

DATE: September 27, 2006

In re:

SSN: -----

Applicant for Trustworthiness Position

ADP Case No. 06-02261

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

On May 21, 1998, Applicant filed for Chapter 7 bankruptcy. Her debts were discharged in September 1998. She continued to struggle financially, partially due to job lay-offs and difficulty finding suitable employment. She currently has nine delinquent accounts with a total approximate balance of \$7,462. She has no plan of action for resolving her delinquent accounts. I find Applicant did not intentionally falsify her security clearance questionnaire. However, based on her current and past financial history, it is too soon to conclude her financial situation is under control. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On July 22, 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 March 22, 2006, DOHA issued 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, and Guideline E, Personal Conduct.

In a sworn statement dated April 7, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on June 23, 2006. A notice of hearing was issued on July 3, 2006, scheduling the hearing for July 25, 2006. The hearing was conducted on that date. The government submitted seven exhibits that were marked as Government Exhibits (Gov Ex) 1-7, and admitted without objection. I took administrative notice of one document. Applicant testified on her own behalf, and submitted two exhibits which were marked and admitted as Applicant Exhibits (AE) A-B. The record was held open until August 8, 2006. Applicant submitted a four page document which was admitted without objection as AE C. DOHA received the hearing transcript (Tr.) on August 4, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits the allegations under Guideline F, ¶¶ 1.a, 1.b, 1.f, 1.g, and 1.k, but denies the allegations in ¶ 1.c, 1.d, 1.e, 1.h, 1.i, 1.j and Guideline E ¶ 2.a. 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 49 years old and is employed as an enrollment specialist with a Department of Defense contractor. She is seeking a position of public trust. She has worked for the same company since July 2004. ⁽²⁾ She is single and has no children. ⁽³⁾⁽⁴⁾ She has an Associates of Science degree. ⁽⁵⁾

In 1982, Applicant moved in with her mother. They shared living expenses. Applicant was not very responsible about her credit. She ran up high balances on her credit card accounts. In the summer of 1997, she went to credit counseling because even though she was paying her debts on time, she had accumulated so much debt that she was unable to pay the balances down. She entered into a debt consolidation agreement where she agreed to pay \$600 monthly for five years. She made payments toward this plan for six months. Then in December 1997, two significant events happened. Her mother died and she lost her full-time job due to her employer's bankruptcy. Her mother's death was devastating to Applicant because she relied on her mother for decision-making. She did have a part-time job but her hours varied so she was unable to keep up with expenses. She consulted with an attorney about her financial situation. The attorney advised her to file for bankruptcy. ⁽⁶⁾

On May 21, 1998, Applicant filed for Chapter 7 bankruptcy. Her total assets were \$36,335 and her total liabilities were \$46,099. Her debts were discharged on September 4, 1998. ⁽⁷⁾

Applicant continued to struggle financially after the bankruptcy. She was having difficulty finding full-time employment that paid well. Her friend convinced her to move to a nearby state. In September 1998, she moved to the other state. She moved into an apartment with her friend and shared expenses. It took her a month to get a full-time job. The job did not cover all of her living expenses since it only paid \$8.00 per hour. A month after moving in with her friend, he moved out, leaving her with the full rent to pay. A month later, she suffered a herniated disc which forced her to go on disability. She received only \$88 a week while on disability. As a result, she started to rely on credit cards to pay her expenses. ⁽⁸⁾

Sometime later in 1999, she moved in with her friend again. They move to another apartment which cost \$800 a month. A month later, her friend moves out of the apartment again. He finds a new roommate to take his place. Around September 1999, she came home from work and discovers her current and former roommate taking meth. She kicked both roommates out of the house since she does not want drugs in her house. Soon afterward, she moved to a more affordable apartment with monthly rent of \$532. She still was not making enough money to cover her rent, car payment and car insurance. She began to look for a part-time job. ⁽⁹⁾

In 2000, her apartment was robbed so she moved again. She obtained a few part-time jobs but nothing that gave her enough hours. In 2001, her former roommate contacted her again and persuaded her to move in with him to share expenses. ⁽¹⁰⁾ They lived together for a year during which time her roommate ran up the utility bill which was in her name. ⁽¹¹⁾ In 2004, she was robbed again. She believes her upstairs neighbor robbed her. ⁽¹²⁾

