

DATE: February 22, 2007

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In re:

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SSN: -----

Applicant for ADP I/II/III Position

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P Case No. 06-04774

## **DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

As a divorced single mother with two young children, Applicant encountered financial problems which led to Chapter 7 bankruptcy in April 1995. In 2003, she encountered financial problems again after an automobile accident prevented her from working for one year. She incurred 14 delinquent debts totaling \$12,211. Applicant's step-father helped her with her financial affairs. She has paid off most of the debt. The debts remaining are medical accounts where the creditor was not identified on the credit report and could not be located. She made a good faith effort to resolve her accounts. The omission of her delinquent debts on her trustworthiness application was not intentional. She has mitigated the trustworthiness concerns raised under financial considerations and personal conduct. Applicant's eligibility for a assignment to a sensitive position is granted.

### **STATEMENT OF CASE**

On September 29, 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").<sup>(1)</sup> On August 24, 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 September 18, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to another administrative judge on October 19, 2006, and transferred to me on October 20, 2006. A notice of hearing was issued on November 3, 2006, scheduling the hearing for November 29, 2006. Due to a scheduling conflict for Applicant's counsel, the hearing was continued to December 5, 2006, and was conducted on that date. The government submitted Government Exhibits (Gov Ex) 1-5 which were admitted into the record without objection. Applicant testified on her own behalf, called one witness and submitted one exhibit with subparagraphs 1-11 which was marked as Applicant Exhibit (AE) A, and admitted without objection. The record was held open until December 19, 2006, to allow Applicant to submit further documents. A ten page document was submitted on December

7, 2006, marked as AE B, and admitted without objection. A nine page document was received on December 14, 2006, marked as AE C, and admitted without objection. DOHA received the hearing transcript (Tr.) on December 13, 2006.

### FINDINGS OF FACT

In her SOR response, Applicant admits to the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, and 1.j. She denies the allegations in SOR ¶¶ 1.b, 1.f- 1.i, 1.k- 1.o, and 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 a 44 year old woman employed as an administrative assistant for a Department of Defense contractor who is seeking a position of public trust. She is divorced and has two sons, ages 19 and 23. <sup>(2)</sup>

In 1995, Applicant struggled financially as a divorced single mother with two young children. Her youngest son is a special needs child. She felt overwhelmed financially and file for Chapter 7 bankruptcy on April 4, 1995. <sup>(3)</sup> She listed total assets of \$1,340 and total liabilities of \$7,038. Her debts were discharged on July 21, 1995. <sup>(4)</sup> After her bankruptcy discharge, she was financially stable for over a seven year period.

On October 29, 2002, Applicant was in a car accident. A car rear-ended her. She suffered injuries to her back, right arm, and neck. She was in extreme pain and was unable to work for at least a year. she encountered financial problems as a result <sup>(5)</sup> Around 2003, her mother and step-father offered to help her out. She gave them access to her checking account and they paid her bills for her. Her step-father was most helpful in settling her accounts for her. <sup>(6)</sup>

On September 29, 2004, Applicant completed a Public Trust Position Application (SF 85-P). <sup>(7)</sup> She answered "No" in response to question 20. Your Financial Record - 180 Day Delinquencies which reads: "Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government)." Her background investigation revealed 14 delinquent accounts with a total approximate balance of \$12,211. <sup>(8)</sup>

The accounts included a \$551 orthodontist/dental bill placed for collection in August 2005 (SOR ¶ 1.b); a \$830 department store credit card account that was charged off (SOR ¶ 1.c); a \$1,988 credit card account that was charged off (SOR ¶ 1.d); a \$5,718 credit card account placed for collection (SOR ¶ 1.e); a \$573 department store credit card account placed for collection in September 2004 (SOR ¶ 1.f); a \$269 account placed for collection in February 2003 (SOR ¶ 1.g); a \$59 medical account placed for collection in January 2000 (SOR ¶ 1.h); a \$97 medical account placed for collection in April 2002 (SOR ¶ 1.i); a \$1,404 account placed for collection in May 2004 (SOR ¶ 1.j); a \$63 medical account placed for collection in September 2001 (SOR ¶ 1.k); a \$286 medical account placed for collection in December 2002 (SOR ¶ 1.l); a \$222 medical account placed for collection in November 1998 (SOR ¶ 1.m); a \$63 medical account placed for collection in September 1999 (SOR ¶ 1.n); and a \$88 medical account placed for collection in November 1998 (SOR ¶ 1.o). <sup>(9)</sup> The current status of the debts are:

