

DATE: November 27, 2006

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In re:

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SSN: -----

Applicant for ADP I/II/III Position

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ADP Case No. 05-15389

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has over \$16,000 in delinquent debt. She failed to establish any plan to resolve these debts. 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 Applicant's eligibility for a position of trust. In accordance with Department of Defense Regulation 5200.2-R (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2. 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on 19 January 2006 detailing the basis for its decision—concerns raised under Guideline F (Financial Considerations) of the Regulation. Applicant answered the SOR in an undated letter and elected to waive her right to a hearing and have the case decided on the written record. Department Counsel submitted the Government's written case on 16 March 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 31 July 2006. The case was assigned to me for a hearing on 16 August 2006. <sup>(1)</sup> The case file is silent as to who granted her a hearing and the basis for the decision. On 13 September 2006, I convened a hearing to consider whether it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a position of trust. DOHA received the hearing transcript (Tr.) on 25 September 2006.

**FINDINGS OF FACT**

Applicant is a 27-year-old employee of a defense contractor who aids military members and their dependents with their medical benefits. She has worked there two years. She currently has an ADP position and has been working with sensitive medical information for seven years. She served on active duty with the U.S. Air Force from 1996 to 2000, when she separated with an honorable discharge. While in the Air Force, she held a Secret security clearance. A coworker reports Applicant is an excellent performer, a valued member of the employer's team, and has a wealth of

knowledge that has been used to solve many problems of importance to the department in which she works.

Applicant is a single parent of a five-year-old son. A court ordered the child's father to pay \$58 a month child support. He is approximately \$1,800 in arrears. Currently Arizona is providing Applicant \$36 a month to help her support the child. Before Applicant's son started school, she was paying about \$500 a month for child care.

In the SOR, DOHA alleged Applicant had 18 accounts in collection status totaling more than \$7,800 (¶¶ 1.a-1.e, 1.g, 1.j-1.n, 1.p-1.v); had a delinquent debt of more than \$7,640 after the sale of a repossessed vehicle (¶ 1.f); had an unpaid judgment for \$501 (¶ 1.h); had a charged off debt of \$373 (¶ 1.i); was arrested for passing bad checks in December 2003 (¶ 1.o); and was financially capable of paying these debts (¶ 1.w). In her Answer, Applicant denied some of the allegations as follows: ¶ 1.d (claims it was paid in November 2005); ¶¶ 1.g, 1.p-1.s, 1.u (denies knowledge of the debt); ¶ 1.m (claims it is part of the debt alleged in ¶ 1.c). She denies being arrested for passing bad checks (SOR ¶ 1.o), but admits she received a summons and paid the debt.

While she was attending college, Applicant received veteran's benefits of approximately \$1,000 a month. She no longer attends college and owes the Department of Veterans Affairs \$1,221. SOR ¶ 1.t

One of her father's friends has been teaching her about the credit process. Tr. 24. There is no evidence he has any particular credentials to perform as a credit counselor and he has not intervened with any of the debts alleged in the SOR.

Applicant claims some of the debts have been paid and she has no knowledge of the other debts. Tr. 25. She presented no documentary evidence that she paid any of the debts or has formal plans in place to do so.

### POLICIES

Positions designated as ADP I or ADP II are "sensitive positions." Regulation ¶ AP10.2.1. ADP III positions are nonsensitive positions. Regulation AP10.2.3.1. By memorandum dated 19 November 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 positions, under the Directive. <sup>(2)</sup> "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

#### **Guideline F--Financial Considerations**

An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Regulation app. 8 at 144. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

Potentially disqualifying conditions are raised when an applicant has a history of not meeting her financial obligations (DC 1) and is unable or unwilling to satisfy her debts (DC 3). Applicant has such a history, with \$16,000 in delinquent debt. Because she no longer receives the VA stipend for education, she is not financially capable of paying these debts.

An applicant may mitigate financial considerations security concerns involving delinquent debt by establishing that the behavior was not recent (MC 1); it was an isolated incident (MC 2); the conditions that resulted in the behavior were largely beyond the applicant's control; (MC 3); the applicant has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control (MC 4); or the individual initiated a

good-faith effort to repay overdue creditors or otherwise resolve debts (MC 6).

As the numerous debts are still owing, Applicant failed to establish that the behavior was not recent or was an isolated incident. MC 1 and MC 2 were not established. Applicant's ability to pay a portion of her indebtedness may have been affected by the refusal of her son's father to pay child support. Although that would only assist in paying \$1,800 of debts totaling more than \$16,000, I have applied MC 3. Applicant appears to have been counseled by a family friend on managing credit. But there are no indications her financial problems are being resolved or that she has made a good-faith effort to resolve them. Applicant failed to establish MC 4 or MC 6.

### **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 an acceptable security risk." Regulation app. 8 at 132. It involves "the careful weighing of a number of variables known as the "whole person concept." *Id.* 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. *Id.*

Applicant is a skilled employee who has performed very well for her employer. She has held a security clearance and has been working with sensitive medical information for seven years. Nevertheless, she has accumulated significant debt and has not taken any direct steps toward paying it. Although she had several months from the date of the SOR in January 2006 until the hearing in September 2006, she was not familiar with many of the alleged debts. It does not appear she made any effort to contact some of the creditors. The amount of the debt and her inability to pay it makes her vulnerable to exploitation. Considering all the circumstances of this case, I am unable to find it is in the interests of national security to grant her a clearance.

As she was not actually arrested for passing bad checks and she is not financially capable of paying these delinquent debts, I find for Applicant on ¶¶ 1.o and 1.w.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.n: Against Applicant

Subparagraph 1.o: For Applicant

Subparagraph 1.p-1.v: Against Applicant

Subparagraph 1.w: For Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is denied.

James A. Young

Administrative Judge

1. "To be entitled to a hearing, the applicant *must* specifically request a hearing in his or her answer. The answer must be received by the DOHA within 20 days from receipt of the SOR." Directive ¶ E3.1.4 (emphasis added). Upon a showing

of good cause, the Director, DOHA, or his designee, may grant an extension to time to file the answer. *Id.* The Directive does not contain any provision for an applicant to request a hearing after submitting her answer. There is no evidence in the case file that Applicant ever requested a hearing. By granting Applicant a hearing after the Department Counsel spent time, effort, and resources preparing and mailing the FORM, Applicant was able to delay this case by several months. Rather than prolong the case another several months, I decided to hear it.

2. As far as I could determine, the contents of this memorandum have never been published in the Federal Register, as appears to be required by 5 U.S.C. § 552(a)(1) before the memorandum could become effective.