In July 2004, Applicant was hired by her current employer. On July 22, 2004, she completed a Questionnaire for Public Trust Position (SF 85-P) in conjunction with her employment. ⁽¹³⁾ A subsequent background investigation revealed Applicant has nine delinquent accounts with a total approximate balance of \$7,462. ⁽¹⁴⁾ The accounts included a \$420 department store account placed for collection in June 1998 (SOR ¶ 1.a); a \$2,591 credit card account charged off as a bad debt in August 1999 (SOR ¶ 1.b); a \$1,491 account charged off as a bad debt in September 1999 (SOR ¶ 1.c); a \$1,491 credit card account charged off as a bad debt in September 1999 (SOR ¶ 1.d); a \$51 buyers club membership account placed for collection in June 2000 (SOR ¶ 1.e); a \$326 women's clothing store account placed for collection in December 2000 (SOR ¶ 1.f); a \$264 women's clothing store account placed for collection in June 2001 (SOR ¶ 1.g); an

\$850 judgment entered against Applicant in January 2002 (SOR ¶ 1.h); a \$1,237 credit card account placed for collection in April 2003 (SOR ¶ 1.i); and a \$232 cable bill placed for collection in June 2005 (SOR ¶ 1.j).

Applicant admits that she is financially over-extended.⁽¹⁵⁾ She is trying to find a part-time job to supplement her income.⁽¹⁶⁾ Although she wants to resolve her debts, she currently has no extra money to pay her delinquent accounts.⁽¹⁷⁾ Once she obtains a second job, she intends to pay off each debt one at a time.⁽¹⁸⁾

Applicant's current annual income is \$26,000. Her net monthly income varies between \$1,600 to \$1,800 depending on how much overtime she works. She purchased a mobile home in May 2004. She has a four year mortgage of \$529 a month.⁽¹⁹⁾ She currently pays approximately \$197 for space rent on her mobile home.⁽²⁰⁾ The record is not clear whether this is a monthly or yearly expense. Her car payment is \$490 per month. Her car insurance is \$112 per month. Gas for her car is approximately \$62 per month. Utilities cost her \$84 per month. Water and trash is approximately \$27 per month. She pays \$102 per month for her telephone and cell phone. She pays approximately \$80 per month for Direct TV. She spends approximately \$150 per month on food. She has a rental agreement where she pays \$62 every two weeks. She has medical expenses of \$135 every three months. She needs some dental work. Her first visit will cost \$140. She is not sure what her other appointments will cost. She has approximately \$50 in savings.⁽²¹⁾ Based on these figures, Applicant's expenses will meet or exceed her income depending on how much over-time she receives during a pay period.

From June 1984 to June 1988, Applicant served as a medical administration specialist in the Air Force Reserves. She achieved the rank of Staff Sergeant. She was in the inactive reserve from June 1988 to June 1992.⁽²²⁾

When Applicant completed her July 22, 2004, Public Trust Position Application (SF 85-P), she answered, "No" in response to question "20. Your Financial Record - 180 Day Delinquencies. Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government). She did not list any of her delinquent debts.

At hearing, Applicant testified that she thought she had answered, "Yes" to question 20. She was aware that her credit report would be obtained in conjunction with her background investigation. She had no intent to withhold information about her delinquent accounts. She failed to look at her public trust application more closely prior to signing it.⁽²³⁾ She did list her 1998 bankruptcy in response to question "19. Your Financial Record - Bankruptcy, Liens, Judgments. 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.?"⁽²⁴⁾

Applicant is highly regarded at her place of employment. Her most recent performance rating indicates she consistently meets and often exceeds day-to-day expectations. She was awarded on three occasions with a super star award for quality, efficiency, and teamwork. Her manager commented on her evaluation that she has been continually at the top of the department in producing the most enrollment items month after month. She is a sterling performer at the top of her game.⁽²⁵⁾

The Director of Enrollment states that Applicant has done more in two years than many do in three. She has maintained the position of number one performer over the past 19 months. She processes approximately three times more cases than other workers. He is aware of the issues in the SOR. He is confident her risk to security is no greater than anyone else due to her unmatched performance, work ethic and reliability.⁽²⁶⁾

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."⁽²⁷⁾ 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." (28)

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines 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." (29) The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. (30) 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.

Conditions that could raise a security concern and may be disqualifying (DC), as well as those which could mitigate (MC) 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." (31) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (32) 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. (33)

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. (34) 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. (35) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (36) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (37) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (38) The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

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

Financial Considerations

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*); and FC DC 3 E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Applicant has a history of not meeting her financial obligations since the late 1990s which resulted in her filing for Chapter 7 bankruptcy protection in 1998. She continued to have financial problems after her bankruptcy discharge. She is not able to resolve her delinquent accounts based on her current income and expenses.

