

DATE: August 31, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 05-10061

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1998 and 2002, Applicant and her husband incurred approximately \$29,276 in delinquent debt. In March 2001, she separated from her husband. Neither party has filed for a legal separation or divorce. Although she claims her husband agreed to be responsible for the marital debts, she still is jointly responsible for the joint debts of the marriage. Her inaction towards resolving the delinquent debts of the marriage tends to show a lack of responsibility and remains a trustworthiness concern. Applicant's eligibility for a assignment to a sensitive position is denied.

STATEMENT OF CASE

On August 22, 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 15, 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 trustworthiness concerns under Guideline F, Financial Considerations.

In a sworn statement dated January 9, 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) 1-3 which were admitted into the record without objection. Applicant testified on her own behalf, and submitted no exhibits at the hearing. The record was held open until August 1. Applicant timely submitted two exhibits, Applicant Exhibits (AE) A-B, which were 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 the debt alleged in SOR ¶ 1.x and denies all remaining allegations. Applicant's admission is 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 34-year-old claims analyst with a Department of Defense contractor who is seeking a position of public trust. She has worked for the same employer for the past four years. She has graduated from business college.⁽²⁾

In November 1996, Applicant married. Two daughters were born of the marriage. They are currently ages eight and six.⁽³⁾ In March 2001, she separated from her husband due to his alcoholism and abusive treatment. She and her daughters moved to the state where her parents live. She and her husband had a verbal agreement that she would take care of the children's expenses and he would pay off the debts acquired during the marriage. He did not fulfill his part of the agreement.⁽⁴⁾ Several collection agencies mailed letters to Appellant after she had moved. She did not contact them because she was unable to pay the debts.⁽⁵⁾

On August 22, 2004, Applicant completed a Questionnaire for Public Trust Position (SF 85-P).⁽⁶⁾ In response to question 22b, she listed three delinquent accounts and indicated that she had approximately 20 delinquent accounts which were delinquent/written off. She stated that most of the debt was her husband's which he neglected to pay but admitted her name is on the accounts. She indicated she was unable to list all of the accounts since most had been transferred to collection agencies.⁽⁷⁾

A subsequent background investigation revealed that Applicant has 24 delinquent accounts with a total approximate balance of \$29,276.⁽⁸⁾ The accounts included a \$92 credit card account which was placed for collection in January 1998 (SOR ¶ 1.a); a \$850 gas station credit card account which was placed for collection in March 1998 (SOR ¶ 1.b); a \$961 account past due since April 1998 (SOR ¶ 1.c); a \$170 account placed for collection in April 1998 (SOR ¶ 1.d); a \$771 account placed for collection in May 1998 (SOR ¶ 1.e); a \$513 account placed for collection in May 1998 (SOR ¶ 1.f); a \$2,168 account placed for collection in September 1998 (SOR ¶ 1.g); a \$988 jewelry store account placed for collection in March 1999 (SOR ¶ 1.h); a \$1,047 account placed for collection in May 1999 (SOR ¶ 1.i); a \$7,642 automobile loan charged off in August 2000 (SOR ¶ 1.j); a \$578 credit card account placed for collection in August 2000 (SOR ¶ 1.k); a \$5,166 account placed for collection in September 2000 (SOR ¶ 1.l); a \$102 account placed for collection in October 2000 (SOR ¶ 1.m); a \$805 account charged off as a bad debt in November 2000 (SOR ¶ 1.n); a \$2,710 account charged off as a bad debt in November 2000 (SOR ¶ 1.o); a \$730 account placed for collection in December 2000 (SOR ¶ 1.p); a \$176 cable account placed for collection in December 2000 (SOR ¶ 1.q); a \$770 account placed for collection in December 2000 (SOR ¶ 1.r); a \$1,683 account placed for collection in December 2000 (SOR ¶ 1.s); a \$45 home heating oil account placed for collection in March 2001 (SOR ¶ 1.t); a \$236 unspecified medical account placed for collection in August 2001 (SOR ¶ 1.u); a \$595 unspecified medical account placed for collection in April 2002 (SOR ¶ 1.v); a \$408 ladies clothing store credit card account placed for collection in June 2002 (SOR ¶ 1.w); and a \$70 medical account placed for collection in May 2003 (SOR ¶ 1.x).

