

DATE: July 17, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 05-17662

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Jr., Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 37 years old and works at a military hospital. From 1997 to 2003, she accumulated about \$9,700 of delinquent debt during her former marriage and a period of unemployment, and after incurring medical expenses that were not covered by insurance. When she completed her application for access to sensitive information, she did not disclose all of her debts. Recently, she entered into a repayment plan that will resolve all of the outstanding debt. She mitigated the trustworthiness concerns raised by her financial problems and personal conduct. Her eligibility for assignment to a sensitive position is granted.

**STATEMENT OF THE CASE**

On July 6, 2004, Applicant submitted a public trust position application (SF-85P). 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 (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Security Personnel Review Program* (Jan. 2, 1992), as amended (the "Directive"). On February 23, 2006, DOHA issued a Statement of Reasons (SOR), alleging trustworthiness concerns under Guideline F (financial considerations) and Guideline E (personal conduct) of the Directive.

In a sworn statement, dated March 7, 2006, Applicant responded to the SOR allegations and requested a hearing. On April 21, 2006, the case was assigned to me. A Notice of Hearing was issued on May 22, 2006, setting the case for hearing on June 15, 2006. At the hearing the Government introduced exhibits (GX) 1 - 7 into evidence without objection. Applicant testified in her case-in-chief and introduced exhibits (AX) A - B into evidence without objection. On June 16, 2006, Applicant submitted an additional exhibit to Department Counsel, who forwarded the document to me without objection. The exhibit is marked AX C. DOHA received the hearing transcript on June 26, 2006.

**FINDINGS OF FACT**

Based on the entire record, including Applicant's admissions in her answer to the SOR, I make the following additional

findings of fact:

Applicant is 37 years old and the mother of three adolescent children who live with her. She was married for 12 years and divorced in March 2002. From 1987 to June 2003, she worked as a medical assistant for a physician who later retired. After leaving her former employer, she was unemployed until July 2004, when she obtained her current job at a military hospital.

In September 2004, Applicant met with a government investigator to discuss her financial problems and credit report. In a written statement, Applicant indicated that her financial difficulties arose during her marriage to her former husband and while she was unemployed, and subsequent to a surgery that was not covered by insurance. She admitted that she and her husband were financially overextended and could not meet their financial commitments. (GX 2) When she divorced in 2002, she assumed responsibility for all outstanding debts. (Tr. 41) The debts span a period of time from 1997 to 2003. (Tr. 40)

Paragraph 1 of the SOR alleged that Applicant owes approximately \$9,700 in delinquent debt, consisting of a defaulted car loan, utility bills, and credit card bills. In her answer and testimony, she admitted that she is responsible for the alleged debts. In June 2006, all of the debts alleged in SOR ¶¶ 1.a through 1.f were consolidated into a repayment plan established by a debt management company. In accordance with the plan, she agreed to make her first payment of \$226 on July 3, 2006. The debt alleged in SOR ¶ 1.g has been removed from her May 2006 credit report, as it her former husband's responsibility. (AX C)

Presently, Applicant has a monthly net income of \$1,794 and expenses of \$1,248, leaving her with more than \$400 of discretionary income, in addition to the \$800 monthly child support she receives. (Tr. 47) Based on her current monthly budget, she should be able to comply with the plan. (AX B) Since her divorce, Applicant does not have any credit cards. She acknowledged that the debts are her responsibility and that she should have begun to resolve the problems after she became aware of them in the 2004 meeting with the government investigator. (Tr. 49) She enjoys her present position and wants to continue working with her supervisor and colleagues. She was credible and sincere about managing her finances responsibly and appreciates the adverse impact her credit history can have on her present employment. (Tr. 51)

Applicant's current supervisor noted in a December 2005 Appraisal Review that Applicant "always safeguards referrals and private information when at or away from the desk." (AX A at 1.) She termed Applicant an "outstanding associate." (*Id.* at 4)

When Applicant completed her SF-85P in July 2004, she certified that her answers were true, complete and correct to the best of her knowledge. In response to Question 22.a Your Financial Record (*In the last 7 years, have you or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had a legal judgment rendered against you for a debt?*), she answered "No." She did not list the judgment listed in SOR ¶ 1.a regarding a debt pertaining to a repossessed car. She explained that she did not list the debt because she never filed bankruptcy, and did not know that a judgment had been entered against her until her interview with the government investigator in October 2004.

