

DATE: August 31, 2006

In re:

SSN: -----

Applicant for Trustworthiness Position

P Case No. 05-17712

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Richard A.Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has approximately \$60,076 in delinquent debt listed on her credit report. Much of the debt arose from her ex-husband's truck driving business, including a \$25,000 repossession of an 18-wheeler truck. The final divorce decree makes her ex-husband responsible for the debts that are from his trucking business. This leaves her responsible for approximately \$2,676 of the delinquent debt. She has paid the debts that are her responsibility and is capable of meeting her monthly expenses. Applicant's eligibility for a assignment to a sensitive position is granted.

STATEMENT OF THE CASE

On August 16, 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 7, 2006, DOHA issued to 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, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct.

In a sworn statement dated February 22, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on May 24, 2006. A notice of hearing was issued on June 21, 2006, scheduling the hearing for July 11, 2006. The hearing was conducted on that date. The government submitted three exhibits that were marked as Government Exhibits (Gov Ex) 1-3. The exhibits were admitted into the record without objection. Applicant testified on her own behalf, and submitted two exhibits which were admitted as Applicant Exhibit (AE) A and AE B without objection. The record was held open until August 1, 2006. Applicant timely submitted a 12 page exhibit that was admitted as AE C without objection. DOHA received the hearing transcript (Tr.) on July 27, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits the allegations under Guideline F, ¶¶ 1.a - 1.l, but denies the allegations in ¶¶ 1.m, 2.a, 2.b and 3.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 a 33 -year-old woman employed as a payment record analyst with a Department of Defense contractor who is seeking a position of public trust. ⁽³⁾ She has worked for the same company for over 11 years, receiving several promotions throughout her career. ⁽⁴⁾ On August 30, 1997, Applicant got married. Two sons were born of the marriage, ages 7 and 4. ⁽⁵⁾

Applicant's husband was a truck driver. At the time of their marriage, he worked for a company. Soon after, he established his own independent trucking company. In 1998, he used Applicant's good credit to qualify for a loan for a new 18-wheeler truck. He also opened credit card accounts and took out loans which were used for his business. ⁽⁶⁾ He did not pay his expenses which created much of the delinquent debt. In 2000, his truck was repossessed. Applicant was not involved with the day-to-day operations of her husband's business. ⁽⁷⁾

On March 15, 2004, Applicant separated from her husband as a result of her husband being unfaithful. She and her children moved out of the family home and moved in with her parents. Her parents have another house on their property. Applicant made improvements to the house. She and her sons have lived there since August 2004. ⁽⁸⁾

On August 16, 2004, Applicant completed a Questionnaire for Public Trust Position (SF 85-P). ⁽⁹⁾ She answered, "No." in response to question "22a. 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 subjected to a tax lien, or had legal judgment rendered against you for a debt?" She did not list a \$683 judgment entered against her in October 2003. In response to question "22b. Your Financial Record: Are you now over 180 days delinquent on any loan or financial obligation?" she also answered, "No." A subsequent background investigation revealed Applicant has 13 delinquent accounts with a total approximate balance of \$60,076. ⁽¹⁰⁾

The accounts included a \$1,400 telephone account placed for collection in June 2000 (SOR ¶ 1.a); a \$25,609 balance resulting from repossession of her husband's truck in June 2000 (SOR ¶ 1.b); a \$5,485 account past due since June 2000 (SOR ¶ 1.c); a \$2,204 computer account charged off in June 2000 (SOR ¶ 1.d); a \$1,738 credit card debt placed for collection in November 2001 (SOR ¶ 1.e); a \$1,144 credit card account delinquent as of May 2002 (SOR ¶ 1.f); a \$1,110 medical account placed for collection in October 2002 (SOR ¶ 1.g); a \$1,700 account charged off as a bad debt in December 2002 (SOR ¶ 1.h); an \$81 medical account placed for collection in May 2003 (SOR ¶ 1.i); a \$16,910 credit card account placed for collection in July 2003 (SOR ¶ 1.j); a \$683 judgment entered on October 2003 (SOR ¶ 1.k); an \$84 medical account placed for collection in November 2003 (SOR ¶ 1.l); and a \$1,927 cell phone account placed for collection in July 2004 (SOR ¶ 1.m).