SOR Paragraph	Debt	Status	Record
1.b	\$551 orthodontist/dental bill.	Denies. Ex-husband is responsible for this bill. Dentist verifies this. Mitigated.	AE A-7; Tr. at 33-34; Gov Ex 2 at 3.
1.c	\$830 department store credit card that was charged off.	Denies. Stepfather paid in March 2003. Resolved.	AE A-11; AE A-6; Tr. at 30-31, 37, 49, 69-70; Gov Ex 2 at 2; Gov Ex 4 at 2; Gov Ex 5 at 4.
1.d	\$1,988 credit card account that was charged off.	Admits. Resolved .	AE A-5; AE A-8; AE A-9 at 3; Tr. at 29, 49, 66-70, 79-80; Gov Ex 2 at 1; Gov Ex 4 at 2; Gov Ex 5 at 2.

1.e	\$5,718 credit card account turned over for collection.	Admits. Settled. Resolved.	AE A-8; AE A-9 at 2; Tr. at 43, 68, 77; Gov Ex 2 at 12; Gov Ex 4 at 2; Gov Ex 5 at 3.
1.f	\$573 department store credit card account placed for collection.	Denies. Account is paid. Resolved.	AE A-6; Tr. at 51-52; Gov 2 at 6; Gov 5 at 3.
1.g	\$269 collection account.	Denies. Attempts to locate unsuccessful. Still unresolved.	Tr. at 57-58, 73-74; Gov 2 at 8; Gov 5 at 4.
1.h	\$59 medical account.	Denies. Unable to determine creditor.	Tr. at 40; Gov Ex 2 at 10; Gov Ex 5 at 5.
1.i	\$97 medical account placed for collection.	Denies. October 6, 2004, credit report indicates paid. Resolved.	Gov Ex 5 at 5.
1.j	\$1,404 collection account.	Admits. Settled and paid 9-12-2005. Resolved.	AE A-11 at 5; Tr. at 31-32, 52-53, 71-72; Gov Ex 2 at 3-5; Gov Ex 5 at 6.
1.k	\$63 medical account placed for collection in September 2001.	Denies. Unable to determine creditor.	Tr. at 40; Gov Ex 2 at 10; Gov Ex 5 at 6.
1.l	\$286 medical account placed for collection in December 2002.	Denies. Unable to determine creditor.	Tr. at 39-40; Gov Ex 2 at 7; Gov Ex 5 at 6.
1.m	\$222 medical account placed for collection in November 1998.	Denies. Unable to determine creditor.	Tr. at 40; Gov Ex 2 at 8; Gov Ex 5 at 11.
1.n	\$63 medical account placed for collection in September 1999.	Denies. Unable to determine creditor.	Tr. at 40; Gov Ex 2 at 9; Gov Ex 5 at 11.
1.o	\$88 medical account placed for collection in November 1998.	Denies. Unable to determine creditor.	Tr. at 41; Gov Ex 2 at 9; Gov Ex 5 at 12.

With the help of her step-father, Applicant has resolved the accounts alleged in SOR ¶¶ 1.c, 1.d, 1.e, 1.f, 1.i, and 1.j. Her step-father contacted the creditors but the bills were paid out of Applicant's account.<sup>(10)</sup> The debt alleged in SOR ¶ 1.b is a dental bill for her son. Her dentist verified that her ex-husband is responsible for this bill. Applicant paid her share of the dental bill.<sup>(11)</sup> The bills remaining are seven medical accounts. The names of the specific creditors for these medical accounts are not identified on the credit report. The total approximate balance of the unresolved medical bills is \$1,050.<sup>(12)</sup> Applicant's step-father tried unsuccessfully to locate the creditors. He did track down and pay three medical/lab bills on Applicant's behalf, a total amount of \$504.93.<sup>(13)</sup> The credit report entries are too vague to be able to connect these bills with any of the medical accounts alleged in the SOR.

