

DATE: January 16, 2007

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 06-07664

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1999 and 2004, Applicant accrued approximately \$16,050 of delinquent debt. Currently, it remains outstanding in its entirety despite her repeated promises to begin satisfying it. Eligibility to occupy a sensitive position is denied.

STATEMENT OF THE CASE

On May 3, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (the Regulation); and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended and modified (Directive).

The SOR detailed reasons under Guideline F (financial considerations) and Guideline E (personal conduct) why DOHA could not make a preliminary affirmative finding that it was clearly consistent with the national interest to grant or continue Applicant's eligibility for occupying an Information Systems Position to support a contract with the Department of Defense, and recommended a referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked. Applicant answered the SOR on August 30, 2006, admitting the allegations, and requesting an administrative determination in lieu of a hearing.

Department Counsel mailed the government's file of relevant material (FORM) to Applicant on September 13, 2006. She received it on September 23, 2006, and was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She did not do so. The case was assigned to me on November 20, 2006.

RULING ON PROCEDURE

The government's motion to amend the SOR by deleting any reference to DoD Directive 5200.2 is denied.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations. I have incorporated them into the findings of fact. I make the following additional findings of fact.

Applicant is a 32-year-old married woman with one child age 13. She has a high school diploma and has completed vocational training in the medical services field. ⁽¹⁾

Between 1999 and 2004, Applicant accrued 11 delinquencies in the approximate amount of \$16,050. Ten have been referred to collection agencies and one has been charged off. She accrued these debts "due to [her] own neglect." ⁽²⁾ During an interview with an investigative agent in October 2004, Applicant stated that her smaller debts would be satisfied by March 2005. ⁽³⁾ Also, she stated that upon satisfying these smaller debts, she would focus on the larger ones. ⁽⁴⁾

She satisfied none of her debts, as promised. ⁽⁵⁾ Moreover, she has provided no evidence that she has either sought counseling for her financial problems or organized a budget.

When Applicant completed a Questionnaire for Public Trust Positions (SF 85P) in August 2004, all of the debts listed in SOR subparagraph 1.a through 1.j were more than 180 days delinquent. She did not disclose them, as required on the SF 85P. She asserts her supervisor told her not to list them. ⁽⁶⁾

POLICIES

The adjudicative guidelines set out in the Regulation apply to ADP trustworthiness determinations. DoD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable determination may be made. ⁽⁷⁾

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist in reaching fair and impartial common sense decisions.

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." ⁽⁸⁾ Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are raised:

Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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 pertaining to these guidelines that could raise a security or trustworthiness concern and may be disqualifying, as well as those which could mitigate security or trustworthiness concerns, are set forth and discussed in the conclusions below.

Since the protection of national security (and sensitive information) is the paramount consideration, the final decision in each case must be reached by applying the standard that the determination of an applicant's eligibility for occupying an Information Systems Position is "clearly consistent with the national interest."⁽⁹⁾ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted.⁽¹⁰⁾ The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable trustworthiness determination.⁽¹¹⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹²⁾ These same burdens of proof apply to trustworthiness determinations for ADP positions.

CONCLUSIONS

Financial Considerations

Applicant's continuing inability to satisfy her financial delinquencies triggers the applicability of Financial Considerations Disqualifying Condition (FC DC) 1: *A history of not meeting financial obligations*, and FC DC 3: *Inability or unwillingness to satisfy debts*. I have considered all of the mitigating conditions and conclude none apply. As she stated during an interview with an investigator in 2004, her financial delinquencies accrued through her own neglect. Despite promising to begin satisfying them more than two years ago, they remain outstanding in their entirety. Also, she provided no evidence that she has either organized her finances or enrolled in financial counseling. She has failed to mitigate the financial considerations trustworthiness concern.

Personal Conduct

Applicant's omission of her delinquencies from the SF 85P raises the issue of whether Personal Conduct Disqualifying Condition (PC DC) 2: *The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, applies. Her explanation that her supervisor advised her not to list the debts was not credible. PC DC 2 applies without mitigation.

Whole Person Concept

Upon considering Applicant's financial irresponsibility, her continuing delinquent indebtedness, and the dishonesty she displayed by omitting them from the SF 85P, I conclude it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for occupying an Information Systems Position designated ADP I/II/III.

FORMAL FINDINGS

I conclude Applicant is not eligible to occupy an Information Systems Position. Formal findings on each allegation set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1., Guideline F.: AGAINST THE 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.: AGAINST THE APPLICANT

Subparagraph 2.a.: Against 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 or continue Applicant's eligibility for occupying an Information Systems Position designated ADP I/II/III. Eligibility is denied.

Marc E. Curry

Administrative Judge

1. Item 6, Questionnaire for Public Trust Positions, signed by Applicant on August 25, 2004.
2. Item 7, Affidavit, executed by Applicant on October 18, 2004, at 1.
3. *See generally* Item 7.
4. *Id.* at 3-4.
5. Item 5, Answer, dated June 30, 2006.
6. Item 7 at 5.
7. Regulation ¶C8.2.1.
8. Regulation ¶C6.1.1.1.
9. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
10. Directive ¶E3.1.14.
11. Directive ¶E3.1.15.
12. Directive ¶E2.2.2.