

DATE: January 24, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-07734

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 29-year-old employee of a defense contractor who has longstanding delinquent debt totaling \$13,537. He has not made any good faith efforts to resolve the debt. Applicant deliberately failed to list his delinquent accounts on his trustworthiness application. He has failed to mitigate the trustworthiness concerns raised under financial considerations and personal conduct. Applicant's eligibility for a trustworthiness position is denied.

STATEMENT OF THE CASE

On October 21, 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").⁽¹⁾ On July 28, 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.

On August 19, 2006, Applicant submitted a notarized response to the SOR, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the government's written case on October 12, 2006. Applicant received a complete file of relevant material (FORM) on October 17, 2006, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case.⁽²⁾ Applicant did not submit any information or written response to the FORM by November 16, 2006. The case was assigned to me on January 11, 2007.

RULING ON PROCEDURE

On October 11, 2006, the government moved to amend the SOR. The introductory paragraph on page one was struck in its entirety and replaced with:

A review of your eligibility for occupying Information Systems Position designated ADP-II to support a contract with the Department of Defense (DoD) has been made pursuant to DoD Directive 5220.6, dated January 2, 1992, This office recommends that your case be submitted to an Administrative Judge for a determination that you are not eligible for occupying such a position.

The Applicant did not object to the motion. I granted the government's motion to amend the SOR.

FINDINGS OF FACT

Applicant admitted all allegations in his SOR response under Guideline F, but denied the allegation under Guideline E concerning his alleged failure to disclose debts on his ADP application.⁽³⁾ The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a single, 29-year-old claims auditor of a defense contractor, seeking a position of public trust. After graduating from high school, he worked and attended a community college. He received an associate degree in 1998, and continued to take college courses and work. He received his undergraduate degree in 2003. He has no prior military experience. He has been with his current employer since October 2004.⁽⁴⁾ His 2005 performance evaluation rated him as "exceeding expectations."⁽⁵⁾

On October 21, 2004, Applicant completed a Public Trust Position Application (SF 85-P).⁽⁶⁾ He answered "No" in response to question 22.b. 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)." His background investigation revealed nine delinquent accounts with a total approximate balance of \$13,537.⁽⁷⁾

Applicant's nine debts in SOR ¶ 1.a through 1.i are not disputed.⁽⁸⁾ He provided no information on the origin of the debts. He acknowledges that all the debts are delinquent and "currently not in repayment." Several of the debts have been in collection since 1999.⁽⁹⁾ The record is devoid of any information concerning counseling or debt consolidation plans. Although Applicant, proclaimed he is committed to the repayment of the debt, he admitted his current strained financial situation would need to improve before he could plan to repay the debt. Applicant did not provide any mitigating conditions involving medical problems or other extenuating circumstances.

His outstanding debts corresponding to the SOR ¶ 1. a. through 1.i. are as follows: \$1,883 credit account in collection in June 1999; \$4,969 credit account in collection in October 1999; \$293 account charged off in November 1999; \$1,943 account charged off in July 2000; \$2,354 collection account July 2000; \$880 account in collection in November 2000; \$451 account in collection in September 2001; \$467 medical account in collection in October 2001; and \$297 medical account in collection in October 2001.⁽¹⁰⁾

Applicant's October public trust application reveals employment with a book store from October 1994 until January 2001. From January 2001 until June 2001 he was unemployed. He worked with a newspaper for approximately four months in 2001 and was again unemployed from October 2001 until October 2002. He worked as a research data manager from October 2002 until December 2003. His last period of unemployment lasted from December 2003 until October 2004, when he gained his current position. He provided no details about his unemployment or how it directly impacted his finances in any of his responses to the SOR.⁽¹¹⁾

Applicant has a net monthly income of \$1,760. The reported expenses of \$1,683 left a net remainder of \$32. Applicant is currently paying the minimum amount on four accounts listed on his financial statement .⁽¹²⁾ He has no savings or assets except his automobile. His 2006 credit report lists several student loans in forbearance.

