

DATE: March 15, 2005

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 03-26053

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 48-year-old employee of a defense contractor. She has worked for the defense contractor for over four years without adverse incident. Applicant has a long history of inability or unwillingness to fulfill her financial obligations. She has not sought credit counseling or made a good-faith effort to resolve the debts. Additionally, on two occasions Applicant used a position of trust to wrongfully take funds from her employer, resulting in her termination. She repaid the funds shortly after she was caught and was not prosecuted. Applicant has failed to mitigate the security concerns arising from her financial difficulties and her personal conduct. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On October 9, 2001, Applicant submitted an application for a position of public trust. 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 modified (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On May 27, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the guidelines for Financial Considerations and Personal Conduct in the Regulation.

Applicant answered the SOR in writing on June 25, 2004. She elected to have a hearing before an administrative judge.

The case was assigned to me on October 14, 2004. With the concurrence of the parties, I conducted the hearing on November 18, 2004. The government introduced six exhibits. Applicant presented three exhibits and testified on her own behalf. DOHA received the transcript (Tr.) on December 7, 2004.

FINDINGS OF FACT

Applicant denied the allegations in ¶¶ 1.i and 1.l of the SOR, admitted the remaining factual allegations, and noted mitigating conditions. Applicant's Answer to SOR, dated June 25, 2004, at 3. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 48 years old. Ex. 1 at 1. She has been married since 1992 and has four children, ages 29, 27, 24, and 16. *Id.* at 4, 5. Her youngest child lives at home.

Applicant began working at a gas station in about December 1988. Ex. 2 at 6. In June 1992, she took about \$200.00 from petty cash. *Id.* The manager discovered the theft and fired her. Applicant repaid the debt from her last paycheck, and no criminal charges were filed. *Id.*

Between 1993 and 1999, Applicant worked as a cashier, bookkeeper, and manager of several other service stations. Ex. 1 at 3. Her positions did not offer health care insurance, and Applicant incurred bills for medical treatment she could not pay, including the debts listed in ¶¶ 1.b, 1.c, 1.d, 1.e of the SOR.

In February 1999, while serving as the manager of a service station, Applicant took about \$3,000.00 from the business's receipts to cover her rent and some bills that were due immediately. Ex. 2 at 6. She believed she would receive her federal income tax refund within a few days and it would allow her to repay the deficiency. *Id.* Applicant's supervisor audited the service station accounts and discovered the missing funds before Applicant repaid them. *Id.* at 7. He fired Applicant. *Id.* She repaid the funds from her tax refund received a few days later. She was not criminally charged with the offense. *Id.*

Applicant subsequently worked as a data entry technician for a temporary services company and as a cashier at a service station. Ex. 1 at 2. In 2000 she began working for a defense contractor as a customer service representative. *Id.* Applicant has worked there for over four years, and has received three raises during that time. Tr. at 22-23. Her co-workers praise her honesty, dependability, and dedication. Exs. A, B, and C.

Applicant admits she is delinquent on some debts. Tr. at 23. She has paid the automobile loan listed as ¶ 1.1 of the SOR. Tr. at 31; Ex. D. She has also paid the credit card debt listed at ¶ 1.h of the SOR. Tr. at 29; Ex. 4 at 1. Applicant questions some of the debts listed on the credit reports; however, she has not inquired into the debts because she is not in a position to take action to resolve them. Tr. at 33. She admits the remaining unpaid obligations, totaling over \$7,000.00.

Applicant's current income does not provide means to pay the delinquent debts. Tr. at 37-38. She intends to use funds from her federal income tax refund to pay for bankruptcy proceedings under Chapter 13 (Wage Earner's Plan) to resolve her unpaid debts. Tr. at 40.

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 guidelines at issue in this case are:

Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Personal Conduct - Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard 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." 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 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 considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Financial Considerations

The Regulation provides that financial considerations may affect an individual's suitability for a security clearance, because "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." DoD 5200.2-R, Appendix 8, Financial Considerations, sets out several disqualifying conditions that could raise security concerns.

