

DATE: December 29, 2006

---

In re:

-----

SSN: -----

Applicant for ADP I/II/III Position

---

ADP Case No. 05-17140

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 30 years old, unmarried, and works for a defense contractor in the health care business. Applicant had four delinquent debts he paid by settlement or in full. Applicant did not falsify his trustworthiness application on prior arrests in the past seven years. Applicant mitigated the financial considerations and personal conduct trustworthiness concerns. Eligibility for assignment to sensitive positions is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue an application for a position of trust for Applicant<sup>(1)</sup>. On May 1, 2006, DOHA issued a Statement of Reasons<sup>(2)</sup> (SOR) detailing the basis for its decision-trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on May 17, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on June 23, 2006. On November 1, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness determination for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. I gave Applicant additional time to submit exhibits after the hearing. The Government had no objection to those exhibits, and I marked them as Exhibits K and Landadmitted them into the record. DOHA received the hearing transcript (Tr.) on November 16, 2006.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 30 years old, unmarried, and employed by a defense contractor who provides call center advice services to

military members. Applicant started his current employment in January 2004. He is a mentor and trainer for new employees, in addition to handling a large number of telephone calls from military members inquiring about medical services under their insurance plans.

Applicant takes more phone calls on a monthly basis than the average employee in this company

His competency and work ethic are rated highly by his supervisor. He earns \$32,000 annually. (Tr. 23-31, 41, 61-63)

Applicant worked from 1998 to 2002 when he was laid off from a debt collection company. His annual salary in 2002 was to be \$62,000, but he never earned that much because he was laid off in ay 2002. His income went from \$48,491 in 2000, to \$38,881 in 2001, then \$23,518 in 2002, dropping to \$14,619 in 2003 while working in a restaurant and another collection agency. It increased to \$32,890 in 2004 after he starting working for his present employer, and in 2005 to \$35,758. He used that income to pay his current financial obligations, living expenses, and for his car and auto insurance. Applicant also works a second job as a photographer. He has a budget showing increasing monthly net remainders through March 2007 to \$509 from which he can pay any debts. Applicant does not have a savings plan at the present time. (Tr. 50, 51, 59-64, 69, 71, 73, 86; Exhibits A-C, H, I; Answer)

Applicant had a delinquent debt to a credit card company for \$3,777. The company charged it off on its books as a bad debt in April 2002. Applicant paid that debt on November 3, 2006, by a settlement with the company for \$1,133.32. His father loaned him the money with which to repay this debt. Applicant will repay his father by April 2007 for this loan. (Tr. 36-40, 53, 54; Exhibits 4, 5, K)

Applicant had a delinquent debt to an appliance retailer for a television he purchased. The amount owed was \$929.50 including interest and fees. The SOR alleges the debt was \$627. He paid a settlement amount of \$500 in full by his debit card that took the money from his checking account for the payment. The \$500 came out of his account on November 3, 2006. The debt is paid. (Tr. 44, 45; Exhibits 3-5, D)

Applicant had a delinquent debt to a credit card company for \$9,357. He settled this debt for \$3,054.99. Applicant borrowed the money to repay this debt from his father, and will repay his father according to a signed promissory note. Applicant wired the money to the creditor on November 3, 2006. The debt is now paid in full of the settlement amount. He is current on his obligation to repay his father for the money borrowed for the two debts alleged in the SOR. (Tr. 52-54; Exhibits 4, 5, E)

Applicant paid by garnishment a state tax lien for \$793. His home state filed the lien in April 2004. Applicant did not have the taxes deducted from each pay check while working in the restaurant in 2003, and from his unemployment checks that he received after being laid off from his job. This debt is fully paid. (Tr. 54-56; Exhibits 1, 2, 5, F)

Applicant completed his trustworthiness application, the Standard Form 85P (SF 85P) on August 25, 2004. In answer to Question 20 about being arrested, charged with, or convicted of any offenses in the past seven years, Applicant checked the "no" box. Applicant was arrested on June 11, 1996, for allegedly shoplifting a case of beer from a local store. On July 8, 1996, the local court dismissed the charge for lack of evidence. Applicant denies he ever stole anything from that store, and asserts the only thing he ever stole was a "Star Wars" figurine in 1983 at the age of 8. The alleged shoplifting arrest was beyond the seven year inquiry period of the SF 85P, and Applicant was not required to disclose it by the time limit terms of Question 20. (Tr. 77-83; Exhibits 1, L)

## POLICIES

As Commander in Chief, 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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive.

Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. *See* Directive ¶ 2.3. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination." *See* Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (*See* Directive, Section E2.2.1. of Enclosure 2). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's trustworthiness suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.* E2.A6.1.1

Guideline E: Personal Conduct: *The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.* E2.A5.1.1

Positions designated as ADP I or ADP II are classified as sensitive positions. (Regulation ¶ AP10.2.1) ADP III positions are nonsensitive positions. (Regulation AP102.3.1) By memorandum dated November 19, 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, under the Directive. Thus, even though they are nonsensitive positions, ADP III cases are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

"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

**Financial Considerations:** From 2002 to 2006 Applicant had four delinquent debts. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1), and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply. These debts were two credit card debts, a television purchase, and a tax lien.

Mitigating Conditions (MC) 3 (Conditions resulting in the behavior were beyond Applicant's control because of unemployment. E2.A6.1.3.3), and MC 6 (Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts E2.A6.1.3.6) apply. Applicant's income dropped nearly 50% between 2002 and 2003 after being laid off from his previous employment. That income decline prevented Applicant from paying his debts in a timely manner. Now, having made an intra-family financial arrangement to borrow the money from his father to repay the credit card debts, he settled and paid them. The television debt he paid from his checking account. The tax lien was repaid by garnishment in 2005. Therefore, all of Applicant's delinquent debts were paid before the hearing.

**Personal Conduct:** SOR alleges Applicant falsified his SF 85P by not disclosing his June 1996 shoplifting arrest. Applicant completed his SF 85P on August 25, 2004. The seven year inquiry period went back to August 25, 1997, after the date of arrest, and also the dismissal of the charges in July 1996. Applicant was not required to disclose this arrest, for which he denies any culpability. No DC apply.

### **Whole Person Analysis**

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. I considered the totality of the evidence in view of the "whole person" concept, including Applicant's loss of employment while attending college, a decline in his income, resulting in his inability to repay his debts in a timely manner, and his subsequent plan and efforts to repay those debts and be debt-free by June 2007, with the unlikelihood of repetition of those circumstances. I took into account his age when the debts were incurred, his present attitude toward financial responsibilities, and his work ethic. I also considered that Applicant paid three alleged debts prior to the hearing, and the fourth debt was paid in 2005. Based on all these considerations, I conclude the financial considerations and personal conduct trustworthiness concerns for Applicant.

## FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. His application for eligibility is granted.

Philip S. Howe

Administrative Judge

1. Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).
2. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.