

DATE: June 30, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 04-11112

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has approximately \$23,717 in delinquent debt. In January 2005, she enrolled in a debt repayment program but was released from the plan in November 2005 after she missed two payments. Although she has recently entered into repayment plans with four of her creditors, it is too soon to conclude that she will be able to make consistent payments towards these plans. She has taken no action to resolve other debts. 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 CASE

On November 7, 2002, 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 August 11, 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.

In a sworn statement dated September 29, 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 12, 2006. The hearing was conducted on that date. The government submitted Government Exhibits (Gov Ex) 1-5 which were admitted into the record without objection. Applicant testified on her own behalf, and submitted Applicant Exhibit (AE) A which was admitted into the record without objection. The record was held open until April 26, 2006. Applicant timely submitted a 10 page exhibit that was marked as AE B and admitted without objection. DOHA received the hearing transcript (Tr.) on May 3, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits to all the SOR allegations. 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 31 year old woman employed as an information technology coordinator with a Department of Defense contractor who is seeking a position of public trust. ⁽²⁾⁽³⁾ She has worked for the same employer for the past ten years. She is married and has two children. At the time of the hearing, she was expecting her third child. She was scheduled to give birth in May. ⁽⁴⁾

On November 7, 2002, Applicant completed a Questionnaire for Public Trust Position (SF 85-P). ⁽⁵⁾ Her background investigation revealed she has 13 delinquent accounts with a total approximate balance of \$23,717. ⁽⁶⁾ The accounts included a \$352 store credit card account which was charged off in September 1996 (SOR ¶ 1.a); a \$1,344 women's fashion store credit card account which was turned over for collection in September 1998 (SOR ¶ 1.b); a \$2,103 balance owed after an automobile repossession in 1998 (SOR ¶ 1.c); a \$104 telephone account turned over for collection in March 1999 (SOR ¶ 1.d); a \$2,302 credit card account placed for collection in November 2002 (SOR ¶ 1.e); \$839 related to five collection accounts from a hospital (SOR ¶¶ 1.f, 1.g, 1.h, 1.i and 1.k); a \$9,910 account related to an automobile repossession, charged off in December 2004 (SOR ¶ 1.j); a \$1,055 department store credit card account placed for collection (SOR ¶ 1.l); and a \$5,654 student loan account placed for collection (SOR ¶ 1.m).

The current status of the delinquent debts are:

SOR Paragraph	Debt	Status	Record
1.a	\$352 department store account charged off in September 1996.	Initially unable to locate/ intends to pay \$25 a month/ made \$25 payment April 15, 2006.	Tr. at 15-17; Gov Ex 3 at 4; Answer to SOR; AE A at 3; AE B at 9-10.
1.b	\$1,344 women's fashion store credit card account, placed for collection September 1998.	Unpaid. Intends to pay \$25 a month/made \$25 payment April 15, 2006.	Tr. at 17-19; Gov Ex 3 at 2; Gov Ex 4; Answer to SOR; AE A at 1; AE B at 9-10.
1.c	\$2,103 balance from automobile repossession in 1998.	Unpaid/initially on debt repayment plan/intends to pay \$100/month.	Tr. at 19-21; Gov Ex 3 at 2; Gov Ex 4; Answer to SOR; AE A at 1.
1.d	\$104 telephone account placed for collection in arch 1999.	Unpaid. Unable to locate creditor/debt is 7-10 years old.	Tr. at 21-22; Gov Ex 3 at 5; Answer to SOR; AE A at 3; AE B at 2.
1.e	\$2,302 credit card account, placed for collection in November 2002.	Unpaid.. Unable to locate creditor/debt is 7-10 years old.	Tr. at 22-23; Gov EX 3 at 4; Gov Ex 4; Answer to SOR; AE A at 2.
1.f, 1.g, 1.h, 1.i, 1.k	Collection accounts for medical bills, total balance \$839.	Consolidated accounts. Intends to pay \$75 a month/made \$75 payment on 4-20-06.	Tr. at 23-24; Gov Ex 3 at 2; Gov Ex 4-5; Answer to SOR; AE A at 2; AE B at 2, 8.
1.j	\$9,910 balance from an automobile repossession, charged off in December 2004.	Unpaid. No action taken.	Tr. at 24-27; Gov Ex 3 at 4; Gov Ex 5; Answer to SOR; AE A at 3.
1.l	\$1,055 department store credit card account placed for collection.	Unpaid/unable to locate creditor/debt 7-10 years old.	Tr. at 27; Gov Ex 3 at 3; Gov Ex 4; Answer to SOR; AE A at 2.
1.m	\$5,654 student loan collection account.	Unpaid/unable to pay lump sum/ expects garnishment.	Tr. at 27-28; Gov Ex 3 at 3; Gov Ex 4; Answer to SOR, AE A at 2.

Applicant admits she has not always been responsible with her finances.⁽⁷⁾ She incurred several delinquent credit cards while in college (SOR ¶¶ 1.a, 1.b, 1.e, and 1.i). She intends to pay her delinquent debt. She and her husband married in 1996. Her husband separated from the United States Army in 1997. He had difficulty finding employment. He worked jobs that did not pay well for a few years. He found suitable employment in 1998.⁽⁸⁾ Their financial difficulties when they were first married prevented Applicant from paying on her college credit card accounts.