Applicant also paid bills that were listed as delinquent in her response to interrogatories dated July 21, 2006, that were not listed in the SOR. They consisted of an \$88 mail order music store account,<sup>(14)</sup> a \$123 overdue library book account,<sup>(15)</sup> and a department store account settled for \$2,700 on July 13, 2004.<sup>(16)</sup>

Applicant did not list any delinquent accounts in response to question 20 on her trustworthiness application because she did believe that any of her accounts were delinquent at the time she submitted her trustworthiness application on September 29, 2004. Her step-father handled the bills for her in 2003/2004 and told her that she had no delinquent accounts.<sup>(17)</sup> Her step-father testified at hearing that he believed that Applicant had no delinquent accounts at the time she filled out her trustworthiness application.<sup>(18)</sup> He states his step-daughter is honest and trustworthy. She just hit a couple of bumps in the road and needed his help to clear up her financial situation.<sup>(19)</sup> He states that she is able to meet her current financial obligations.<sup>(20)</sup> He acknowledges certain medical accounts remain outstanding but it was a result

of not being able to contact the creditor rather than a refusal to pay the account.<sup>(21)</sup> Applicant is able to pay back these medical accounts if they are able to locate the creditors in the future.<sup>(22)</sup>

Applicant earns approximately \$1,800 a month in take home pay. Rent is \$600 a month. Her youngest son lives with her and helps out with expenses. The only other expenses they have are electric and cable television. She has no car payment.<sup>(23)</sup> She has a budget. She writes down every item purchased and does not buy anything that she does not need. She has no open credit card accounts. She tries to work as much overtime as possible.<sup>(24)</sup> She loves her job and would never do anything to jeopardize it.<sup>(25)</sup> She has enrolled in an identity theft protection program with a bank to allow her to track her personal and confidential records and to ensure they are up-to-date.<sup>(26)</sup>

Applicant's former pastor wrote a letter on her behalf. He has known her since 1996. She attended church regularly and participated in other church activities. He admires her courage while dealing with her serious health issues and finds her to be a person of great integrity. His experience with Applicant has been positive.<sup>(27)</sup> A co-worker who worked with Applicant from 1998 to 2002 finds her to be trustworthy and a good communicator. Her knowledge and excellent people skills consistently received rave reviews from her co-workers.<sup>(28)</sup> Applicant's friend of 20 years who was her supervisor from 1991-1995 was impressed with her can do attitude and willingness to help her co-workers. Her performance appraisals were always excellent. She is equally trustworthy as a friend.<sup>(29)</sup>

### 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."<sup>(30)</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive 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:

Guideline F - 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.

Guideline E - Personal Conduct - 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.

Conditions that could raise a trustworthiness 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."<sup>(31)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(32)</sup> 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.<sup>(33)</sup>

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.<sup>(34)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>(35)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(36)</sup> Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>(37)</sup> 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. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations, and Guideline E - Personal Conduct.

### **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 E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Applicant first experienced financial difficulty in 1995 which resulted in her filing for Chapter 7 bankruptcy. She encountered additional financial problems around 2003 after a car accident prevented her from working for a year. The SOR alleged 14 delinquent debts with an approximate total balance of \$12,211.

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 she experienced financial troubles over the past few years. I cannot apply FC MC E2.A6.1.3.2 (*The behavior was isolated*) due to her prior history of financial responsibility, including the 1995 bankruptcy and her most recent financial problems.

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. Applicant's 1995 bankruptcy was the result of a divorce and her struggle adjusting to taking care of her two children on her own. After her bankruptcy, her finances were under control for a period of seven years. In late 2002, she was injured in a car accident which prevented her from working for a year. Financial problems occurred as a result of her inability to work. Conditions beyond Applicant's control contributed to both periods of financial instability.

