

DATE: March 19, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 05-08748

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 37 years old, never married, and owes \$91,000 in delinquent debt he incurred at least since 1999. While unemployed for several periods of time between 1998 and 2004, he continued to spend money while having no income. He was arrested in March 2003 for driving while intoxicated. Applicant mitigated the alcohol consumption trustworthiness concern, but did not mitigate the financial consideration trustworthiness concern. Eligibility for an ADP I/II/III position is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trust for Applicant⁽¹⁾. On March 20, 2006, DOHA issued a Statement of Reasons⁽²⁾ (SOR) detailing the basis for its decision-trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on April 14, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on May 31, 2006. On February 6, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness determination for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on February 14, 2007.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated as findings of fact. Applicant denied the allegations in subparagraphs 1.b. and 1.d. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 37 years old, never married, and has had several jobs over the past 16 years since he dropped out of college after two years. Since May 2004, he has worked for a defense contractor in the health care business. Currently, he

makes \$40,000 as a trainer for customers of his company. He rents a room in his girlfriend's condominium for \$600 per month. He pays his brother \$150 monthly on the purchase of a used car. His monthly take home pay is \$1,913. His net monthly income is \$26, according to his personal financial statement he submitted at the hearing. He testified he usually has \$400 remaining monthly from which he pays some older bills, using about \$200 to \$300 of that remainder for that purpose. He also saves money in a 401K plan and puts money in the company's stock purchase plan, but does not know the current amount of those investments. (Tr. 34, 35, 46, 50, 52; Exhibits 1, C and D)

Applicant had several periods of unemployment. He was unemployed from September 1998 to February 1999, July 2000 to October 2000, April 2002 to June 2002, and October 2003 to May 2004. During those periods of unemployment, he charged his rent, utilities, and other expenses to at least two credit cards. His May 17, 2004, security clearance application (SCA) shows he made many trips to Mexico between September 1998 and December 2003, to Canada in October 2002, and to Australia from December 1999 to January 2000. Some of these trips were made during periods of unemployment, as well as while employed. All trips required Applicant to use money he could have saved or used to pay his delinquent debts. The 11 SOR allegations total \$91,000 in delinquent debts. Applicant claims the actual debt owed, because of duplications on the credit reports when the debts were bought and sold among various creditors and collectors, is about \$40,000. He offered no documentation or proof of his assertion. Since his current employment started in May 2004, he has not paid any money toward resolving these delinquent debts, as he admitted at the hearing. He is paying his ordinary monthly expenses from his current income. He has one credit card he uses for business travel, but it has a low credit limit of \$2,100 and a high interest rate. From 1999 to 2001, Applicant opened numerous credit accounts offered by mail to him. He paid some of those debts, as the credit reports show, but the SOR allegations are the remaining delinquent debts. (Tr. 22, 23, 28-30, 36, 39-44, 59, 71, 73, 74; Exhibits 1-4)

Applicant's unpaid debts are:

1. A credit card for \$9,295. (Tr. 31, 32, 62, 63; Exhibits 2-4)
2. A collector for unknown accounts totaling \$14,044. (Tr. 31, 64; Exhibits 2-4)
3. A bank debt on an auto loan. The car was stolen, and the loan balance of \$3,990 is owed. The insurance payment would not cover the remaining loan balance. (Tr. 65; Exhibits 2-4)
4. A debt collector is owed \$5,553. Applicant is not certain what this debt is. (Tr. 65 Exhibits 2-4)
5. A debt collector is owed \$13,387.48 from a department store debt it purchased. (Tr. 66-68; Exhibits 2-4)
6. A bank debt of \$4,997 is owed. Applicant denies knowledge of the origin of this debt. (Tr. 68; Exhibits 2-4)
7. A credit card on which he charged his monthly expenses when unemployed. The debt is now \$7,257 that remains unpaid. (Tr. 31, 71; Exhibits 2-4)
8. \$15,700 owed to an automobile manufacturer for a repossessed car that Applicant could not pay for after he lost one job. (Tr. 75; Exhibits 2-4)
9. A credit card debt incurred when Applicant charged his monthly expenses during a period of unemployment. The amount owed is \$3,967.31. (Tr. 73; Exhibits 2-4)
10. A bank credit card debt in the amount of \$6,292.58. Applicant is not certain about the origin of this debt. (Tr. 76; Exhibits 2-4)
11. A law firm is owed \$7,009.29 as the collector for another bank credit card debt. (Tr. 76; Exhibits 2-4)

Applicant attended a free credit counseling course in the spring of 2005, but he does not remember the name of the course presenter. Later, he used the internet to find budget planning information. His monthly budget he submitted at the hearing is based on that information. Applicant also consulted with bankruptcy attorneys whose fee is \$2,500 to file

bankruptcy for him. He does not have that amount of money so he has not filed bankruptcy. He claims he contacted various creditors about installment payment arrangements, but they wanted several hundred dollars as a down payment on such a plan, and he could not afford it, so he has done nothing beyond the initial contacts. He contacted the credit reporting agencies, but no action resulted from those contacts. Applicant did not focus on resolving his debt between the March 2006, SOR and the hearing because his debt is so large. Applicant claims a four-year statute of limitations on debt collection actions in the state in which he lived when he incurred these delinquent debts would protect him from collection action when the four year limit is reached in 2007, so he has done nothing about resolving his debts, relying on that information from an attorney he consulted but does not have the advice in writing. (Tr. 25, 33, 45, 69)

