

DATE: September 26, 2006

In re:

SSN: -----

Applicant for Trustworthiness Position

P Case No. 05-14913

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1999 and 2003, Applicant incurred approximately \$13,131 in delinquent debt. Although she had entered into a repayment program with a credit counselor in 2000, she did not continue with her repayment plan after moving to another state. At the time of the hearing, she had not taken steps to resolve her delinquent accounts. I find Applicant did not intentionally falsify her security clearance questionnaire. However, based on her past financial history, it is too soon to conclude her financial situation is under control. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On March 28, 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 February 8, 2006, DOHA issued 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, and Guideline E, Personal Conduct.

In a sworn statement dated April 13, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on June 16, 2006. A notice of hearing was issued on July 3, 2006, scheduling the hearing for July 24, 2006. The hearing was conducted on that date. The government submitted eight exhibits that were marked as Government Exhibits (Gov Ex) 1-8 and admitted without objection. Applicant testified on her own behalf and submitted three exhibits which were marked and admitted as Applicant Exhibits (AE) A-C. The record was held open until August 7, 2006. Applicant timely submitted four additional exhibits that were admitted without objection as AE D-G. DOHA received the hearing transcript (Tr.) on August 4, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits the allegations under Guideline F, ¶¶ 1.a, 1.b, 1.h, 1.k, 1.l - 1.r, but denies the allegations in ¶ 1.c - 1.g, 1.i, 1.j and Guideline E ¶ 2.a.⁽²⁾ 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 32 years old and is employed as a personnel care advocate with a Department of Defense contractor. She is seeking a position of public trust. She has worked for the same company since March 2004.⁽³⁾ She is single and has a six month old son.⁽⁴⁾ She has attended two years of college.⁽⁵⁾

On March 28, 2004, Applicant completed a Questionnaire for Public Trust Position (SF 85-P).⁽⁶⁾ A subsequent background investigation revealed Applicant has 18 delinquent accounts with a total approximate balance of \$13,131.⁽⁷⁾ The accounts included a \$29 department store account charged off in April 1999 (SOR ¶ 1.a); a \$342 clothing store account charged off as a bad debt in May 1999 (SOR ¶ 1.b); a \$667 account charged off in May 1999 (SOR ¶ 1.c); a \$539 account charged off in June 99 (SOR ¶ 1.d); a \$496 account charged off in June 1999 (SOR ¶ 1.e); a \$2,263 account charged off in September 1999 (SOR ¶ 1.f); a \$611 account placed for collection in May 2000 (SOR ¶ 1.g); a \$609 account placed for collection in July 2001 (SOR ¶ 1.h); a \$454 account placed for collection in October 2001 (SOR ¶ 1.i); a \$342 clothing store credit card account charged off in November 2001 (SOR ¶ 1.j); a \$546 department store account charged off as a bad debt in December 2001 (SOR ¶ 1.k); a \$1,015 electronics store account charged off as a bad debt in April 2002 (SOR ¶ 1.l); a \$478 personal loan charged off in April 2002 (SOR ¶ 1.m); a \$66 cell phone account placed for collection in August 2002 (SOR ¶ 1.n); a \$1,584 electronics store account placed for collection in August 2002 (SOR ¶ 1.o); a \$2,018 furniture store account placed for collection in January 2003 (SOR ¶ 1.p); a \$441 department store account placed for collection in February 2003 (SOR ¶ 1.q), and a \$631 electronics store account placed for collection in September 2004 (SOR ¶ 1.r).

Applicant's financial problems started while she was a full-time college student. After two years of college, she dropped out because she was unable to support herself and attend college at the same time. In 1996, she incurred a \$2,000 medical debt related to an emergency room visit.⁽⁸⁾ She got into credit card debt and was unable to pay her debts and meet her daily living expenses.⁽⁹⁾ Applicant testified that she had enrolled in consumer credit counseling around 1997 or 1998.⁽¹⁰⁾ Documents submitted after the hearing indicate she enrolled in consumer credit counseling in July 2000.⁽¹¹⁾

In October 2000, Applicant moved to another state for better job opportunities.⁽¹²⁾ She stopped making payments towards her credit counseling plan when she moved.⁽¹³⁾ At present, she has a job where she has doubled her income and now makes \$14 an hour. She states that she is more capable of repaying her debts now.⁽¹⁴⁾ Although she fully intends to repay her delinquent debts, she has taken no steps to resolve her delinquent debts at the time of the hearing. She has established sufficient evidence that the debts alleged in SOR ¶¶ 1.b and 1.j are the same debt. She is not sure about the debts listed in SOR ¶¶ 1.c, 1.d, 1.e, and 1.i.⁽¹⁵⁾ She believes the companies holding the accounts are junk debt buyers and therefore refuses to deal with the companies but will deal with the original creditor.⁽¹⁶⁾

Applicant believes the debt in SOR ¶ 1.f is the same as either SOR ¶ 1.p or 1.l.⁽¹⁷⁾ She believes the debt alleged in SOR ¶ 1.g is the same as SOR ¶ 1.h.⁽¹⁸⁾ She provided no additional evidence that any of these debts are duplicates. As such, I conclude they are separate accounts. She co-signed for the debts that are alleged in SOR ¶¶ 1.m and 1.o for friends. Her friends did not pay the loans so the creditor is seeking payment from her.⁽¹⁹⁾ As the co-signer of the loan, she is responsible for paying the debt if her friends do not. She contacted the cell phone company related to the debt alleged in SOR ¶ 1.n. She claims they have no record of this debt and she has an active account with the cell phone company. She provides no additional proof that this debt is resolved. Based on recent credit reports, it appears that she is current on payments towards the debt alleged in SOR ¶ 1.h.⁽²⁰⁾

On March 28, 2004, Applicant completed a Questionnaire for Public Trust Position (SF 85-P).⁽²¹⁾ In response to question "22b. Your Financial Record - Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government," she answered, "No." She did not list any

of her delinquent debts.