Disqualifying condition (DC) 1 arises where an applicant has "a history of not meeting financial obligations." Similarly, under DC 3, "inability or unwillingness to satisfy debts," may raise security concerns. Applicant's admissions and the available information in the file indicate Applicant has a history of not meeting her financial obligations and an inability to satisfy her debts. Applicant's record of financial difficulties began well before she began working for her present employer. Although she has worked there for over four years, she is still unable to resolve her debts. I conclude DC 1 and DC 3 apply.

Under DC 2 in the Regulation, it may be disqualifying where there is evidence of "deceptive or illegal financial

practices such as embezzlement, employee theft, check fraud, ... and other intentional financial breaches of trust." Applicant admitted two instances of embezzlement or employee theft, listed as ¶¶ 1.n and 1.o of the SOR. She also indicated the debt listed as ¶ 1.f of the SOR related to a bad check. I conclude DC 2 applies.

The regulation also sets out conditions that might mitigate the security concerns arising from financial difficulties. Mitigating condition (MC) 1 arises when "the behavior was not recent." As noted above, most of the delinquent debts at issue arose many years ago. However, the pattern of financial irresponsibility continues from that time until the present. I conclude Applicant's pattern of behavior regarding her unpaid debts was recent, thus MC 1 does not apply.

Mitigating condition 2 applies where a financial problem "was an isolated incident." The available evidence indicates Applicant had problems paying her debts in 1998 and the problems continued until the date of the hearing. I conclude Applicant's financial problems were not an isolated incident, therefore MC 2 does not apply.

Mitigating condition 3 concerns situations where "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)." Applicant indicated several of the delinquent debts listed on the SOR were medical bills. However, the available information does not indicate they were the result of a medical emergency. Also, several of the debts are in fairly modest amounts, but Applicant has not made an effort to pay them even though she has been employed in her current position for more than four years. I am not persuaded that the delinquent accounts arose from conditions beyond her control, therefore I find this mitigating condition does not apply.

Mitigating condition 4 arises where, "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." Similarly, mitigating condition 6 applies where, "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." There is no evidence Applicant received credit counseling. The evidence indicates Applicant paid the debts listed in ¶¶ 1.h and 1.l of the SOR. Otherwise, she has not made an effort to resolve unpaid debts. I conclude MC 4 does not apply.

I considered the all the facts and circumstances surrounding this case. Applicant has demonstrated a long-term pattern of financial irresponsibility. She continues to experience financial hardship. Balancing all the information, I conclude Applicant has not mitigated the security concerns arising from her lack of financial responsibility.

Personal Conduct

Under the Regulation, personal conduct demonstrating "questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations" may indicate that an individual may not properly safeguard classified information. The Regulation lists several potentially disqualifying conditions relating to personal conduct.

Disqualifying condition 1 provides that "reliable information" tending to show Applicant exercised questionable judgment or was unreliable may raise security concerns. Applicant admits that on two separate occasions she used her position of trust to wrongfully take money from her employer. I conclude this is reliable, unfavorable information, and that it does show questionable judgment and unreliability. Therefore, DC 1 applies.

The Regulation provides that security concerns raised by personal conduct may be mitigated under certain circumstances. Mitigating condition 1 arises when "the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability." I considered carefully the information which formed the basis for the disqualifying conditions, above, and find that it was substantiated and pertinent to a determination of Applicant's judgment and reliability. Therefore MC 1 does not apply.

I considered carefully the other potentially mitigating conditions. I find none of them apply in this case.

It is also important to consider other factors discussed in DoD Regulation 5200.2-R, Appendix 8, including: (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.

Applicant was a mature adult during the time in question. Her thefts from her employer were especially serious, because she violated a position of special trust, and because she did so on more than one occasion. With regard to Applicant's failure to keep her financial affairs in order, no single omission is a serious matter standing alone. However, the cumulative impact of her continuing failure to pay her debts reveals a long-term problem that has yet to be wholly resolved. At the same time, I recognize that Applicant has worked for her present employer for over four years without incident. I considered all the available evidence in light of the "whole person" concept discussed above and conclude Applicant has not mitigated the security concerns arising from her inability to fulfill her financial obligations or her personal conduct.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, 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: 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

Paragraph 2, 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 interests of national security to grant Applicant's eligibility for assignment to sensitive duties. Eligibility is denied.

Michael J. Breslin
Administrative Judge