Applicant was arrested for driving while intoxicated on March 19, 2003, during one of his periods of unemployment. He went drinking with friends and was later stopped by the police for his driving. The charges were extreme driving under the influence over .15% blood alcohol content (BAC), driving under the influence with a BAC of more than .10%, alcohol or drugs toxic vapors or a combination of these conditions, and improper position and right turn violation. He was found guilty of the extreme driving charge, sentenced to 30 days in jail, but served only 10 days with 20 suspended. He was given 12 months of supervised probation, and fined approximately \$1,411. As of July 6, 2004, \$1,000 remained unpaid. Applicant claims to have paid that money, but had no documentary evidence of payment to offer at the hearing. The other charges were dismissed. Applicant's drivers license is being cleared in the state in which the arrest occurred, his home state, and his state of current residence. He has the original state's license with documents from his state of current residence that allow him to drive. In an alcohol assessment of August 2, 2006, Applicant was diagnosed not to have an alcohol problem. He also attended a victim effect panel in the state in which the driving incident occurred on November 25, 2003. (Tr. 17-21, 37, 56; Exhibits 5, A, B)

Applicant's 2005 and 2006 employee evaluations show he is an excellent employee. His customer comments sheets he submitted show he is patient with customers, courteous, and calm. He was promoted to a training position in 2006 by his employer based on his work productivity and competency. (Tr. 48-50; Exhibit E)

POLICIES

As Commander in Chief, 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). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. *See* Directive ¶ 2.3. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination." *See* Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's trustworthiness suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 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

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1*

Guideline G: Alcohol Consumption: *The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. E2.A7.1.1*

Positions designated as ADP I or ADP II are classified as sensitive positions. (Regulation ¶ AP10.2.1) ADP III positions are nonsensitive positions. (Regulation AP102.3.1) By memorandum dated November 19, 2004, the Deputy under Secretary of Defense for Counterintelligence and Security directed DOHA to resolve all contractor cases submitted for trustworthiness determinations, including ADP I, II, and III, under the Directive. Thus, even though they are nonsensitive positions, ADP III cases are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

"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." (Regulation ¶ C6.1.1.1) Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. (Regulation ¶ C8.2.1)

CONCLUSIONS

Financial Considerations Applicant has \$91,000 worth of delinquent debts alleged in the SOR. He incurred them since 1999, while unemployed and also employed. He opened and used numerous charge accounts, closed some and paid some off completely, but still has \$91,000 in debt remaining. His current income of \$40,000 does not allow him to repay this debt. Disqualifying Condition (DC) 1 (A history of not meeting financial obligations) and DC 3 (Inability or unwillingness to satisfy debts) apply. Applicant even traveled to other countries while incurring these debts, trips for which he spent money that could have been used to pay delinquent debts. Applicant has paid other debts over the years, and is paying his current monthly obligations, but has taken no action recently to repay these debts.

Applicant asserts his periods of unemployment over the years contributed to his delinquent debt load as he charged his

monthly expenses to his charge cards. Even those charges did not amount to \$91,000. His practice of opening charge accounts when offered through the mail shows he has no control over his spending habits. Applicant has been employed since May 2004 and has done nothing substantive to decrease his debts. He displayed at the hearing a lack of knowledge of his debts, his assets, and his spending habits. While his current computer budget may indicate a change in his spending control mechanisms, this action is insufficient to demonstrate sound financial practices. Therefore, I conclude no Mitigating Conditions (MC) apply in this case, and the trustworthiness concern is resolved against Applicant.

Alcohol Consumption Applicant was arrested for extreme intoxication in March 2003. He spent 10 days in jail. This alcohol related incident is the only one on his driving record. DC 1 (Alcohol-related incidents away from work, such as driving while under the influence of alcohol) applies.

This incident does not indicate a pattern, as a one-time incident (MC 1). It occurred four years ago, and there is no indication of a present problem, as shown by Applicant's alcohol assessment of August 2006. MC 2 applies, therefore. Viewing all the evidence, I conclude this trustworthiness concern for Applicant.

Whole Person Analysis

"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" trustworthiness decision. Directive E2.2.1. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." *Id.* In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive ¶ E2.2.1.

Applicant's financial history shows a serious lack of appreciation and control of his spending habits. I considered his over-spending, even while unemployed, and the repeated nature of his profligate spending at his age and maturity at the time, in determining that his action were not financially prudent. Especially significant is the size of his debt load, so large compared to his income, that he has a great potential for being subject to duress and coercion in the future. While he has only one credit card now, I was persuaded by his testimony about his past patterns of spending, his lack of knowledge of the origin of some of these debts, coupled with his lack of knowledge of his assets, and his overall lack of appreciation of the seriousness of his conduct, that he is vulnerable to engage in these spending habits again, and is not trustworthy. He did not exhibit any remorse or personal responsibility about spending so much money and not repaying it. Therefore, I conclude this "whole persons analysis" against Applicant.

The "whole person concept," as it applies to Applicant's alcohol use, results in a conclusion for him. He does not have an alcohol problem, based on consideration of all the factors, including his age at the time of the incident, the frequency and date of the incident, the opportunity for it to happen again, and the potential for coercion or duress. I conclude this trustworthiness concern for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a: For 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 grant or continue Applicant eligibility for a public trust position. His application for an ADP I/II/III position is denied.

Philip S. Howe

Administrative Judge

1. Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).

2. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.