

DATE: October 24, 2006

In re:

SSN: -----

Applicant for Trustworthiness Position

P Case No. 06-04764

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes approximately \$30,259 in delinquent debt. Most of the debts became delinquent in 2003 during a six month period of unemployment. She has been employed with her current employer for approximately two years. During this time, she took no steps towards resolving her delinquent accounts. I find Applicant did not intentionally falsify her trustworthiness application. I find for her under Personal Conduct and Criminal Conduct. 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 CASE

On April 6, 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 April 11, 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, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct.

In a sworn statement dated April 13, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on June 9, 2006. A notice of hearing was issued on July 3, 2006, scheduling the hearing for July 26, 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 six exhibits which were marked and admitted as Applicant Exhibits (AE) A-F. DOHA received the hearing transcript (Tr.) on August 4, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits to all the allegations under Guideline F, ¶¶ 1.a -1.i. She denies the allegations under Guideline E, Personal Conduct, ¶ 2.a, and Guideline J, Criminal Conduct, ¶ 3.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 59 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 her current company for two years.⁽²⁾ She has been divorced for 30 years, has two grown children, and five grandchildren.⁽³⁾ She has completed two years of college.⁽⁴⁾

Applicant's financial problems started in 1999. In August 1999, she was laid off from Employer A. After a one month period of unemployment, she found a new position with Employer B. She worked for this company for approximately two and a half years. She lost her job with Employer B because she made three mistakes.⁽⁵⁾ Between March 2003 and September 2003, she was unable to find a job. Most of her bills became delinquent as a result of this period of unemployment.⁽⁶⁾ Since September 2003, she worked several temp jobs. On March 22, 2004, she was assigned a job as a temp worker by her current employer. Within two months she was made a permanent employee based on her good work performance.⁽⁷⁾

On April 5, 2004, Applicant submitted a Public Trust Position Application, Standard Form 85P (SF 85P).⁽⁸⁾ A subsequent background investigation revealed Applicant has nine delinquent accounts with a total approximate balance of \$30,259.⁽⁹⁾ The accounts included a \$7,090 balance owed after an automobile repossession in November 1999 (SOR ¶ 1.a); a \$2,412 credit card account placed for collection in July 2003 (SOR ¶ 1.b); a \$2,510 account charged off as a bad debt in August 2003 (SOR ¶ 1.c); a \$1,179 credit card account charged off as a bad debt in September 2003 (SOR ¶ 1.d); a \$2,187 credit card account charged off as a bad debt in September 2003 (SOR ¶ 1.e); a \$5,682 balance owed after an automobile repossession in September 2003 (SOR ¶ 1.f); a \$2,000 account turned over for collection in October 2003 (SOR ¶ 1.g); an \$3,225 credit card account charged off as a bad debt in December 2003 (SOR ¶ 1.h); and a \$3,974 account used for purposes of starting a web business placed for collection in January 2005 (SOR ¶ 1.i).

On February 17, 2005, Applicant was interviewed in conjunction with her background investigation. The interview focused on her financial situation. She admits to having all of the above debts. Two cars were repossessed during periods of unemployment. The first car was repossessed in 1999 after she was laid off for about a month. The second repossession occurred in September 2003 during a six month period of unemployment. Applicant stated that she was not financially able to pay her delinquent accounts. She intends to pay her delinquent debts one at a time when she becomes financially able to do so.⁽¹⁰⁾ During the interview, she provided a personal financial statement. Her total monthly income was \$1,936. Her total monthly debts were \$1,195. She paid \$237 towards other accounts not listed in the SOR. She had a net remainder of \$504 each month.⁽¹¹⁾

At hearing, Applicant indicated that she has not paid her delinquent accounts.⁽¹²⁾ Other expenses have prevented her from paying on these accounts. She had to purchase a new car in order to drive to work.⁽¹³⁾ She also has to pay for some dental work.⁽¹⁴⁾ She submitted copies of her bills and income for 2005 and 2006. In 2005, she had approximately \$841 left over each month after paying her bills. In 2006, she has approximately \$500 to \$600 left over each month after expenses.⁽¹⁵⁾

She has not attended any financial counseling.⁽¹⁶⁾ She consulted a bankruptcy attorney about the possibility of filing for bankruptcy in May or June 2005. The attorney advised her that the court would not accept her bankruptcy filing since she did not owe very much.⁽¹⁷⁾ She has no open credit card accounts and has not incurred additional delinquent debts.⁽¹⁸⁾

