

DATE: March 28, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-07703

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued approximately \$19,300 of delinquent financial indebtedness between 1999 and 2004. Through the help of a financial counseling service, she has either satisfied several debts through negotiated settlements, satisfied others in their entirety, or has initiated the process of resolving the remainder. She has alleviated the trustworthiness concern, and eligibility to occupy a sensitive position is granted.

STATEMENT OF THE CASE

On July 11, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Regulation 5200.2-R., *Personnel Security Program*, dated January 1987, as amended, (Regulation); and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended. (Directive).

The SOR detailed reasons why DOHA could not make a preliminary affirmative finding that it was clearly consistent with the interest of national security to grant or continue Applicant's eligibility for occupying a sensitive position in support of 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 September 2, 2006, and initially requested an administrative determination. On November 8, 2006, she filed an amended answer to the SOR, and requested a hearing.

The case was assigned to me on January 3, 2007. A notice of hearing was issued on January 12, 2007 scheduling the case for January 31, 2007. The hearing was held as scheduled. At the beginning of the hearing, Department Counsel moved to amend the SOR to delete any reference to the DoD Regulation 5200.2-R. After reserving judgment until after the close of the hearing, I denied the motion.

During the hearing, I received seven government exhibits and two Applicant exhibits, in addition to the testimony of

Applicant and her husband. At the hearing's conclusion, I left the record open to allow Applicant to submit additional exhibits. Subsequently, she submitted eight additional exhibits which I marked and received as Applicant's exhibits C through J. DOHA received the transcript on February 15, 2007.

FINDINGS OF FACT

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

Applicant is a 42-year-old married woman with two children, ages 12 and 15. She has a high school diploma and an associate's degree. Since 1989, she has worked as a claims processor for an insurance company that has a contract with the Department of Defense. She is highly respected in her community. ⁽¹⁾

In 1991, Applicant and her husband purchased a home. Unbeknownst to them at the time of purchase, it had several structural deficiencies that required extensive, expensive repair. Unable to keep up with the excessive repair costs and their routine cost of living expenses, they grew delinquent on several loans, and ultimately filed for Chapter 7 bankruptcy in 1995 after selling the house back to the dealer. ⁽²⁾

By 2002, Applicant and her husband had saved enough money for a down payment on another house. Shortly after purchasing the house, however, both their cars began breaking down frequently, requiring expensive repairs. ⁽³⁾ At approximately the same time, the manner in which her employer compensated her was altered, resulting in an \$8,000 pay cut. ⁽⁴⁾ Also at that time, her husband's work hours were cut resulting in a reduction in pay. ⁽⁵⁾ They again began accruing financial delinquencies.

By July 2006, the month the SOR was issued, Applicant was delinquent in payments to eight creditors on ten accounts in the approximate amount of \$19,300. Two of the debts are medical bills (subparagraphs 1.b. and 1.k.), and the remainder are owed to credit card companies. Subparagraphs 1.d. and 1.f. are owed to the same creditor. Similarly, subparagraphs 1.e. and 1.g. are separate accounts owed to another shared creditor.

The debts owed to the creditor listed in subparagraphs 1.e. and 1.g., collectively equal to approximately \$12,000, have been delinquent since January 2003. Applicant offered to satisfy the account through a payment plan, but the creditor rejected her offer. ⁽⁶⁾ The debts owed to the creditor listed in subparagraphs 1.d. and 1.f. have been delinquent since February 2002. ⁽⁷⁾ Applicant contacted the creditor in January 2004, and offered to satisfy the account through \$50 monthly increments. The creditor rejected this offer, and demanded the complete amount. ⁽⁸⁾ Her offers to settle accounts with the other creditors in the SOR were similarly rejected.

On February 12, 2007, Applicant met with a financial counselor who helped her identify surplus money from her budget that could be applied toward her debt, and develop a plan for settling accounts of creditors with large, longstanding delinquencies. ⁽⁹⁾ Subsequently, Applicant satisfied the debts listed in subparagraphs 1.c., ⁽¹⁰⁾ 1.i., ⁽¹¹⁾ 1.j., ⁽¹²⁾ and 1.k. ⁽¹³⁾ Applicant has yet to satisfy subparagraph 1.c. ⁽¹⁴⁾ Her counselor has revived the negotiations with the creditors of the accounts listed in subparagraphs 1.d. and 1.f, and 1.e. and 1.g. They have been unable to locate the current holder of the account listed in 1.h. Applicant has not accrued any delinquencies in more than two years.