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*) does not apply only with respect to the fact that Applicant has not received any formal financial counseling. I do note that her financial problems now appear to be under control. Applicant lives within her means and has resolved most of her delinquent accounts. The only accounts that have not been resolved are accounts where she and her step-father have been unsuccessful in locating the creditor.

Applicant's step-father was a big facilitator in resolving Applicant's accounts. One might question her ability to handle her finances on her own. I believe she can. She is cautious about her spending habits. She was financially stable for a period of over seven years after her bankruptcy discharge in 1995. In 2003, she recognized that she needed help with her finances and sought the assistance of her mother and step-father. The accounts were resolved using her money. Her step-father helped organize her financial situation. He essentially did what most credit counseling agencies would have done for Applicant.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Applicant resolved six of the delinquent accounts. The total approximate balance of these delinquent accounts on the SOR was \$11,151. Seven accounts remain unresolved, an approximate total of \$1,050. Applicant and her step-father were proactive in trying to locate these accounts. They are all medical accounts. The evidence supporting these accounts are entries on Applicant's credit report indicating that she owes these "medical accounts." The entries are too vague and do not give Applicant adequate notice as to the exact name of the creditor. Regardless, Applicant and her step-father attempted to locate these accounts and have paid three other medical accounts which may or may not related

to the medical accounts listed in the SOR. If they successfully locate these creditors, Applicant is able to pay the accounts. Adequate attempts have been made to locate these creditors and Applicant has demonstrated a good faith effort to resolve her delinquent accounts. She has resolved a large majority of debt balance.

Applicant has mitigated the financial considerations trustworthiness concern. Guideline F is decided for Applicant.

### **Personal Conduct**

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified and/or sensitive 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, trustworthiness position, or other official matters is a concern. It is deliberate if it is done knowingly and willfully.

In this case, Applicant explained that she did not list her delinquent debts in response to question 20 on the public trust application because she was not aware of the delinquent debt. Her step-father had been helping with her finances since 2003. He testified that he was unaware of these delinquent accounts. I find both Applicant and her step-father's testimony credible. I find Applicant did not intentionally falsify her trustworthiness 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. Applicant took the initiative to resolve her financial problems even prior to applying for her trustworthiness position. She resolved the accounts where the creditors were able to be located. She was not aware that she had delinquent accounts when she filled out her trustworthiness application. Her proactive attempts to resolve her accounts with the help of her step-father and the favorable recommendations from her friends and co-workers mitigate the trustworthiness concerns raised in her background investigation. Based on the evidence in the record, 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.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

Subparagraph 1.n: For Applicant

Subparagraph 1.o: For 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 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; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.

2. Tr. at 48, 56; Gov Ex 1.

3. Tr. at 23-24.

4. Gov Ex 3.

5. Tr. at 23-27; Gov Ex 2 at 12-13..

6. Tr. at 28-29, 65; Gov Ex 2.

7. Gov Ex 1.

8. Gov Ex 4, 5.

9. Gov Ex 2, 4, and 5.

10. Tr. at 65.

11. AE A-7.

12. SOR ¶¶ 1.g, 1.h, 1.k, 1.l, 1.m, 1.n and 1.o.

13. AE C at 6-9.
14. Gov Ex 2 at 12; AE A-4.
15. Gov Ex 2 at 12; AE C at 3-4.
16. AE B at 1-10.
17. Tr. at 22, 46; Gov Ex 2 at 12.
18. Tr. at 65.
19. Tr. at 78.
20. Tr. at 85.
21. Tr. at 73-74, 76.
22. Tr. at 42.
23. Tr. at 54-55.
24. Tr. at 58-60.
25. Tr. at 46.
26. AE A-10.
27. AE A-2.
28. AE A-1.
29. AE A-3.
30. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
31. Directive, ¶ E2.2.1.
32. *Id.*
33. *Id.*
34. Directive, ¶ E3.1.14.
35. Directive, ¶ E3.1.15.
36. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
37. Directive, ¶ E2.2.2.