

DATE: September 29, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 05-07702

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Melvin Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 49 years old and has worked for a federal contractor since 2004. She lost her high paying job in January 2002, and had numerous credit card debts, retail store debts, and other debts that became delinquent. She had been previously making payments on the debts, but many were minimum payments. She started gambling when casinos opened in her state in 1999. She continued to gamble despite losing her job and not having money to pay her bills or to hire an attorney to file for bankruptcy. Applicant failed to mitigate the trustworthiness concerns based on financial considerations and personal conduct. Eligibility for assignment to sensitive positions is denied.

STATEMENT OF THE CASE

On March 21, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with national security to grant her eligibility for assignment to information systems positions designated ADP I/II/III. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges trustworthiness concerns under Guideline F, financial considerations and Guideline E, personal conduct.

Applicant answered the SOR in writing on May 11, 2006, and elected to have a hearing before an administrative judge. In her answer, Applicant admitted all of the allegations under Guidelines F and E, but noted some discrepancies on dates. The case was assigned to me on July 6, 2006. A notice of hearing was issued on August 2, 2006, scheduling the hearing for August 22, 2006. I conducted the hearing as scheduled to consider whether it is clearly consistent with national security to grant her eligibility for assignment to information systems positions designated ADP I/II/III. The Government offered ten exhibits for admission in the record and were marked as Government Exhibits (GE) 1-10. The exhibits were admitted into evidence without objection. Applicant testified on her own behalf, and offered four exhibits for admission into the record. They were marked as Applicant's Exhibits 1-4 and were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 1, 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 testimony, I make the following findings of fact:

Applicant is 49 years old and has worked as a claims processor for a defense contractor since 2004. She works forty hours a week and earns approximately \$14.00 an hour. In the past she was employed in a high paying job as a consultant. In late 2001, she was on medical leave and was only receiving 60% of her wages. She stated, "I had already fallen slightly behind in my regular monthly obligations."⁽²⁾ Shortly after returning to work on January 30, 2002, she lost her job and was unemployed until April 2004. During her unemployment period she worked temporary jobs, one lasting six months and others ranging from a couple of weeks to day jobs. None of the temporary jobs paid her the amount of money she had been accustomed to. When she was employed full time she was able to maintain payments on all of her bills. However, when she lost her job she was unable to maintain payments on her debts. Applicant was not paying off the balance on her debts each month, but was rather making minimum payments and sometimes more on some debts.⁽³⁾ At different points she might pay off one debt, while maintaining balances on others. She maintained a substantial amount of revolving credit card debt that incurred finance charges. She applied for unemployment compensation and received 31% of what had been her income.⁽⁴⁾ In 2002 she withdrew funds from her 401k pension plan and also her 403b pension plan. These actions incurred tax consequences, in that she owed taxes on the pension monies she withdrew and penalties. She claimed she used the money from her pension plans to pay down her debts, but offered no documentation to support her claim. She listed her adjusted gross income for 2002 as \$83,295, which included the cash withdrawal of her pension funds(\$38,052), unemployment compensation (\$22,320), wages (\$10, 949) and gambling winnings (\$11,974). She also began using certain credit cards to pay other credit cards and found herself deeper in debt.

Applicant has ten revolving credit card delinquent debts.⁽⁵⁾ One of these credit cards was used to finance her daughter's wedding in 2001.⁽⁶⁾ She has five retail credit card delinquent debts.⁽⁷⁾ Her debts include six checks she wrote on an account that had insufficient funds.⁽⁸⁾ Applicant claimed she believed she had money in the account to cover the checks, but she did not. She has one delinquent account for bank fees owed for writing the insufficient fund checks.⁽⁹⁾ She also has a telephone bill debt and a satellite TV debt that she has not paid.⁽¹⁰⁾ One delinquency is for a car loan that Applicant co-signed with her daughter who then defaulted on the loan.⁽¹¹⁾ The amount owed on all of these debts has increased and continues to do so because they remain delinquent and she continues to incur late fees and interest. In addition to the delinquent debts listed, she owes on a car she leased that she returned to the dealer because she was unable to make the payments.⁽¹²⁾ Applicant has not made any payments on any of these debts.

