicant admitted to the obligation in her response to the SOR. Later, in her response to the FORM, she submitted a page from her March 3, 2006, credit bureau report. On that page Applicant wrote that she had paid the \$31 owed the collection agency for this medical provider, a debt placed in collection in about November 2003, but offered no proof of actual payment.

Regarding sub-allegation 1.n, Applicant admits the obligation is hers and states that she has "made payment arrangements," but has offered no documentation or explanation as to what those arrangements are.

Regarding sub-allegations 1.p - 1.s, Applicant admits the obligations are hers and states that she has "made payment arrangements" or "made arrangements," but has offered no documentation or explanation as to what those arrangements are.

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."⁽⁴⁾ Appendix 8 of the Regulation sets forth the personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.⁽⁵⁾

"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."⁽⁶⁾ Each eligibility determination must be a fair, impartial, and common sense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation.⁽⁷⁾ 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.⁽⁸⁾

United States Department of Defense (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.⁽⁹⁾ In security clearance cases, the Government initially 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.⁽¹⁰⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽¹¹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹²⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹³⁾ These same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

The existence of personal financial issues raise concerns regarding trustworthiness. "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts."⁽¹⁴⁾ In this case, the government has provided substantial evidence that Applicant accrued in excess of \$13,500 in debts which remain substantially unaddressed. Consequently, under Appendix 8 of the Regulation, Guideline F, Financial Considerations Disqualifying Condition (FC DC) 1 (*a history of not meeting financial obligations*) and FC DC 3 (*inability or unwillingness to satisfy debts*) apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. Here, Applicant admits 13 of the 19 debts cited in the SOR are hers. At the same time, she generally denies or claims payment of the remaining six debts noted in the SOR. Inasmuch as the debts at issue are multiple and the vast majority remain outstanding, neither Financial Considerations Mitigating Condition (FC MC)1 (*the behavior was not recent*) nor FC MC 2 (*it was an isolated incident*) applies.

Applicant declined to offer any explanation as to how these debts accrued or why they have been neglected. Instead, she chose to have this determination made solely on the written record. In the absence of any illustrative facts or arguments, there is no basis upon which 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)*) can apply. Similarly, her lack of personal facts make it unclear as to whether she has received or is receiving financial counseling. Therefore 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 is under control*) does not apply.

Among Applicant's few submissions is sufficient evidence to suggest that, giving her the benefit of the doubt, the obligations noted at 1.h and 1.l have been satisfied. With regard to the obligation set forth at sub-allegation 1.h for a \$151 cable account, the debt was apparently paid directly by her; regarding the obligation set forth at sub-allegation 1.l for a medical account, that debt was apparently paid in part by the state on her behalf when it applied a portion of her state tax refund to a medical account. The remaining debts, however, have apparently been neglected or are subject to some vague payment arrangement or arrangements Applicant has failed to explain, document, or detail. Lacking such evidence, or any proffer demonstrating her efforts to otherwise address the debts at issue, FC C E2.A6.1.3.6 (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply.

I have considered both the record evidence and Applicant in light of the "whole person" concept. The scant facts of record indicate that Applicant is a mature woman with a background in areas requiring an attention to detail. In explaining her current financial situation, however, she has failed to offer any substantial evidence or other proffer explaining how her debts arose, what she has done to address them, or whether she has any firm plan to address them in the near future. Lacking such evidence or argument, concerns regarding her trustworthiness and suitability for assignment to an information systems position designated ADP I/II remain unmitigated. Consequently I conclude that Applicant is not entitled to a favorable eligibility determination

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.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.I: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: For 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

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for assignment to sensitive duties. Eligibility for positions designated ADP I/II is denied.

Arthur E. Marshall, Jr.

Administrative Judge

1. 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.

2. These creditors and the amounts owed are set forth in the SOR in sub-allegations 1.a through 1.s.
3. In the absence of objection from Applicant, the government's motion is granted and the lower sum substituted for the obligation originally noted at SOR sub-allegation 1.c.
4. Regulation ¶ C6.1.1.1.
5. In this case, the applicable guideline is Guideline F (Financial Considerations).
6. Regulation Appendix 8.
7. *Id.*
8. *Id.*
9. Regulation ¶ C8.2.1.
10. Directive, ¶ E3.1.14.
11. Directive, ¶ E3.1.15.
12. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
13. Directive ¶ E2.2.2.
14. Directive, Enclosure 2, ¶ E2.A6.1.1