A majority of the delinquent debt is related to her husband's unsuccessful trucking business.

The final order of divorce dated July 22, 2005, indicated her husband was solely responsible for all debt associated with his trucking company. Applicant was responsible for the debt alleged in SOR ¶ 1.a and another debt, not alleged in the SOR. She is making payments on both debts. ⁽¹¹⁾ She denies the debt alleged in ¶ 1.m which is a cell phone account. She claims she never opened a cell phone account with the alleged cell phone company. She contacted the company asking for proof of the debt. They could not provide proof because the company merged with another company. ⁽¹²⁾

The current status of the delinquent debts are:

SOR Paragraph	Debt	Status	Record
1.a	\$1,401 telephone account placed for collection June 2000.	Paid by Applicant.	Tr. at 17, 30-31; Gov Ex 2 at 2; Gov Ex 3 at 4; AE C at 5.

1.b	\$25,609 balance owed after repossession and resale of ex-husband's truck in June 2000.	Ex-husband responsible under divorce decree.	Answer to SOR, Final Order dated July 22, 2005; Tr. at 17; Gov Ex 2 at 1,; Gov Ex 3 at 3.
1.c	\$5,485 delinquent credit card account used for ex-husband's business, charged off in June 2000.	Ex-husband responsible under divorce decree.	Answer to SOR, Final Order dated July 22, 2005; Tr. at 17; Gov Ex 3 at 3.
1.d	\$2,204 computer account for ex-husband's business, placed for collection in June 2000.	Ex-husband responsible under divorce decree.	Answer to SOR, Final Order, dated July 22, 2005; Tr. at 17; Gov Ex 2 at 2; Gov Ex 3 at 2. 15.
1.e	\$1,738 credit card account for ex-husband's business placed for collection in November 2001.	Ex-husband responsible under divorce decree.	Answer to SOR; Final Order, dated July 22, 2005; Tr. at 17; Gov Ex 2 at 2; Gov Ex 3 at 2.
1.f	\$1,144 credit card account for ex-husband's business, placed for collection in October 2002..	Ex-husband responsible under divorce decree.	Answer to SOR; Final Order, dated July 22, 2005; Tr. at 17; Gov Ex 2 at 2; Gov Ex 3 at 2.
1.g	\$1,110 medical account placed for collection in October 2002.	Paid by Applicant.	AE C at 4; Tr. at 17; Gov Ex 2 at 2; Gov Ex 3 at 2.
1.h	\$1,700 account charged off as a bad debt in December 2002 related to ex-husband's business.	Ex-husband responsible under divorce decree.	Answer to SOR; Final Order, dated July 22, 2005; Tr. at 18; Gov Ex 3 at 3.
1.i	\$81 medical account placed for collection in ay 2003.	Paid by Applicant.	AE C at 4; Tr. at 18; Gov Ex 2 at 2; Gov Ex 3 at 2.
1.j	\$16,910 credit card account related to ex-husband's business placed for collection in July 2003.	Ex-husband responsible under divorce decree.	Answer to SOR; Final Order, dated July 22, 2005; Tr. at 18; Gov Ex 2 at 2; Gov Ex 3 at 1.
1.k	\$683 judgment entered in October 2003, business loan of ex-husband's.	Ex-husband responsible under divorce decree.	Answer to SOR; Final Order, dated July 22, 2005; Tr. at 18; Gov Ex 3 at 3.
1.l	\$84 medical account placed for collection in November 2003.	Paid by Applicant.	AE # at 3; Tr. at 18; Gov Ex 3 at 2.
1.m	\$1,927 cell phone account placed for collection in July 2004.	Applicant denies account. Not aware of account.	Answer to SOR; Tr. at 18-19; Gov Ex 3 at 2.