Four of the bad checks Applicant wrote were written to a casino and were to obtain cash. Applicant admits she gambles and in 2002 she declared on her tax return \$11,974 in gambling winnings and \$10,074 in gambling losses. Those amounts include what she had receipts for.⁽¹³⁾ This was the same year she was lost her job and was unemployed. She does not believe she has a gambling problem. She claimed her gambling slowed down after 2002. She approximates that she had about \$1,800 in winnings in 2003 and about the same in losses. She does not know what her winnings and losses were in 2004, but estimates she gambled about one or twice a month. She would go to dinner at a casino and play the slots "a little bit."⁽¹⁴⁾ In 2005, she continued to gamble, but probably less. In 2003 she realized she could not make money gambling.⁽¹⁵⁾ She started gambling when casinos opened in her state in 1999. She tries to limit herself. She continued to gamble in 2006, and believed it was about once a month. She claimed she did not gamble in large amounts, usually \$40-60 on average. She views gambling as a form of entertainment, the same as going to the movies.⁽¹⁶⁾ She continues to gamble if she "can squeeze it out."⁽¹⁷⁾ She claimed she would have put the money towards her debts if it would have made a difference. With regard to her attitude towards her delinquent debts and her gambling she stated, "I would say on occasion I spend \$40 hoping I could turn it into \$200 so I could pay my utility company when my utility company refused to accept \$40."⁽¹⁸⁾ She went on to say "and on occasion I have been able to do that. It is a risk of the \$40, but when they won't accept \$40 it is sometimes a risk I have to take."⁽¹⁹⁾

During 2004, Applicant's brother came to live with her because he had serious medical needs and required assistance. She was his only family member that could help care for him. He paid for his medical expenses, but had out of pocket expenses that he could not always meet. Applicant would occasionally assist him with these expenses that would range from no money to up to \$100 a month depending on his needs. [\(20\)](#)

In her 2004 statement, Applicant claimed she was going to file for bankruptcy. She did not because she said she could not afford the retainer fee required to hire an attorney. She had saved enough money at one point, but then she had car trouble and had to use the money to get a different car. She provided a letter from an attorney dated August 21, 2006, stating he has accepted her bankruptcy case. She has paid him the initial retainer fee of \$300 and will owe him another \$300 before he files. It is unclear when that will be. Applicant would like to keep her house, so she is hoping to file under Chapter 13, but realizes that may not be a possibility. She has two mortgages on her house, with approximately \$50,000 in equity, and she believes the house would sell for approximately \$135,000-140,000.

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." [\(21\)](#) 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." [\(22\)](#)

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." [\(23\)](#) The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. [\(24\)](#) The adjudicative guidelines at issue in this case are:

Financial Considerations-a security concern exists when a person has significant delinquent debts. 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 information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person 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." [\(25\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(26\)](#) 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. [\(27\)](#)

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.⁽²⁸⁾ In security clearance cases, the Government must initially present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.⁽²⁹⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽³⁰⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³¹⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽³²⁾ The same burdens of proof apply to trustworthiness determinations in ADP cases.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I have considered the government's evidence for disqualification under Guidelines F and E .

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 1 (*a history of not meeting financial obligations*), FC DC 3 (*inability or unwillingness to satisfy debts*), and FC DC 5 (*financial problems that are linked to gambling, drug abuse, alcoholism or other issues of security concern*) apply in this case. Applicant accumulated a large amount of delinquent debts and continues to owe creditors. These debts are now a couple of years old. Despite her claims of not having the money to pay her debts, she continued to gamble during her period of unemployment and later after she was employed, instead of saving her money to put towards repaying her debts.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 1 (*the behavior was not recent*), FC MC 2 (*it was an isolated incident*), 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)*), 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*), and FC MC 6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant's debts are recent, because they remain unpaid and because there are so many they can not be considered isolated. Therefore, FC MC 1 and FC MC 2 do not apply. It is apparent that Applicant was living very close to the edge financially in 2002. Although she was making payments on her credit cards and paying her bills on time, she was only making minimum payments on most of her credit cards and would occasionally make larger payments on certain debts. The fact remains she was not paying the total balance due on her revolving credit each month. She had a substantial amount of debt, although it did not become delinquent until she lost her job. She was having difficulty paying all of her bills prior to then, when she was on medical leave and was receiving 60% of her salary. When she lost her job, she could not keep up with all of her debt. Losing her job was beyond her control and she did look for work during her period of unemployment. However, the way Applicant structured her financial life was within her control. Although she had been receiving a substantial salary, it is apparent she was still spending more than she could afford. During this time she was also gambling. Her declared winnings and losses were in the thousands of dollars. It is difficult to comprehend how she could be gambling this amount of money when she did not have a job and had astronomical delinquent debts. I have also considered that Applicant is assisting in caring for her sick brother. Although she occasionally helps him out, he did not come to live with her until after her financial problems arose. He may contribute marginally to her ability to repay her debts. Therefore, I find FC MC 3 applies because she had no control over losing her job and her brother's medical issues.

