

DATE: August 30, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 05-08843

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has approximately \$30,678 in delinquent debt. She has not contacted any of her creditors or taken any steps towards resolving her delinquent debts. Although she has been a reliable employee for the past 16 years, a concern remains under financial considerations. Applicant's eligibility for a assignment to a sensitive position is denied.

STATEMENT OF CASE

On August 16, 2004, 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 December 2, 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 January 28, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on May 24, 2006. A notice of hearing was issued on June 21, 2006, scheduling the hearing for July 10, 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. DOHA received the hearing transcript (Tr.) on July 27, 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 47-year-old woman employed as a customer service representative with a Department of Defense contractor who is seeking a position of public trust. She has worked for the same employer for the past 16 years.⁽²⁾ She is married and has no children.⁽³⁾ She has a Bachelor of Science Degree in Mathematics.⁽⁴⁾

On August 16, 2004, Applicant completed a Questionnaire for Public Trust Position (SF 85-P).⁽⁵⁾ Her background investigation revealed she has 16 delinquent accounts with a total approximate balance of \$30,678.⁽⁶⁾ The accounts included a \$1,811 credit card account which was placed for collection in October 1998 (SOR ¶ 1.a); a \$2,187 credit card account which was charged off as a bad debt in November 1999 (SOR ¶ 1.b); a \$2,183 account charged off as a bad debt in November 1999 (SOR ¶ 1.c); a \$5,912 mobile home account placed for collection in April 2000 (SOR ¶ 1.d); a \$638 credit card account placed for collection in May 2000 (SOR ¶ 1.e); a \$1,012 credit card account placed for collection in May 2000 (SOR ¶ 1.f); a \$1,121 credit card account placed for collection in April 2001 (SOR ¶ 1.g); a \$2,221 account which was charged off as a bad debt in October 2001 (SOR ¶ 1.h); a \$2,797 credit card account placed for collection in December 2001 (SOR ¶ 1.i); a \$1,001 carpet store account charged off in January 2002 (SOR ¶ 1.j); a \$2,180 credit card account charged off as a bad debt in January 2002 (SOR ¶ 1.k); a \$863 credit card account charged off in March 2002 (SOR ¶ 1.l); a \$5,260 credit card account charged off in December 2002 (SOR ¶ 1.m); a \$714 cell phone account charged off in February 2003 (SOR ¶ 1.n); a \$3,090 credit card account placed for collection in June 2003 (SOR ¶ 1.o); a \$1,034 account placed for collection in June 2003 (SOR ¶ 1.p); a \$394 credit card account charged off as a bad debt in July 2003 (SOR ¶ 1.q); and a \$623 credit card account charged off in October 2003 (SOR ¶ 1.r).

Applicant does not dispute any of the debts.⁽⁷⁾ The debts in SOR ¶¶ 1.b, 1.c, and 1.k are the same debt.⁽⁸⁾ She has made no attempts to resolve any of the delinquent debts.⁽⁹⁾

In 1999/2000, Applicant was overpaid \$6,969 due to a payroll error. As a result, \$310 was deducted from her paycheck for 13 pay periods. The debt was paid back in 2001. She claims this caused her to get behind on making payments on all of her other debts.⁽¹⁰⁾ During the same time, her mother was a hospice patient. Her mother's home care added an expense of approximately \$150 to \$200 a week. She and her three brothers shared this expense for approximately five months until her mother passed away in May 2001.⁽¹¹⁾

Applicant has not consulted a financial planner or attended any credit counseling.⁽¹²⁾ She currently takes home about \$1,600 a month. After expenses, she has approximately \$100 left over each month.⁽¹³⁾ Her husband repairs cars. He works approximately 36 hours a week and makes \$9.00 an hour.⁽¹⁴⁾ She is paying \$50 a month towards a federal tax debt. She owes the state approximately \$600 in state income taxes for this past tax year.⁽¹⁵⁾ She claims that her family is selling some land. Once she gets the money from the sale of the land, she is going to pay her state income taxes. She anticipates she will receive \$24,000 from the sale. She also intends to pay some of her debts.⁽¹⁶⁾ She did not provide any documentation pertaining to the sale of the land.

Applicant's co-workers think highly of her.⁽¹⁷⁾ Her manager finds her to be "a very dependable and resourceful customer service representative and team member."⁽¹⁸⁾ Her co-workers describe her as "hard-working," "dependable," "kind and caring."⁽¹⁹⁾ Her performance reports from 1997 to February 2005 indicate that she exceeds expectations.⁽²⁰⁾

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 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."⁽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⁾ 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.⁽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⁾

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) 1 (*a history of not meeting financial obligations*), and FC DC 3 (*inability or unwillingness to satisfy debts*) apply to Applicant's case. Applicant has a history of not meeting her financial obligations since 1998. Between 1998 and 2003, she has 16 delinquent debts with an approximate total balance of \$30,678. Since she only has \$100 left over each month after expenses, it is unlikely she will be able to resolve much of this debt.

I considered the Financial Considerations Mitigating Conditions (FC MC). Most of Applicant's delinquent debts remain unpaid. Therefore, I cannot apply FC MC 1 (*the behavior was not recent*). I cannot apply FC MC 2 (*it was an isolated incident*), due to her numerous delinquent accounts.

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)*) applies. When her mother became terminally ill, Applicant incurred additional expenses to pay for her mother's health care. Her finances were also adversely affected by the payroll error. While these events placed a burden on her finances, both of these events occurred in 2001. Since that time, she took no steps towards resolving her delinquent debts. As such, I give this mitigating condition little weight.

I cannot apply 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 under control*). Applicant has not attended financial counseling. Her delinquent debts remain outstanding. Although at the end of the hearing, Applicant indicated that she will soon receive \$24,000 which she will apply towards some of the debt, it is unlikely her financial problems will be resolved in the near future.

FC MC 6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) cannot be applied as well. Applicant has taken no action towards resolving her delinquent accounts. I cannot conclude she made a good-faith effort to resolve her debts.

Applicant 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 trustworthiness 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 trustworthiness 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 inaction towards resolving her delinquent accounts. 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
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

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 5, 18; Gov. Ex. 1.
3. Tr. at 23.
4. Tr. at 6.
5. Gov Ex 1.
6. Gov Ex 2, 3, 4 and 5.
7. Tr. at 32.
8. Tr. at 10.
9. Tr. at 19.

10. Tr. at 18-21, Answer to SOR, Statement of Overpayment E-mails, January 2001.
11. Tr. at 18-19.
12. Tr. at 32.
13. Tr. at 35.
14. Tr. at 33-34.
15. Tr. at 36.
16. Tr. at 36-37.
17. AE A.
18. AE A at 2.
19. AE A.
20. Answer to SOR, Performance Evaluations February 1997 to January 2005.
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.