POLICIES

The adjudicative guidelines set out in the Regulation apply to ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable determination may be made. ⁽¹⁵⁾

Positions designated as ADP I and ADP II are classified as "sensitive positions." ⁽¹⁶⁾ "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." ⁽¹⁷⁾ Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"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." ⁽¹⁸⁾ Each eligibility determination must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation. An administrative judge should consider: 1) the nature 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 the participation; (6) the absence or presence 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. ⁽¹⁹⁾

The following adjudicative guideline is raised:

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

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." ⁽²⁰⁾

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. ⁽²¹⁾ The applicant is responsible for presenting 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. ⁽²²⁾ These same burdens of proof apply to trustworthiness determinations for ADP positions.

CONCLUSIONS

Financial Considerations

Applicant has struggled with her finances since the early 1990s. Her delinquencies that are currently outstanding accrued after a Chapter 7 bankruptcy discharge in 1995. Financial Considerations Disqualifying Conditions (FC DC) 1 (*A history of not meeting financial obligations*), and FC DC 3 (*Inability or unwillingness to satisfy debts*) apply.

The majority of Applicant's delinquencies accrued during periods following the purchase of homes in 1991 and 2002. After the first purchase, she accrued delinquencies after becoming overwhelmed with unanticipated maintenance expenses. After the second purchase, she and her husband both experienced significant reductions in pay that rendered them unable to manage their finances. Financial Considerations Mitigating Condition (FC MC) 3 (*The conditions that resulted in the behavior were largely beyond the person's control*) applies.

Applicant obtained a discharge of her delinquencies that accrued after the purchase of her first home, through the Chapter 7 bankruptcy process in 1995. In the years following her employment downturn in 2002, she unsuccessfully attempted to negotiate debt payment plans with her creditors. With the help of a financial counselor, retained in February 2007, she has satisfied several of her delinquencies, and has revived the process of negotiating settlements on the remaining delinquencies. She has not accrued any delinquencies in more than two years. FC MC 1 (*The behavior was not recent*), FC MC 4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*), and FC MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

Whole-Person Concept

Applicant's post-bankruptcy accrual of approximately \$19,300 of delinquent debt generates a trustworthiness concern. Her past financial problems were largely caused by circumstances beyond her control rather than any deficiency in

judgment or self-control. Although she could have been more proactive in resolving her delinquencies when they first grew delinquent in 2002, she has managed not to incur any additional ones since 2004. Upon evaluating the cause of her delinquencies, the steps she has taken to resolve them, and the record evidence relating to her strong character, I conclude she has mitigated the trustworthiness concern.

FORMAL FINDINGS

Paragraph 1., Guideline F: FOR THE APPLICANT

Subparagraphs 1.a. through 1.k.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for occupying a sensitive position. Eligibility is granted.

Marc E. Curry

Administrative Judge

1. Recommendation Letter of Applicant's Pastor, dated January 24, 2007.
2. Tr. 17.
3. Exhibit 3, Signed, Sworn, Statement, dated December 15, 2004, at 1.
4. Tr. 18. Applicant's employer previously paid her based upon the number of claims she processed. Under the new compensation system, she was paid an hourly salary.
5. Exhibit 5, Signed, Sworn Statement, dated August 13, 2003, at 1.
6. Tr. 40.
7. Answer, dated September 2, 2006, at 2.
8. The amount due at that time was in excess of \$3,500.
9. Exhibit F, Letter from Financial Counselor to Department of Defense, dated February 12, 2007, at 1.
10. Exhibit J, Copy of Settlement Check in the Amount of \$250.00, dated March 1, 2007.
11. Exhibit J, Copy of Settlement Check in the Amount of \$250.00, dated March 1, 2007.
12. Exhibit D, Copy of Check in the Amount of \$69.84, dated February 13, 2007.
13. Exhibit D, Copy of Check in the Amount of \$50.00, dated February 13, 2007.
14. Applicant submitted a copy of a check written to a medical provider with another name for an amount close to the amount she owed to the creditor in 1.c. (Exhibit D). She did not specify whether this creditor is the same as the creditor listed in subparagraph 1.c.
15. Regulation ¶ C8.2.1.
16. Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.
17. Regulation ¶ C6.1.1.1.

18. Appendix 8 at 132.

19. *Id.*

20. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

21. Directive ¶ E3.1.14.

22. Directive ¶ E3.1.15.