Applicant denied that he deliberately failed to list his delinquent debts on his public trust application form because "he misread or misunderstood question 22." It was in no way my intention to report false, inaccurate, or misleading

information." He stated he is committed to total compliance with regard to the truthful release of any and all information requested as part of his trustworthiness procedure. He did not elaborate on why or how he misunderstood the question. The debts have been charged off or placed in collection since 1999. I do not find his vague statement reasonable under the circumstances.

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."⁽¹³⁾ 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."⁽¹⁴⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹⁵⁾ 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.⁽¹⁶⁾

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.⁽¹⁷⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽¹⁸⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁹⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽²⁰⁾ 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 had difficulty meeting his financial obligations since 1999. Currently, he has nine delinquent debts with an approximate total balance of \$13,537. He admits his financial situation is strained. His 2006 credit report confirms the debt.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant's delinquent debts remain outstanding. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*) because he still carries a significant amount of delinquent debt.

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)*) does not apply. Applicant had periods of unemployment, but provided no evidence as to the effect on his finances. Moreover, some of the debt precedes the unemployment. Two accounts are for medical care, but the majority are consumer accounts. Applicant provided no evidence to support this mitigating condition. Also, an applicant's actions towards resolving the debt should be considered.

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. Applicant indicates that he intends to repay based on an improved financial situation. A promise to pay in the future is not sufficient to mitigate the financial considerations concern. All of the debts remain outstanding. He has not taken steps to resolve these debts. Applicant's financial problems remain. It is unlikely they will be resolved in the near future. The record is devoid of any information concerning financial counseling.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. Applicant has not shown that he established a record of steady payments or financial stability. He made no attempts to resolve any of the delinquent accounts I cannot conclude that he made a good-faith effort to resolve his debts despite his good intentions.

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 or in other official matters is a trustworthiness concern. It is deliberate if it is done knowingly and willfully.

In this case, Applicant explained that he did not list his delinquent debts in response to question 22 on the public trust application because he did not understand the question. He did not provide any reason for this misunderstanding. I find that he intentionally withheld information about his delinquent debts in response to question 22 on his public trust application signed by him on October 21, 2004. In his financial interrogatories, dated May 2006, Applicant acknowledges that he has the debts and has not paid due to a strained financial situation. The evidence indicates that he was aware of his financial situation when he filled out his public trust application.

Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*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. Although Applicant claims that he had no intent to report false, inaccurate, or misleading information, he provides no reasonable explanation for not listing his debts. He was required to provide a truthful answer to question 22. When he signed the application, he certified that his answers were "true, complete, and correct to best of his knowledge and belief and are made in good faith." However, he admits that he had the debts, but did not list them on his public trust application. I find his actions were deliberate.

I find that none of the mitigating conditions apply under personal conduct. Applicant has failed to mitigate the personal conduct concern. Guideline E is decided against 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. An applicant with a good or even exemplary work history may engage in conduct that has negative trustworthiness implications. It is premature to grant Applicant a trustworthiness position based on his deliberate failure to disclose his delinquent debts and his lack of action towards resolving his delinquent accounts. Based on the evidence in the record, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

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: AGAINST 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant's request for a determination of trustworthiness and eligibility for assignment to sensitive duties. Eligibility is denied.

Noreen A. Lynch

Administrative Judge

1. This action is 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. The government submitted eight items in support of its contentions.
3. Item 3 (Applicant's Answer to SOR, dated August 19, 2006) at 1-2.
4. Item 4 (Application for Public Trust Positions (SF 85P), dated October 24, 2004) at 1-11.
5. Item 7 (Applicant's Answers to Financial Interrogatories), dated May 20, 2006.
6. Item 4, *supra* note 4 at 1-11.
7. Item 5 (Credit Bureau Report, dated January 21, 2005) at 1-10.
8. Item 7, *supra* note 6, at 1-4.
9. Item 6 (Credit Bureau Report, dated April 12, 2006) at 1-5.
10. *Id.* at 1-5.
11. Item 3, *supra* note 3.
12. Applicant's Personal Financial Statement, dated May 20, 2006.
13. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
14. Directive, ¶ E2.2.1.
15. *Id.*
16. *Id.*
17. Directive, ¶ E3.1.14.
18. Directive, ¶ E3.1.15.
19. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
20. Directive, ¶ E2.2.2.