

DATE: December 31, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-07711

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Chester H. Morgan II, Esq.

SYNOPSIS

After her husband left her as the sole support for their three children, Applicant was unable to pay her bills and accumulated substantial delinquent debt. She has paid all her delinquent debts, except for some student loans for which she has established a payment plan. 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 an ADP I/II/III position for Applicant. As required by 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 August 2006 detailing the basis for its decision--concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Regulation. Applicant answered the SOR in an undated writing and elected to have a hearing before an administrative judge. The case was assigned to me on 26 September 2006. With the consent of the parties, I convened a hearing on 13 December 2006 to consider whether it is clearly consistent with the interest of national security to grant or continue Applicant's eligibility to occupy an ADP I/II/III position. At the hearing, Applicant submitted Exs. A-L as amendments to her Answer. DOHA received the hearing transcript (Tr.) on 21 December 2006.

FINDINGS OF FACT

Applicant is a 36-year-old employee of a defense contractor. She was a benefits service representative but was promoted to quality assurance analyst. She monitors telephone calls between TRICARE benefits counselors and beneficiaries to assure the quality of the advice given. Her supervisors and coworkers believe she is honest and trustworthy.

She has been married since 1989 and has three children, ages 20, 16, and 10 years old. Applicant's husband joined the U.S. Army in 1991. In 1996, she received a certificate in medical administration from a vocational school.

In the summer of 2000, Applicant's husband left her for a lower ranking enlisted woman in the same Army unit. Applicant filed a complaint with her congressman that led to an investigation of her husband's affair. Thereafter, he failed to provide any financial support for her or the children. Applicant was then making \$9 an hour. She took the children to her hometown and moved into a house owned by her father. She paid him rent.

Applicant moved back near where her husband lived in January or February 2001, so her children could see their father. Applicant's sister was going to move into the house Applicant was vacating, so Applicant did not have the gas or telephone disconnected. She asked her sister to just have the name on the accounts changed. Applicant's sister never moved into the house. Instead, her father rented the house to another family. They never changed the name on the accounts and did not pay the bill. The gas bill of \$557 was referred for collection in April 2001 (SOR ¶ 1.a) and the telephone bill was referred for collection in August 2001(SOR ¶ 1.b). Applicant paid these debts in July 2006. Exs. A, B.

The debt alleged in ¶ 1.c, \$1,743 for medical services provided in 2000, was referred for collection in November 2001. Applicant was unconscious when she was admitted, does not know what information was given to the hospital about her enrollment in the military medical benefits system (TRICARE), and believes that TRICARE should have been billed directly for her care. She asserts that the collection agency returned the debt to the hospital and the individual at the hospital authorized to handle the debt has not returned her telephone calls. Applicant believes she has done more than enough to resolve this debt.

When the couple separated, Applicant's husband stopped paying a loan on Applicant's van. (¶ 1.d). They then owed about \$13,000 on the loan. The van was repossessed and sold at auction. Applicant received a letter from the creditor stating the balance due. She claims she made payments of \$200 a month but does not recall for how long. Ex. D. The OPM security investigator asked for documentation of the payments. Applicant asserts she requested such documentation. When it wasn't forthcoming, she stopped payment on the debt. In October 2006, she settled the \$2,684 balance for \$1,400. Ex. D.

The debt alleged in ¶ 1.e is for a credit card debt in the amount of \$422. Applicant only paid the minimum on her balance and was often late in her payments. The creditor closed the account in August 2003. Applicant paid the debt in August 2006. Ex. E.

Applicant alleges that the delinquent debt noted in ¶ 1.f resulted from a computer her husband purchased under her account. The creditor charged off the debt of \$1,543 in May 2004. The debt was paid in full in August 2006.

The couple reconciled in August 2003. Sometime thereafter, Applicant's husband opened a credit card account without her knowledge. The account was delinquent in the amount of \$1,543 and charged off as a bad debt in November 2004. SOR ¶ 1.g. Applicant did not learn of the debt until after her husband deployed to Iraq in October 2005. She paid the debt in three monthly installments, the last of which was made in January 2006.

The debt alleged in ¶ 1.h is for a loan her husband initiated. Payment on the debt was by automatic deduction from his checking account. The debt became delinquent when Applicant's husband did not have sufficient funds in his account to cover the payments. Applicant asserts this loan has been paid in full but provided no documentation to support this claim.

The debt alleged in SOR ¶ 1.i is for a store credit card that was delinquent more than 90 days as of March 2005. Applicant claims the debt was for \$448 as opposed to the \$471 alleged. She paid the debt in full in August 2006. Ex. I at 2.

Applicant admits being indebted to the U.S. Department of Education for delinquent student loans that were placed in default in April 2005. SOR ¶ 1.j. She provided evidence that she paid \$2,400 on the loan on 29 September 2006. Ex J at 3. But as of 25 October 2006, the U.S. Department of Education reported her total balance on the debt was \$9,940. *Id.* at 12. She was instructed to make payments to the National Payment Center. She claims she was contacted by a collection agency on this account and agreed to have them withdraw \$130 each month from her bank account until the debt is paid. *Id.* at 4. The first installment was to be withdrawn on 2 November 2006. Ex. K at 2.