In response to Question 22.b Your Financial Record (*Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded by the Federal Government*), she answered "Yes," and listed the debt alleged in SOR ¶ 1.g. She did not list those alleged in SOR ¶¶ 1.b through 1.f, because she did not remember them, but did recall the medical bill referenced in ¶ 1.g. I find her explanations regarding both questions credible.

## 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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995), 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."

To be eligible for assignment to sensitive duties, an applicant must meet the security guideline 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." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are the following:

**Guideline F - Financial Considerations** - A trustworthiness concern may arise when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

**Guideline E - Personal Conduct**: A trustworthiness concern may arise 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, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

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. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance request is not necessarily a judgment of the applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

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 for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying condition and an applicant's present security suitability. ISCR Case No. 95-0611 at 3 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." *Id.*

## **CONCLUSIONS**

I considered all facts in evidence and the appropriate legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth in the SOR:

## Guideline F - Financial Considerations

The Government's evidence and Applicant's admissions established a potential case for disqualification under this guideline. Two disqualifying conditions apply: (1) Financial Consideration Disqualifying Condition (FC DC) 1 (*A history of not meeting financial obligations*), and FC DC 3

(*Inability or unwillingness to satisfy debts*). From 1997 to approximately 2003, Applicant accumulated approximately \$9,700 of delinquent debt that she was unable to manage or pay.

The Government having raised a trustworthiness concern, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I concluded Financial Consideration Mitigating Condition 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. Applicant provided evidence that many of her delinquent debts accumulated during her marriage and a period of unemployment, in addition to a medical problem were factors outside of her control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered 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 recently entered into a reasonable repayment plan through a debt consolidation company that will resolve all of the outstanding debts listed in SOR ¶¶ 1a, through 1f. The plan, coupled with Applicant's commitment and financial ability to pay her debts, indicated her problems are under control.

In addition to the enumerated disqualifying and mitigating conditions, I considered Applicant's previous 16 year employment history with her former employer, and her present employer's satisfaction with her performance. I considered her remorse and acceptance of responsibility for her financial problems and their resolution, as well as the likelihood that she will reliably manage her finances in the future due to a strong desire to maintain her employment.

After weighing the disqualifying and mitigating factors and evaluating the evidence in the context of the whole person, I concluded Applicant mitigated the security concerns raised by her financial considerations. Accordingly, all allegations contained in the SOR under Guideline F are decided for her.

## Guideline E: Personal Conduct

The Government alleged that Applicant falsified her SF-85P by failing to disclose a monetary judgment and several delinquent debts, which constituted a disqualification under Personal Conduct Disqualifying Condition (PC DC) 2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status determines security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Although Applicant admitted that she failed to disclose the information, she denied that she did so intentionally.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant's explanation that she failed to disclose the judgment alleged in SOR ¶ 2.a because she was unaware of it, and had forgotten some of the delinquent debts alleged in ¶2.b when she completed her application, is credible, given her disclosure of another old debt and truthful demeanor while testifying. Hence, the allegations contained in SOR ¶¶ 2.a and 2.b are concluded in her favor. Accordingly, Guideline E is decided for her.

## **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 as follows:

Paragraph 1: Guideline F (Financial Considerations) FOR APPLICANT

Subparagraphs 1.a through 1.g: For Applicant

Paragraph 2: Guideline E (Personal Conduct) FOR APPLICANT

Subparagraphs 2.a and 2.b: 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. Her application for eligibility is granted.

Shari Dam

Administrative Judge