In her answer to the SOR, Applicant admitted to the allegation under Guideline E, SOR ¶2.e. At hearing, Applicant clarified her answer by stating although she did not list her delinquent debts on her trustworthiness questionnaire, she did not intend to falsify her answer. She misunderstood the question. She thought the question related only to mortgages or car loans. She did not think the question included credit card accounts, which is the majority of her delinquent debt. (22)

Applicant is highly regarded at work. Her supervisor describes her as "organized, efficient, trustworthy, extremely competent." (23) Another co-worker states that she is "a punctual, diligent, and hard working employee" and goes the "extra mile for all of the patients she assists." (24) Both attest to her trustworthiness. In 2004, she received an award from the Department of Defense for outstanding service. (25)

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." (26) 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." (27)

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." (28) The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. (29) The adjudicative guidelines at issue in this case are:

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.

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 (DC), as well as those which could mitigate (MC) 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." (30) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (31) 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. (32)

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.⁽³³⁾ 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.⁽³⁴⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽³⁵⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³⁶⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽³⁷⁾ 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. I make the following conclusions.

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 3 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 the late 1990s. Although it appears that none of the delinquent accounts are recent, she has taken no action towards resolving the delinquent accounts since she moved to another state in 2000.

I considered the Financial Considerations Mitigating Conditions (FC MC). Since there are numerous accounts that remain delinquent, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*).

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)*) applies, in part. In 1996, Applicant had some additional medical expenses related to an emergency room visit which could have further complicated her financial problems. However, it appears the majority of Applicant's financial problems were the result of becoming over-extended on credit card accounts. Most of the debt incurred was within her control. Two of the accounts are debts which she served as a co-signer. While she has no control over the fact that her friends did not pay the debt, when she co-signed on the debt, she accepted responsibility for the debt in the event her friends did not pay the account. This a lesson learned the hard way rather than something that was largely beyond her control. For these reasons, little weight is given to FC MC 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 consulted with a credit counselor, she did not follow through with the repayment program. She still has a significant amount of unresolved delinquent debt. It is unlikely her financial problems will be resolved soon.

FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is applicable, in part. In July 2000, Applicant did enroll in consumer credit counseling and had established a repayment plan. Unfortunately, when she moved to another state in 2000, she did not continue to make payments. Although she intends to resolve her delinquent accounts, she has taken no proactive steps since 2000 towards resolving her debts.

Based on Applicant's past financial history, it is too soon to conclude that her financial situation will be resolved. She has failed to mitigate the concern under Guideline F.

Although her evidence of rehabilitation is insufficient at this time this decision should not be construed as a determination that Appellant can not or will not attain the state of true reform and rehabilitation necessary to justify the granting of a trustworthiness determination. Should Appellant be afforded an opportunity to reapply for a trustworthiness determination in the future and she were able to arrange a satisfactory repayment plan with her creditors to repay her delinquent accounts and pay her debts, she may well demonstrate persuasive evidence of trustworthiness. Since she has not attempted to resolve most of her delinquent accounts, it is premature to grant her a trustworthiness

position. The Financial Considerations concern is resolved against Applicant.

Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

In this case, the record evidence fails to establish Applicant deliberately omitted or concealed information about her delinquent debts. Although her answer to question 22b was incorrect, Applicant successfully rebutted the allegations that she deliberately provided a false answer. I find credible her explanation that she misunderstood the question. I find that she did not intend to falsify her security clearance application. Guideline E is decided for 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 trustworthiness implications. Although Applicant's loyalty to the United States is not in question, I am persuaded by the totality of the evidence that she failed to mitigate the trustworthiness concerns regarding Guideline F, and that 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: For Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: For 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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For 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. Although Applicant admits to not listing her delinquent debts, she denies that she deliberately did so, therefore I conclude she denies Guideline E, ¶ 2.a.
3. Gov Ex 1; Tr. at 6, 7, 61.
4. Tr. at 57.
5. Tr. at 6.
6. Gov Ex 1.
7. Gov Ex 2,3, 6.
8. Tr. at 56-57.
9. Tr. at 52.
10. Tr. at 28, 39; Gov Ex 3 at 1.
11. AE G.
12. Tr. at 52.
13. Gov Ex 3 at 1.
14. Tr. at 49.

15. Tr. at 30-34, 38.
16. Tr. at 30-34, AE A.
17. Tr. at 35.
18. Tr. at 36.
19. Tr. at 43-47.
20. Gov Ex 6 at 2; Gov Ex 7 at 2; AE C at 4.
21. Gov Ex 1.
22. Tr. at 54-55.
23. AE D.
24. AE E.
25. AE B.
26. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
27. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
28. DoD 5200.2-R, ¶ C6.1.1.1.
29. *Id.* at Appendix 8.
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.* at ¶ C8.2.1.
34. Directive , ¶ E3.1.14.
35. *Id.* at ¶ E3.1.15.
36. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
37. Directive, ¶ E2.2.2.