At the time Applicant filled out the SF 85P, she had recently separated from her husband. She was also diagnosed with diabetes in May 2004. It was a stressful time for her and her main focus was finding a place for she and her two sons to live. She filled out the form in a hurry and did not list her delinquent debts. She had no intent to falsify. She states that she is not a dishonest person and she "would never take away from the government or use any government materials to access myself further in life."⁽¹³⁾

Applicant's supervisor states that Applicant has worked for her since August 2001. She has performed above company expectations and is well liked by her associates. She is willing to take on extra projects.⁽¹⁴⁾ Another co-worker has worked with Applicant for 10 years and has known her for 18 years. She describes Applicant as "a dedicated mother," "trustworthy," and "conscientious."⁽¹⁵⁾ Another co-worker states that Applicant can be counted on to help anyone and is an all around honest person.⁽¹⁶⁾

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."⁽¹⁷⁾ 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."⁽¹⁸⁾

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R and DoDD 5220.6. "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."⁽¹⁹⁾ The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.⁽²⁰⁾ 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.

Criminal Conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets and/or sensitive information. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling 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 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."⁽²¹⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²²⁾ 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.⁽²³⁾

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.⁽²⁴⁾ 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.⁽²⁵⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽²⁶⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁷⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽²⁸⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of

the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards.

Financial Considerations

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) 1 (*A history of not meeting financial obligations*); and FC DC 3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Applicant has a history of not meeting her financial obligations since 2000. A January 3, 2006, credit report listed 13 delinquent accounts with a total approximate balance of \$60,076. The debts became delinquent between 2000 - 2003.

I considered the Financial Considerations Mitigating Conditions (FC MC). I conclude FC MC 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. The majority of the delinquent debt arose from Applicant's ex-husband's failed trucking business. She separated from her husband in March 2004. They divorced in July 2005. In the final order of divorce, her ex-husband agreed to pay the debts that were related to his trucking company. This accounts for \$57,4000 of the delinquent accounts.

I cannot apply 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*) since Applicant has not attended financial counseling. However, she has paid off the debts she is responsible for under the divorce decree. Since separating from her husband she has not incurred additional delinquent debt. Her ex-husband caused the financial problems. Although she struggles to provide for her two children, she is financially responsible. Her financial problems are under control.

I conclude FC MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Applicant paid off the marital debts she was responsible for under the divorce decree. I find that she has acted in good-faith towards resolving her delinquent debts. She is capable of meeting her financial obligations. She denies the debt alleged in SOR ¶ 1.m. I find that she has taken reasonable steps to resolve this account. The creditor could not verify that this was her account when she contacted them. I find for Applicant with regard to SOR ¶ 1.m.

Applicant has mitigated the security concern under Guideline F. Guideline F is decided in her favor.

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 answers to questions 22a and 22b were incorrect, she successfully rebutted the allegations that she deliberately provided a false answer. I find credible her explanation that she had no intent to falsify her public trust application. Guideline E is decided for Applicant.

Criminal Conduct

I find for Applicant under Guideline J based on the same reasons stated under Guideline E.

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. I am persuaded by the totality of the evidence that she mitigated the trustworthiness concerns. It is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a: For Applicant

DECISION

In light of all of the evidence presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended.
2. (In her Answer to the SOR, Applicant initially admitted SOR ¶ 2.a. Based her testimony during the hearing, I conclude that her intent was to deny this allegation.)
3. Gov Ex 1.
4. Tr. at 21, 27-28.
5. Tr. at 23.
6. Tr. at 24-25; Answer to SOR; AE C at 6-12.
7. Tr. at 25.
8. Tr. at 24.
9. Gov Ex 2.
10. Gov Ex 2, 3.
11. Tr. at 30-32; Answer to SOR, Final Order, dated July 22, 2205.
12. Answer to SOR.
13. Tr. at 15-16, 30.
14. AE C at 2.
15. AE A.
16. AE B.
17. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
18. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
19. DoD 5200.2-R, ¶ C6.1.1.1.
20. *Id.* at Appendix 8.
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.* at ¶ C8.2.1.

25. Directive , ¶ E3.1.14.

26. *Id.* at ¶ E3.1.15.

27. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

28. Directive, ¶ E2.2.2.