

DATE: December 7, 2006

---

In re:

-----

SSN: -----

Applicant for ADP I/II/III Position

---

ADP Case No. 05-16601

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant failed to mitigate security concerns raised by his falsification of his Public Trust Position Application and his more than \$17,000 in delinquent debt. Eligibility is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue an ADP I/II/III position for Applicant. As required by 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 21 June 2006 detailing the basis for its decision-concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Regulation. Applicant answered the SOR in writing on 31 August 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on 26 September 2006. With the consent of the parties, I convened a hearing on 14 November 2006 to consider whether it is clearly consistent with the interest of national security to grant or continue Applicant's eligibility to occupy an ADP I/II/III position. DOHA received the hearing transcript (Tr.) on 28 November 2006.

**FINDINGS OF FACT**

Applicant is a single, 23-year-old enrollment specialist for a defense contractor. He processes enrollment of military members into the military health care system. He has worked there since June 2004 and currently makes less than \$13 per hour. He also works part-time for his father, who runs a commercial cleaning service. He does not support anyone else financially. He attended college full time last year, but this year he is going part-time.

In 2002 and 2003, several creditors placed debts on which Applicant was delinquent into collection or charged-off status. In the SOR, DOHA alleged Applicant had three charged-off debts totaling more than \$14,500 (¶¶ 1.a, 1.e, 1.h) and six debts totaling more than \$2,678 that had been referred to debt collectors. (¶¶ 1.b-1.d, 1.f-1.g, 1.i). In the Answer,

Applicant admitted the allegations in ¶¶ 1.a-1.b, 1.e-1.f, 1.h) but denied the others.

In SOR ¶ 1.c, DOHA alleged Applicant was indebted to a telephone service provider for \$174 that had been in collection status since 2002. Applicant admits talking to that company about a new cell phone and service, but denies ever contracting for it.

In SOR ¶ 1.d, DOHA alleged he was indebted for \$200 on an account that had been referred to a collection agency in May 2002. Applicant does not recognize the identity of the debtor or the basis of the debt.

In SOR ¶ 1.g, DOHA alleged Applicant was indebted to a city for \$130 that had been referred for collection in July 2002. It appears the debt arose from a motor vehicle accident. An uninsured motorist struck Applicant's vehicle, driving it into a road sign. The city went against Applicant because he was insured through his parents automobile policy. Applicant's parents sent the bill to the insurance company, but it was apparently not paid.

DOHA alleges in SOR ¶ 1.i that Applicant's account for a self-storage unit had been placed for collection in April 2003. He leased a unit for a couple of months and then turned in his key. He disputes the debt but has not talked to the company about it. Applicant's mother reports that the bill arose because Applicant did not remove all of his belongings from the unit when he turned in the key--he expected the company to remove several items, including a large bookcase.

In 2006, Applicant decided to purchase a home. His lender advised him against making any payments on the delinquent debts because it would reactivate them and lower his credit score, which would affect how large a loan he could qualify for. He has talked to a credit counseling service, but it would require him to pay \$600 a month on his debts. With purchasing a new house, living alone, and going to college, he could not afford the debt consolidation plan.

He currently owes \$3,800 in student loans. That amount will rise over the next couple of years as he completes his education. Applicant does not have any credit cards now. He has not paid any of the creditors, nor does he have payment agreements with any of them.

On 29 June 2004, Applicant completed a Public Trust Position Application (PTPA), Standard Form 85P, by certifying that his answers were true, complete, and correct to the best of his knowledge and belief, and by acknowledging that a knowing and willful false statement therein could be punished by fine and/or imprisonment under 18 U.S.C. § 1001. Question 20 asked if Applicant was then delinquent more than 180 days on any loan or financial obligation. Applicant answered "no."

## POLICIES

The adjudication process extends only to sensitive positions. Positions designated as ADP I or ADP II are classified as sensitive positions; ADP III positions are not. Regulation ¶ AP10.2. By memorandum dated 19 November 2004, the Deputy Under Secretary of Defense for Counterintelligence and Security directed DOHA to extend the adjudication process to ADP III positions as well.