Other factors prevented the repayment of their delinquent bills. Their house payment increased due to their credit history. In 2004/2005, Applicant was diagnosed with basal cell skin cancer. She underwent two outpatient surgeries. During this period, she was unable to focus on her finances.⁽⁹⁾ During her current pregnancy, her husband has been unable to work as much overtime as he usually does since he takes care of the children when she is feeling ill.⁽¹⁰⁾

In January 2005, Applicant and her husband enrolled in a repayment plan with a credit counseling agency.⁽¹¹⁾ Around November 2005, the agency cancelled the plan since they missed the September and October 2005 payments.⁽¹²⁾ She claims that during this time, she was pregnant and not feeling well and did not focus on her finances.⁽¹³⁾

Applicant earns approximately \$40,000/year. Her husband earns approximately \$30,000/year. Their combined income is \$70,000/year.⁽¹⁴⁾ On June 16, 2004, she filled out a personal financial statement. Based on this worksheet, she and her husband have \$868 remaining each month after expenses.⁽¹⁵⁾ They have established a budget which they intend to follow over the next several months in preparation for her maternity leave. She will be on maternity leave eight weeks and will receive only 50% of her pay while she is on maternity leave.⁽¹⁶⁾ They have no active credit card accounts.⁽¹⁷⁾ A few months prior to hearing, she sought financial counseling through an employee assistance program. The counselor advised her to pay off the debt that is in the credit report first. He advised some of the older debts are now legally unenforceable because of their age.⁽¹⁸⁾

Applicant submitted a copy of her performance report from June 2004 to June 2005. She either meets or exceeds standards.⁽¹⁹⁾

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."⁽²⁰⁾ 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."⁽²¹⁾

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."⁽²²⁾ The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.⁽²³⁾ The adjudicative guideline at issue in this case is:

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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security

concerns pertaining to this adjudicative guideline, is 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."⁽²⁴⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²⁵⁾ 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.⁽²⁶⁾

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.⁽²⁷⁾ 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.⁽²⁸⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽²⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³⁰⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽³¹⁾

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.

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*), 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 1996. She and her husband have 13 delinquent debts with an approximate total balance of \$23,717.

I considered the Financial Considerations Mitigating Conditions (FC MC). Most of Applicant's delinquent debts remain unpaid. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*). I cannot apply FC MC E2.A6.1.3.2 (*The behavior was isolated*), since Applicant has numerous delinquent accounts including two automobile repossessions.

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)*) is not applicable. Although Applicant states her finances were adversely affected by her husband's inability to find suitable employment when he first separated from the Army, her pregnancy, and her diagnosis of basal cell carcinoma, she failed to show what impact this had on her ability to manage her finances. Her financial problems appear to be from a lack of planning and focus rather than from circumstances that were not within her ability to control. Therefore, I cannot apply FC MC E2.A6.1.3.3.

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*). Although Applicant has attended financial counseling and was enrolled in a debt repayment program for a period of eight months, she was dis-enrolled from the

program when she missed two monthly payments. She and her husband have recently begun to make payments towards seven of her delinquent accounts (SOR ¶¶ 1a, 1.b, 1.c, 1.f, 1.g, 1.h, 1.i, and 1.k). All other delinquent accounts remain unresolved (SOR ¶¶ 1.d, 1.e, 1.j, 1.l and 1.m). It is too soon to conclude she will be able to make timely payments on the debts she is paying considering her past financial history, the anticipated 50% reduction in her income, and her recent default on her debt repayment plan.

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 taken steps to pay off some of her accounts, it is too soon to determine she will be able to follow through on her intentions. Most of these debts have been delinquent for years. I cannot conclude she made a good-faith effort to resolve her debts.

Although she has taken the initial steps towards resolving her financial situation, it is too soon to conclude that Applicant's financial situation is under control. She has failed to mitigate the security concern under Guideline F. Guideline F is decided against Applicant.

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. I am persuaded by the totality of the evidence that Applicant failed to mitigate the trustworthiness concerns regarding Guideline F based on her financial history and delayed action towards resolving her delinquent accounts. In fairness to Applicant, this decision should not be construed as a determination that she cannot or will not attain a state of true reform and rehabilitation necessary to justify the award of a trustworthiness determination. To the contrary, her mitigating evidence suggests certain attempts at paying her past due obligations. Should Applicant be afforded an opportunity to reapply for a security clearance in the future she may well demonstrate persuasive evidence of trustworthiness. Based on the evidence in the record, 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

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. Tr. at 4-5; Gov Ex 1.
3. Gov Ex 1 and 2.
4. Tr. at 13, 29, and 34.
5. Gov Ex 1.
6. Gov Ex 3, 4 and 5.
7. Answer to SOR.
8. Tr. at 13-14.
9. AE A; Tr. at 39-40; 50.
10. Tr. at 40-41; AE A.
11. Gov Ex 3.
12. Tr. at 35-36.
13. Tr. at 37.
14. Tr. at 35.
15. Gov Ex 2 at 7.

16. *Id.*; AE A at 5-7.

17. Tr. at 32.

18. Tr. at 30-31.

19. AE B at 3-7.

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

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

22. DoD 5200.2-R, ¶ C6.1.1.1.

23. *Id.* at Appendix 8.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at ¶ C8.2.1.

28. Directive , ¶ E3.1.14.

29. *Id.* at ¶ E3.1.15.

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

31. Directive, ¶ E2.2.2.