The \$197 debt alleged in ¶ 1.k was for dental services Applicant believed her dental insurance should have covered. Applicant paid the debt (\$206) in full on 28 July 2006.

On 10 February 2004, Applicant completed a public trust position application (PTPA) by certifying that her answers to the questions therein were true, complete, and correct to the best of her knowledge and belief. She also acknowledged that any knowing and willful false statements therein could be punished by fine and/or imprisonment under 18 U.S.C. § 1001. Question 20 on the PTPA asked if Applicant was then delinquent more than 180 days on any loan or financial obligation. Applicant answered "no."

POLICIES

Positions designated as ADP I or ADP II are classified as sensitive positions. Regulation ¶ AP10.2.1. A person may not be assigned to perform sensitive duties unless a competent security authority determines it is clearly consistent with the interests of national security to permit the individual to do so. *Id.* ¶ C2.1.2. 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 cases submitted for trustworthiness determinations, including cases of persons applying for ADP III positions, under the Directive. Thus, even though ADP III positions are nonsensitive, they are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

"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 Regulations 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 had delinquent debts totaling more than \$5,670 in collection status (¶¶ 1.a-1.c, 1.f-1.g), one charged off account for \$1,611 (¶ 1.d), one debt for \$264 that was delinquent more than 120 days (¶ 1.h), a debt for \$470 that was delinquent more than 90 days (¶ 1.i), and one \$9,000 account that was in default (¶ 1.j). In the Answer, Applicant admitted the allegations in ¶¶ 1.a-1.f, 1.h-1.k, with explanation, and denied the allegations in ¶ 1.g.

An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Regulation, app. 8, at 144. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Applicant has a history of not meeting her financial obligations (DC 1) and was unable or unwilling to satisfy her debts (DC 3).

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

In large measure, Applicant's delinquent debts resulted from conditions beyond her control--her separation from her husband and his subsequent refusal to pay her child support or assist with bills that he had incurred. That is not to minimize her responsibility for failing to take an active role in ensuring her bills were paid. Nevertheless, she has made considerable progress. She has paid all but one of her delinquent debts and has a payment plan to resolve that debt--her student loans. Applicant established MC 3 and MC 6.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on her PTPA by denying she was then delinquent more than 180 days on any debts, when the debts alleged in ¶¶ 1.a-1 were delinquent. SOR ¶ 2.a. In her Answer, Applicant denied the allegation.

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 classified information. Regulation, app. 8, at 142. The deliberate falsification or omission of relevant and material facts from any SCA is a security concern and may be disqualifying. DC 2. Information is material if it would affect a final agency decision or would impede a thorough and complete investigation of an applicant's background. *See* ISCR Case No. 01-06870, 2002 DOHA LEXIS 469 at **13-14 (App. Bd. Sep. 13, 2002). An applicant's financial condition and debt history is a matter that could affect a final agency decision on whether to grant the applicant a clearance and her failure to disclose it would impede a thorough investigation of the applicant's background.

Applicant was certainly negligent in failing to closely monitor her financial situation. But after carefully observing her demeanor and considering her testimony, I am convinced she did not deliberately falsify her PTPA. She was unaware of the debts resulting from living in her father's rental unit, and she failed to adequately monitor the status of her financial situation. I find for Applicant on ¶ 2.

Guideline J--Criminal Conduct

In the SOR, DOHA alleged Applicant violated 18 U.S.C. § 1001 by deliberately falsifying information on her PTPA. In the Answer, Applicant denied the allegation.

A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Regulation, app. 8, at 150. A potentially disqualifying security concern may be raised by any criminal conduct, regardless of whether the person was formally charged (DC 1).

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation or knowingly make or use a false writing in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. Information is material if it would affect a final agency decision or would impede a thorough and complete investigation of an applicant's background. *See* ISCR Case No. 01-06870, 2002 DOHA LEXIS 469 at **13-14 (App. Bd. Sep. 13, 2002). An applicant's failure to fully disclose her financial condition on her PTPA would impede a thorough security investigation and could affect a final agency decision. A violation of 18 U.S.C. § 1001 is a serious offense--it carries a maximum sentence that includes confinement for up to five years.

After carefully considering all of the evidence, I conclude Applicant did not violate 18 U.S.C. § 1001. Although she was negligent in completing her PTPA, her answers were not deliberately false. I find for Applicant on ¶ 3.

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.*

Most of Applicant's delinquent debts arose shortly her 2000 separation from her husband. Applicant was then 30 years old and was the sole support for their three children. It is clear she was overwhelmed by her responsibilities and did not pay sufficient attention to paying her debts. Applicant and her husband have reunited, and she has taken positive steps to

pay her delinquent debts. The sole remaining debt is a consolidation of student loans. She has established a payment plan with the collection agency. Applicant fully understands the need for her to maintain a sound financial footing if she wishes to continue in a trustworthiness position. I see little potential for pressure, coercion, exploitation, or duress. I find for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a-1.k: For 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 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