When Applicant completed her April 6, 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)."⁽¹⁹⁾ She did not list any of her delinquent debts. At hearing, Applicant testified that she thought she had answered, "Yes" to

question 20. She did not intentionally withhold information about her delinquent debts. She thought she had answered "yes" and claims she did not proofread the document before signing it. [\(20\)](#)

Applicant is highly regarded at her place of employment. She was awarded a shining star award for the month of July 2006. [\(21\)](#) Her most recent performance rating indicates she consistently meets and often exceeds day-to-day expectations. Her manager indicates that she has been a "stellar performer and excellent team player." She is always willing to assist in other areas of the department and makes valuable suggestions for improvement processes. [\(22\)](#) The Director of Enrollment notes that Applicant started out as a temporary hire but was hired as a permanent employee based on her sterling performance. They only offer permanent jobs to 10% of the temps. She has excelled as an enrollment processor. She has never had a single complaint from the hundreds of enrollees she helps each week. He notes her "flawless performance, loyalty, and dependability are above reproach and ranks her among the top 10% of the employees in the department." [\(23\)](#)

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." [\(24\)](#) 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." [\(25\)](#)

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." [\(26\)](#) The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. [\(27\)](#) 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 - A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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." [\(28\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(29\)](#) 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.⁽³⁰⁾

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.⁽³¹⁾ 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.⁽³²⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽³³⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³⁴⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽³⁵⁾ 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 1999. She had two cars repossessed which accounts for \$12,952 of the debt. Her remaining delinquent accounts total \$17,487. Although she had over \$500 left each month after expenses over the last two years, she claims she is unable to pay on these accounts.

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 1999.

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 relation to Applicant's periods of unemployment. She was unemployed for one month in 1996. The majority of her debts became delinquent in 2003 as a result of a six month period of unemployment between April 2003 to November 2003. She has been continuously employed since November 2003. She has been with her current employer for over two years. While a period of unemployment is a mitigating condition, one must look at whether an applicant has established a plan to resolve their delinquent accounts. Applicant made no attempt to pay on her delinquent accounts. While she did have other expenses come up, it still appears that she had some discretionary income which could have been applied towards her delinquent accounts over the past two years. She took no action even after being interviewed in February 2005 about her financial situation. After the interview, she should have known that her financial situation was a potential concern in her trustworthiness determination. She took no action even after being issued the SOR in April 2006. Applicant's lack of action towards resolving her delinquent accounts gives MC 3 less weight.

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. It is unlikely her financial problems will be resolved soon since all of her delinquent accounts 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 made no efforts to resolve her delinquent accounts. I do not find credible her claim that a bankruptcy attorney advised her that the bankruptcy court would not accept her bankruptcy because she did not have enough debts. Although she intends to resolve these debts in the future, she has taken no steps to resolve these accounts. For the past two years, she had some discretionary income left over each month which she could have applied towards some of her delinquent accounts.

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 any 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. Applicant explained that she did not adequately proofread her answer. Although her answer to question 20 was incorrect, I find credible Applicant's explanation that she thought she had answered "Yes" to the question. She listed other unfavorable information on her trustworthiness application. In response to question 7, she listed a job termination in March 2002. I find that she did not intend to falsify her public trust position application. Guideline E is decided for Applicant.

Criminal Conduct

It is alleged Applicant violated Title 18 United States Code § 1001. Under this statute, it is a crime to knowingly and willfully make any materially false statement, representation or writing. I find Applicant did not violate Title 18 U.S.C. 1001, because she did not deliberately intend to falsify her public trust position application for the reasons explained above in 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, common sense 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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.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. Tr. at 7; Gov Ex 1; Gov Ex 2.
3. Tr. at 63-64.
4. Tr. at 7.
5. Gov Ex 1, questions 6 and 7.
6. Tr. at 12, 38-39; 54-59.
7. Tr. at 60; AE E.
8. Gov Ex 1.
9. Gov Ex 3, 6, and 7.
10. Gov Ex 4.
11. Gov Ex 5.
12. Tr. at 45-46.
13. Tr. at 41-42, 45.

14. Tr. at 48-49

15. AE A and AE B.

16. Tr. at 60.

17. Tr. at 61-62.

18. Tr. at 62.

19. Gov Ex 2.

20. Tr. at 49-54.

21. AE C; AE D.

22. AE F.

23. AE E.

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

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

26. DoD 5200.2-R, ¶ C6.1.1.1.

27. *Id.* at Appendix 8.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at ¶ C8.2.1.

32. Directive , ¶ E3.1.14.

33. *Id.* at ¶ E3.1.15.

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

35. Directive, ¶ E2.2.2.