I considered the Financial Considerations Mitigating Conditions (FC MC). I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), since there are numerous delinquent accounts that remain unresolved. I cannot apply FC MC E2.A6.1.3.2 (*It was an isolated incident*) since she has encountered financial difficulties since the late 1990s. Her financial problems continued after her 1998 bankruptcy discharge.

FC MC E2.A6.1.3.3 (*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, in part. In 1997, Applicant lost her full-time job. She also lost her mother whom she relied on for guidance and support. After her bankruptcy discharge, several other intervening factors aggravated her financial situation. She suffered a herniated disk which forced her to go on disability. Her roommate moved out unexpectedly on two occasions leaving her with the responsibility for the full amount of the rent. She was robbed on two occasions. She had difficulty finding suitable employment.

While I have taken into account the above mentioned factors, Applicant has been employed in her current position for over two years, yet has taken no steps towards resolving any of her delinquent accounts. She took no action even after being made aware that her financial situation was a potential concern in her trustworthiness determination during her background investigation interview on November 3, 2004. It appears Applicant continues to be over-extended on credit card accounts which was a major cause of her first bankruptcy. As such, little weight is given the FC MC 3.

I cannot apply FC MC E2.A6.1.3.4 (*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*) because Applicant has not consulted a credit counselor dealing with her current situation. It is unlikely her financial problems will be resolved soon since all of her delinquent account remain outstanding.

FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. Applicant has made no effort to resolve the delinquent accounts she incurred after her 1998 bankruptcy discharge. Although she intends to resolve these debts in the future, she has taken no steps to resolve these accounts.

Although Applicant was given a financial fresh start with her September 1998 bankruptcy discharge, she continues to have financial problems. While I have considered that Applicant had difficulties with roommates moving out unexpectedly and difficulty finding suitable employment, she could have taken additional steps to control her expenses. She could have prepared a monthly budget to help control her expenses. She could have bought a less expensive car or arranged financing for a lower monthly payment. She could cut down on expenses which are not necessities such as her Direct TV account. She could get a roommate to help out with the mortgage on her mobile home. She could have delayed purchasing a mobile home until her financial situation became more stable. It is too soon to conclude that her financial situation will be resolved since she is unable to resolve her delinquent accounts. Applicant has failed to mitigate the concern under Guideline F.

Although her evidence of rehabilitation is insufficient at this time this decision should not be construed as a determination that Appellant cannot or will not attain the state of true reform and rehabilitation necessary to justify the granting of a trustworthiness determination. Should Appellant be afforded an opportunity to reapply for a trustworthiness determination in the future and she arranged a satisfactory repayment plan with her creditors to repay her delinquent accounts and timely pay her other debts, she may well demonstrate persuasive evidence of trustworthiness. Since she has not attempted to resolve most of her delinquent accounts, it is premature to grant her a trustworthiness position. The financial considerations concern is resolved against Applicant.

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 answer to question 20 was incorrect, I find Applicant's explanation that she thought she had answered "Yes" to question 20 to be credible. She listed her 1998 bankruptcy and was aware that it was routine for employers to access a potential employee's credit report during the hiring process. She successfully rebutted the allegations that she deliberately intended to provide a false answer. I find that she did not intend to falsify her security clearance application. Guideline E is decided for Applicant.

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. An applicant with a good or even exemplary work history may engage in conduct that has negative trustworthiness implications. Although Applicant's loyalty to the United States is not in question, I am persuaded by the totality of the evidence that she failed to mitigate the trustworthiness concerns regarding Guideline F, and that it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

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: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all of the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended.
2. Gov Ex 2; Tr. at 7, 49.
3. Tr. at 92.
4. Tr. at 57.
5. Tr. at 7.
6. Gov Ex 4 at 1-3.
7. Gov Ex 1.
8. Tr. at 38-39.
9. Tr. at 39-41.
10. Tr. at 41-47.
11. Tr. at 48.
12. Tr. at 102.
13. Gov Ex 2.
14. Gov Ex 3, 4, 5, and 6.
15. Tr. at 59-62.
16. Tr. at 60, 65.
17. Tr. at 67, 69.
18. AE C at 2.
19. AE C at 3.
20. Tr. at 57.
21. AE C at 3.
22. Tr. at 54-55.
23. Tr. at 84-90.
24. Gov Ex 2.
25. AE B.

26. AE C at 4.

27. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

28. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

29. DoD 5200.2-R, ¶ C6.1.1.1.

30. *Id.* at Appendix 8.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at ¶ C8.2.1.

35. Directive , ¶ E3.1.14.

36. *Id.* at ¶ E3.1.15.

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

38. Directive, ¶ E2.2.2.