"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**

The Government established, through its evidence and Applicant's admissions, each of the debts alleged in the SOR. Although Applicant disputed a few of the debts at the hearing, he did nothing to formally dispute them with the creditors or the credit reporting agencies, and his own testimony supports a conclusion that the debts he denied in his Answer are

his.

An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Regulation (app. 8) at 144. Applicant has a history of not meeting his financial obligations (DC 1) and is unable or unwilling to satisfy his debts (DC 3).

An Applicant may mitigate financial considerations security concerns raised over delinquent debts by establishing that the behavior was not recent (MC 1); it was an isolated incident (MC 2); the financial situation was largely beyond the applicant's control (MC 3); the applicant has received counseling and there are clear indications the problem is being resolved or is under control (MC 4); or the applicant has made a good-faith effort to repay overdue creditors or otherwise resolve the debts (MC 6). Applicant failed to establish any of the mitigating conditions. Applicant has several delinquent debts, totaling more than \$17,000. He has several debts that are "recent" in the sense they are still delinquent. He failed to establish that his debts were the result of conditions beyond his control. Although he made some preliminary contact with a credit counseling service, there is no evidence he received counseling or that his debt problem is being resolved.

Applicant claims he intends to pay these debts when he becomes able to do so. He has concocted an elaborate scheme to do so. Applicant cosigned a car loan for a friend. Once the friend makes a sufficient number of payments, he will be allowed to refinance without Applicant as a cosignee. That will boost Applicant's credit score, and he will be able to get a mortgage on a house he wants to buy for \$147,000. That is a \$40,000 reduction over the original asking price. He believes that he will then be able to use the \$40,000 in equity to pay off his debts. He anticipates it will be 18 months before he will be able to take the equity out of the house. Even if Applicant's plan does not defy the rules of economic sense, it suggests Applicant will not be able to pay any of his delinquent debts in the near future.

### **Guideline E--Personal Conduct**

In the SOR, DOHA alleged Applicant falsified his PTPA by deliberately failing to disclose he had debts that were then delinquent more than 180 days. In the Answer, Applicant denied the allegation.

Applicant insists he did not intentionally lie on his PTPA. In an affidavit provided to a security investigator, Applicant claimed he must not have been paying attention to the question because he knew he had credit debt and knew the Government would check his credit report. Ex. 2 at 4. At the hearing, he contended that he just did not understand the importance of the question. After listening to his answers and observing his demeanor, I am convinced he deliberately falsified the PTPA.

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Regulation (app. 8) at 142. It is a potential security concern when an applicant deliberately omits, conceals, or falsifies relevant and material facts on any questionnaire used to determine trustworthiness. DC 2.

An applicant may mitigate personal conduct security concerns raised as a result of a falsification by establishing the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily (MC 2); the applicant made prompt good-faith efforts to correct the falsification before being confronted with the facts (MC 3); the omission of material facts was significantly contributed to by improper or inadequate advice of authorized personnel and the previously omitted information was promptly and fully provided (MC 4); and the applicant has taken positive steps to significantly reduce or eliminate vulnerability to coercion or exploitation (MC 5). Applicant failed to establish any of these mitigating conditions, except MC 5. C 2 does not apply because the falsification was recent--it was on the very questionnaire that is the basis of the adjudication of Applicant's eligibility to hold a position of trust. Applicant established MC 5; he admitted his delinquent debts once confronted by the investigator.

### **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 still a young man. He is self-centered. He believes he should be allowed to live the American dream without having to deal with the consequences of his delinquent debt. Going to college, living alone, and buying a house have a higher priority for him than paying his delinquent debts. As he continues through college, he is incurring more debt as a result of his student loans. Under the circumstances, there is little likelihood Applicant will have his delinquent debt resolved or under control in the near future. I find against him on ¶ 1.

I find against Applicant on ¶ 2. He failed to accept responsibility for his deliberate falsification of his PTPA. Although he may be young and immature, his failure to accept responsibility for his deliberate falsification militates against granting him eligibility for an ADP I/II/III position.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.i: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against 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