It is equally important to consider how Applicant handled her finances after the loss of her job. She claimed she could not afford to file for bankruptcy, but she could afford to spend \$40-60 a couple of times a month to gamble. If Applicant had saved this money, vice gambling it, she might have had enough to file for bankruptcy. Therefore even though her employment issue was beyond her control, her spending habits and gambling habits were within her control. She owes between \$150,000 - \$180,000 in credit card and other debts. Even with a large salary it is apparent she was living beyond her means. She financed \$12,000 for a wedding, money she obviously did not have and has yet to repay. These types of actions reflect irresponsible financial behavior.

Applicant offered no evidence that she is receiving any type of financial counseling, nor are there clear indications that

the problem is being resolved. Although she has hired an attorney and plans to file for bankruptcy, that may eventually resolve her delinquencies, but it fails to show how she used good judgment and is reliable in handling her finances. The evidence is to the contrary. I find FC MC 4 does not apply. I also find FC MC 6 does not apply because Applicant has not shown a good faith effort to resolve her debts. She claimed two years ago she was going to file for bankruptcy and did not. Her claim she did not have the money is disingenuous when she admits she was able to gamble a couple of times a month.

I have considered Personal Conduct Disqualifying Condition (PC DC) 4 (*personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or pressure*) applies. Applicant has a history of gambling and although she does not believe she has a problem, her gambling has affected her ability to handle her finances. This conduct could affect Applicant community standing and personal and professional reputation making her susceptible to blackmail. Her conduct also involves questionable judgment.

I have considered all the Personal Conduct Mitigating Conditions (PC MC) and especially considered PC MC 5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or pressure*) and find it does not apply. Applicant continues to gamble, despite her financial difficulty. She has not resolved her financial problems and has a questionable and troublesome attitude about her gambling and willingness to use it as a means to attempt to pay her bills. She seems to believe that gambling away money in an attempt to score the big win to pay a debt is a legitimate and responsible way to attempt to pay an unpaid bill.

The Whole Person

In all adjudications, the protection of sensitive information is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for access to sensitive information. 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 considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered that Applicant was unexpectedly and for a lengthy period unemployed. I considered she took in her sick brother and is helping him. I also considered the large amount of credit card debt that she had before she lost her job, even though she was able to maintain the payments. I also considered the checks she wrote and did not pay and her attitude toward her gambling. I have also considered Applicant's plan to file for bankruptcy. Considering all of the facts in the case, I find Applicant has failed to mitigate the trustworthiness concerns raised by her finances and personal conduct. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive positions. Accordingly, Guideline F and E are decided against 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 Financial Considerations (Guideline F): AGAINST APPLICANT

Subparagraph 1.a-1.bb Against Applicant

Paragraph 2 Personal Conduct (Guideline E): AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with national security to

grant Applicant eligibility for assignment to sensitive positions.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Tr. 21.
3. Tr. 73.
4. A rough estimate of her gross income prior to be terminated from employment was approximately \$75,000.
5. These include VISA, Mastercard, and American Express accounts listed in SOR ¶¶ 1.c, 1.d, 1.f, 1.g, 1.h, 1.i, 1.n, 1. q, 1.u, and 1.w. The balance owed on these debts range from a low on one debt (1.h) of \$4,684, to a high debt (1.g) of \$27,936. The cumulative debt total of these debts are \$138,829.
6. The amount was \$12,000.
7. SOR ¶¶ 1.a, 1.b, 1.p, 1.t, 1aa. The cumulative debt on these accounts is \$6,640.
8. SOR ¶¶ 1.k, 1.l, 1.m, 1.r., 1.y, and 1.aa. The cumulative debt on these accounts is \$1,937.
9. SOR ¶ 1.z. The debt is \$768.
10. SOR ¶¶ 1.v and 1.x. The total of the debt is \$352.
11. SOR ¶ 1.e. The amount of the debt is \$16,680.
12. Applicant believes SOR ¶¶ 1.j and 1.o are a duplicate, but offered no supporting documentation..
13. AE B.
14. Tr. 40.
15. *Id.*
16. Tr. 70.
17. Tr. 71.
18. *Id.*
19. *Id.*
20. Tr. 42-44.
21. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
22. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
23. DoD 5200.2-R, ¶ C6.1.1.1.
24. *Id.* at Appendix 8.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at ¶ C8.2.1.

29. Directive , ¶ E3.1.14.

30. *Id.* at ¶ E3.1.15.

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

32. Directive, ¶ E2.2.2.