

DATE: November 3, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-06999

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant did not falsify her public trust position application and mitigated security concerns raised by her financial condition; she established that her tax debt was discharged in bankruptcy and she had arranged a settlement on her other debt. Eligibility for an ADP I/II/III position is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue Applicant's eligibility for an ADP I/II/III position. In accordance with Department of Defense Regulation 5200.2-R (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2. 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on 21 June 2006 detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Regulation. Applicant answered the SOR in writing on 12 July 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on 16 August 2006. On 14 September 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 21 September 2006.

FINDINGS OF FACT

Applicant is employed by a defense contractor as a service benefits representative for the Department of Defense. The government employee who oversees the contract reports Applicant is a dedicated and trustworthy employee.

In 1993, while accompanying her husband while he was on active duty in the military in California, Applicant incurred a debt of \$665 to a state franchise tax board. In September 1994, the state levied a tax lien against her for \$1,087. The state released the lien in November 1994. On 30 June 1995, the state filed a tax lien against Applicant for \$665. According to Applicant's credit reports, this lien has not been released.

By 1997, Applicant had moved to New Mexico. In 1997, she filed a petition for Chapter 7 bankruptcy, listing the \$666 tax debt as a disputed priority claim. On 14 July 1997, the listed debts were discharged in bankruptcy. Answer at 2-4; Tr. 24.

In 2000, Applicant cosigned a note for \$24,000 when her son purchased a truck. He made no payments on the truck and voluntarily had it repossessed when he went into the military a few months later. Applicant never received any notice from the creditor that they were holding her liable for the deficiency. The creditor agreed to settle the debt for \$2,200. Ex. C. Her first payment is due on 6 October 2006.

On 1 October 2004, Applicant completed a public trust position application (PTPA) by certifying that her statements therein were "true, complete, and correct" to the best of her knowledge and belief, and by acknowledging that a knowing and willful false statement could be punished by fine and/or imprisonment under 18 U.S.C. § 1001. Question 19 asked if, in the previous seven years, Applicant had filed bankruptcy or been subject to a tax lien. Question 20 asked if Applicant was then delinquent more than 180 days on any debt. Applicant answered "no" to both questions.

POLICIES

Positions designated as ADP I or ADP II are "sensitive positions." Regulation ¶ AP10.2.1. ADP III positions are nonsensitive positions. Regulation AP10.2.3.1. By memorandum dated 19 November 2004, the Deputy Under Secretary of Defense for Counterintelligence and Security directed DOHA to resolve all contractor cases submitted for trustworthiness determinations, including ADP I, II, and III positions, under the Directive. [\(1\)](#)

"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." Regulation ¶ C6.1.1.1.

Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. Regulation ¶ C8.2.1.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant is indebted to California in the amount of \$665 for franchise taxes, penalties, and interest for tax year 1993 and was the subject of a lien filed in 1995 (¶ 1.a); indebted for \$24,000 after resale of an automobile that was repossessed (¶ 1.b); and Applicant is capable of paying these debts (¶ 1.c). In her Answer, Applicant denied both allegations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Regulation app. 8 at 144.

It is potentially disqualifying for an applicant to have a history of not meeting his financial obligations (DC 1) or to be unable or unwilling to satisfy her debts (DC 3). The Government's evidence raised both disqualifying conditions. Applicant was unable to pay her debts and had them discharged in bankruptcy in 1997. She also owed monies on her the car loan she cosigned for her son.

An applicant may mitigate financial considerations trustworthiness concerns by establishing that the behavior was not recent (MC 1); it was an isolated incident (MC 2); the financial situation was largely beyond the applicant's control (MC 3); the person has received counseling and there are clear indications the problem is being resolved or is under control (MC 4); or the applicant has made a good-faith effort to repay overdue creditors or otherwise resolve her debts (MC 6).

I conclude Applicant has made a good-faith effort to repay overdue creditors and resolve her debts. MC 6 applies. Although it is not clear whether the tax debt was discharged in bankruptcy, Applicant acted in good-faith. She listed it on her bankruptcy petition and acted on the advice of her attorney, who asserts the debt was discharged in bankruptcy in 1997. Applicant was unaware the creditor who held the note she cosigned for her son was seeking money from her until she was interviewed by a security investigator. She has since made arrangements to pay off the debt and is in a financial

position to make the payments.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on a PTPA by deliberately failing to disclose that she had been subject to a tax lien (§ 2.a) and that she was then delinquent more than 180 days on any debt (§ 2.b). In her Answer, Applicant denied the allegations. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard critical or sensitive information. Regulation app. 8 at 142.

A potentially disqualifying condition is raised when an applicant deliberately omits, conceals, or falsifies relevant and material facts from any questionnaire or form used to determine trustworthiness (DC 1). After considering all of the evidence, I am convinced Applicant did not deliberately provide false or misleading information on her PTPA. Her attorney told her the tax debt was discharged in bankruptcy, and she was not aware the creditor on her son's truck was seeking payment from her. I find for Applicant on § 2.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk." Regulation app. 8 at 132. It involves "the careful weighing of a number of variables known as the "whole person concept." *Id.* 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. *Id.*

After examining all of the evidence, the disqualifying and mitigating conditions, as well as the adjudicative process factors, I conclude Applicant has mitigated the financial considerations security concern. Applicant has arranged to pay off the debt on her son's car. She and her attorney believe the tax debt was discharged in bankruptcy. Applicant is in control of her finances. There is little likelihood she will be delinquent on her debts in the future and the current debts provide little potential for pressure, coercion, exploitation, or duress.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is granted.

James A. Young

Administrative Judge

1. As far as I could determine, the contents of this memorandum have never been published in the Federal Register, as appears to be required by 5 U.S.C. § 552(a)(1) before the memorandum could become effective. Nevertheless, I am required to follow the Deputy Under Secretary's direction.