Applicant admits that these debts were joint debts incurred while she lived with her husband but only claims responsibility for the debt alleged in SOR ¶ 1.x. This was a \$70 medical bill that she incurred after moving away from her husband.⁽⁹⁾ This debt has not been paid. She thought the debt was covered by insurance and did not learn that it was not until she called the office.⁽¹⁰⁾ When asked why she did not pay this debt since she admits it was hers, she claims that she did not know how to get a hold of the creditor so she just did not do it.⁽¹¹⁾

No legal separation agreement or divorce proceeding has been initiated.⁽¹²⁾ Applicant filed an order for child support in order to receive medical benefits for her children but has never received child support from her husband.⁽¹³⁾ The last time she saw her husband was April 2005. His last contact with the children was by telephone in February 2006.⁽¹⁴⁾

Applicant and her daughters live in a house that is owned by her parents. She pays no rent. If needed, her parents help her out financially.⁽¹⁵⁾ Her take home pay is \$1,600 a month.⁽¹⁶⁾ She admits that she is financially over-extended on paper but her financial responsibilities are manageable on a day-to-day basis.⁽¹⁷⁾ Aside from the \$70 medical bill, she

has not incurred additional delinquent debt since separating from her husband. She has two open credit card accounts which have balances of \$200 and \$150. She makes monthly payments on these accounts.⁽¹⁸⁾ Her oldest daughter has special needs but is covered by state medical insurance.⁽¹⁹⁾

Applicant has not attended any credit counseling.⁽²⁰⁾ She admits that she would be unable to pay the delinquent debts and meet her current living expenses.⁽²¹⁾ She has not considered filing for divorce due to the expense.⁽²²⁾ She does not intend to resolve the delinquent debts.⁽²³⁾

Applicant has received several awards while employed with her current company. Several clients wrote favorable letters about the excellent service she provided them. Her performance reviews indicate that she meets and/or exceeds standards.⁽²⁴⁾

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."⁽²⁵⁾ 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."⁽²⁶⁾

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."⁽²⁷⁾ The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.⁽²⁸⁾ 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.

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."⁽²⁹⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽³⁰⁾ 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.⁽³¹⁾

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.⁽³²⁾ 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.⁽³³⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽³⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³⁵⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽³⁶⁾ The same rules apply to

trustworthiness determinations for access to sensitive positions.

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 with respect to SOR ¶¶ 1.a - 1.t, and 1.w - 1.x. I find for Applicant with respect to SOR ¶¶ 1.u and 1.v. Both of these allegations allege Applicant owes an "unspecified creditor" for a medical account. I find this pleading is too vague and fails to provide adequate notice with regard to the identity of the creditor.

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. Between 1998 and 2003, she and her husband incurred 24 delinquent accounts, an approximate total of \$29,276. Although her estranged husband agreed to be responsible for all marital debts, he did not pay the debts and she remains jointly liable for the debts. She is unable and unwilling to pay the debts.

I considered the Financial Considerations Mitigating Conditions (FC MC). Most of Applicant's delinquent debts remain unpaid and unresolved. 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 the 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. It is reasonable to conclude that Applicant's separation from her husband in March 2001 contributed to her financial problems. However, five years have passed since she and her children moved to another state. She could have pursued several options to deal with the delinquent marital debts but has chosen to ignore the situation. FC MC 3 applies, in part, but Applicant's inaction towards resolving the marital debts gives this mitigating condition less weight.

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. She does not intend to resolve the debts. Although Applicant's current financial situation appears to have improved, the issue of the old delinquent debt remains.

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. She has lived apart from her husband for over five years and was aware that he did not pay these delinquent debts. Collection agencies have contacted her at her new residence. She did nothing because she stated that she would be unable to resolve these delinquent debts. While her husband's failure to live up to the terms of their verbal agreement may seem unfair, she could have pursued several options rather than ignoring the situation. She could have pursued a legally binding separation agreement which outlined who was responsible for the debts and held her husband responsible for child support. She could have consulted with a financial credit counselor to discuss the possibility of repayment options or even bankruptcy. She did not even attempt to resolve the one debt which she admits is her responsibility. This was a \$70 debt which should have been one of the easier debts to resolve. I cannot conclude she made a good-faith effort to resolve her debts.

Applicant has failed to mitigate the trustworthiness 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 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.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

Subparagraph 1.s: Against Applicant

Subparagraph 1.t: Against Applicant

Subparagraph 1.u: For Applicant

Subparagraph 1.v: For Applicant

Subparagraph 1.w: Against Applicant

Subparagraph 1.x: 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 5-6, 29; Gov. Ex. 1.
3. Tr. at 14; Gov. Ex. 1.
4. Tr. at 13.
5. Tr. at 18.
6. Gov Ex 1.
7. Gov Ex 1, question 22b.
8. Gov Ex 2, 3, 4 and 5.
9. Tr. at 13, 22.
10. Tr. at 22.
11. Tr. at 29.
12. Tr. at 13-14.
13. Tr. at 15.
14. Tr. at 22.
15. Tr. at 14.
16. Tr. at 25.
17. Tr. at 36.
18. Tr. at 26.
19. Tr. at 24.
20. Tr. at 32.
21. Tr. at 26.

22. Tr. at 27.

23. Tr. at 28.

24. AE A.

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

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

27. DoD 5200.2-R, ¶ C6.1.1.1.

28. *Id.* at Appendix 8.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at ¶ C8.2.1.

33. Directive , ¶ E3.1.14.

34. *Id.* at ¶ E3.1.15.

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

36. Directive, ¶ E2.2.2.