

DATE: January 22, 2007

In Re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 06-05127

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Since 1999, Applicant has owed more than \$17,000 through nine delinquent debts. Some of her financial problems were caused or exacerbated by a 10-month period of unemployment. However, she has failed to pay or otherwise act to resolve her debts despite the fact she has had steady income and a positive cash flow since 2001. Accordingly, Applicant has failed to mitigate the security concerns about her financial condition. Eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant's request for a position of public trust. ⁽¹⁾ On August 14, 2006, it is clearly consistent with the national interest to grant Applicant eligibility for access to a sensitive position. On August 14, 2006, DOHA issued to Applicant a Statement of Reasons (SOR), ⁽²⁾ which specified the basis for its decision - security concerns addressed in the Directive under Guideline F (financial considerations). On August 30, 2006, Applicant answered the SOR, admitted all of the SOR allegations, and requested a determination without a hearing.

DOHA Department Counsel submitted a file of relevant materials (FORM) in support of the government's preliminary decision, a copy of which Applicant received on October 17, 2006. Applicant timely submitted additional information in response to the FORM, and the case was assigned to me on December 1, 2006.

FINDINGS OF FACT

Applicant's aforementioned admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 48-year-old employee of a defense contractor. She has held her current position since November 2002, but was unemployed from July 2002 to October 2002. Her previous employment lasted from May 1999 until June 2002,

before which she was also unemployed for three months. An earlier job lasted from September 1996 until December 1998. She has been married since January 1990.⁽³⁾

Since 1999, her periods of unemployment caused her to fall behind on several credit cards and other personal credit accounts. Some of the accounts she used to cover expenses while she had no or reduced income. Others were opened for other discretionary purposes, and fell delinquent during her unemployment.

In August 2004, Applicant submitted a Questionnaire for a Public Trust Position. She disclosed therein she had three credit cards overdue from 2002. The ensuing background investigation showed she actually owed at least \$17,000 for nine different accounts. In April 2006, she responded to DOHA interrogatories about the current status of her debts and any actions she had yet taken to pay or otherwise resolve her obligations. Applicant verified the debts listed and confirmed she had not taken any steps to pay them.

The only action Applicant has taken to satisfy her debts was to pay, in response to the FORM in October 2006, three of her past due debts. She still has six accounts totaling about \$16,100, that have been delinquent since 1999 or 2000. According to a personal financial statement she submitted when interviewed about her finances by a government investigator in March 2005, Applicant and her husband have over \$1,000 remaining each month after paying expenses.

POLICIES AND BURDEN OF PROOF

The Directive sets forth adjudicative guidelines⁽⁴⁾ to be considered in evaluating an applicant's suitability for access to sensitive information. Trustworthiness determinations must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive.⁽⁵⁾ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of a position of trust.

This decision is intended to resolve whether it is clearly consistent with the national interest⁽⁶⁾ for an applicant to either receive or continue to have access to sensitive information. The government bears the initial burden of producing admissible information on which it based its preliminary decision against the applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, the burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to such access, an applicant bears a heavy burden of persuasion.⁽⁷⁾ A person who has access to sensitive information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁽⁸⁾

CONCLUSIONS

Financial Considerations. The government alleged Applicant should be disqualified because she is delinquent on nine personal credit accounts (SOR ¶¶ 1.a - 1.i) totaling more than \$17,000, and that she has more than \$400 available each month after expenses (SOR 1.j). In addition to Applicant's admissions to each of the SOR allegations, the government presented sufficient information to support those allegations. The facts established raise security concerns addressed in the Directive under Guideline F. Specifically, an applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties.⁽⁹⁾ It is clear from these facts that Applicant is unwilling to pay the delinquent debts she accrued almost seven years ago, despite having been gainfully employed for the past four years. Accordingly, these facts further support application of Guideline F disqualifying condition (DC) 1⁽¹⁰⁾ and DC 3.⁽¹¹⁾

Of the mitigating conditions (MC) that are potentially applicable to these facts, only MC 3⁽¹²⁾ warrants consideration. Applicant's periods of unemployment contributed to her debts and ability to pay; however, she has been steadily

employed with a positive net cash flow since 2002. Despite this, she has failed to address her past debts in a way that would show she is managing her finances responsibly. Failure to do so is also indicative of poor judgment and reliability. Based on available information about Applicant's finances, I conclude this guideline against the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. This record raises reasonable doubts about Applicant's ability to protect sensitive information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Doubts persist about Applicant's judgment and reliability. Absent substantial information to mitigate these doubts, which Applicant failed to provide, I conclude she has not overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial Considerations): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: For the Applicant

Subparagraph 1.j: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's request for access to sensitive information. Position of trust is denied.

Matthew E. Malone

Administrative Judge

1. Per Deputy Undersecretary of Defense for Counter Intelligence and Security memorandum, *Adjudication of Trustworthiness Cases*, (November 19, 2004), ADP I/II/III cases are resolved through application of DoD Directive 5220.6 (Directive).
2. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
3. Item 4, Questionnaire for Public Trust Position, dated August 20, 2004.
4. Directive, Enclosure 2.

5. Commonly referred to as the "whole person" concept, these factor are as follows:

1. Nature and seriousness of the conduct and surrounding circumstances.
2. Frequency and recency of the conduct.
3. Age of the applicant.
4. Motivation of the applicant, and the extent to which the conduct was negligent,

willful, voluntary, or undertaken with knowledge of the consequences involved.

5. Absence or presence of rehabilitation.
6. Probability that the circumstances or conduct will continue or recur in the future;

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

7. *See Egan*, 484 U.S. at 528, 531.

8. *See Egan*; Directive E2.2.2.

9. Directive, E2.A6.1.1.

10. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;

11. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

12. Directive, 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);