

DATE: January 31, 2007

In Re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-07827

ECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is responsible for multiple financial delinquencies, some of which date to 2000.

She has not paid these debts, lacks the financial resources to do so, and has no plans in place to pay them. Applicant failed to mitigate Guideline F security concerns. Eligibility is denied.

STATEMENT OF THE CASE

On December 14, 2004, Applicant submitted an application for a position of public trust. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On August 2, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Financial Considerations Guideline of the Directive. A copy of the Directive was provided to Applicant. The Financial Considerations Guideline of the Directive and the Financial Considerations adjudicative guideline at Appendix 8 of the Regulation are, for all practical purposes, identical.

Applicant answered the SOR in writing on August 23, 2006, and requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on September 25, 2006. The FORM contained documents identified as Items 1 through 8. By letter dated September 26, 2006, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant did not file any information within the required time period. On January 11, 2007, the case was assigned to me for a decision.

MOTION ON PROCEDURE

Department Counsel moved to amend the introductory paragraph at page 1 of the SOR to read, in pertinent part, as

follows: "A review of your eligibility for occupying Information Systems Position designated ADP I/II/III 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 determination that you are not eligible for occupying such a position." Department Counsel stated the amendment was necessary to omit a reference to a "DoD Regulation previously related to ADP cases and should instead reference only DoD [Directive] 5220.6."

The SOR incorrectly refers to paragraph "3-614," DoD Regulation 5200.2-R. However, ADP adjudications, such as this one, are covered by DoD Regulation 5200.2-R, paragraph C3.6.15. Under the Memorandum of Understanding authorizing DOHA to adjudicate ADP trustworthiness cases, the procedures used are those applied by DOHA under DoD Directive 5220.6, but the investigative and adjudicative standards are provided by DoD Regulation 5200.2-R. *See* ADP Case No. 03-21205 at 1 (App. Bd. Dec. 23, 2005) Moreover, DOHA's Appeal Board has observed that " the adjudication of eligibility to occupy a sensitive ADP position under DoD Regulation 5200.2-R is not identical to the adjudication of eligibility for a security clearance under DoD Directive 5220.6." *See* ADP Case No. 00-0131 at 2 n. 2 (App. Bd. May 3, 2001). Accordingly, the citation to DoD Regulation 5200.2-R is corrected and Department Counsel's motion to amend the SOR is denied.

FINDINGS OF FACT

The SOR contains 24 allegations of disqualifying conduct under the Financial Considerations Guideline of Appendix 8 of DoD 5200.2-R. In her answer to the SOR, Applicant admitted 17 allegations and denied 7 allegations. She noted mitigating conditions. Her admissions are incorporated as findings of fact.

Applicant is 41 years old, and the mother of a 21-year-old daughter. Since October 2004, she has been employed as a mail clerk IV by a defense contractor. From about 1989 to 2003, Applicant was employed by a state community organization to provide in-home care to her mother, who was bed-ridden. (Item 3 at 8; Item 4 at 3; Item 5 at 1, 3.)

Applicant's mother died in 2003. After her mother's death, Applicant suffered from depression for about one year and was unemployed from March 2003 to March 2004. She received unemployment compensation during that time. (Item 5 at 1-2.)

Applicant and her brother inherited the family home, which has an estimated fair market value of \$158,888. Applicant denied her ownership interest and her responsibility for paying delinquent property taxes of approximately \$3,432.73 on the house, as alleged in ¶ 1.w. of the SOR. However, her name appears on the local tax assessment record and she stated in response to interrogatories that she and her brother own the house together and she pays the mortgage. (Item 3 at 7-8; Item 6 at 10, 21, 22-23.) The Department of Health and Family Services has a claim of approximately \$146,670 against Applicant's mother's estate. (Item 6 at 10, 13.) She admits she lacks sufficient resources to pay her monthly expenses. She experiences a shortfall of at least \$122 each month. (Item 5 at 8.)

Applicant has a history of financial delinquencies. In her answer to the SOR, Applicant admitted owing over \$9,000 in debts to 16 creditors. Two of the debts had been charged off as bad debts in 2000. The remaining debts had been referred for collection from August 2000 to March 2006. These debts appear on Applicant's 2006 credit bureau report. (Item 7.)

Applicant denied a credit card debt of \$1,813, alleged in ¶ 1.c. of the SOR. She stated the debt belonged to her deceased mother and during the mother's lifetime, she was authorized to use the account to make purchases on behalf of her mother. However, the debt is listed on Applicant's 2006 credit report. (Item 8.)

Applicant also denied a debt to a creditor of approximately \$2,329, alleged at ¶ 1.f. of the SOR, and asserted it was a debt of her deceased mother's. In her response to interrogatories, she provided a notice from the creditor's attorney which identified the debt as owed by the estate of Applicant's mother. (Item 6 at 14.) Her credit report of 2004 shows she was an authorized user of the account. (Item 8 at 2.) I consider her corroborated statement of her lack of responsibility for this debt to be credible.

Applicant denied the debt alleged at ¶ 1.k. of the SOR. She stated the debt accrued when her sister stole her bank account number and ordered cell phones. She said her sister had agreed to pay the debt, but she provided no evidence to

support her assertion. The item appears as Applicant's debt on her 2006 credit report. (Item 3 at 6, Item 7 at 1.)

Applicant also denied a judgment, alleged at ¶ 1.1. of the SOR, that was entered against her for \$756 in April 2004 and shown on her 2006 credit report. She asserted the judgment was brought on a delinquent account belonging to her late mother and for which she was an authorized user. (Item 3 at 7.) Applicant's credit report for 2004 shows that account was opened in 2000 and was held by joint parties. (Item 8 at 203) (Item 7 at 1.)

Applicant also denied responsibility for a collection account for approximately \$614, which was alleged at ¶ 1.p. of the SOR. Applicant admitted her daughter had initiated the debt by purchasing two cell phones in Applicant's name, and apparently with her permission. Subsequently, one of the cell phones was stolen. Her daughter opened a replacement account in her own name. The first account remained in Applicant's name; however, her daughter did not pay on the account. The delinquency is shown as Applicant's responsibility on her 2006 credit report. (Item 3 at 7; Item, 7 at 2.)

Applicant denied a debt of approximately \$584 alleged at ¶ 1.u. of the SOR. She asserted her sister placed business advertisements under Applicant's name and telephone number. While the sister paid some of the charges to Applicant's telephone account, she eventually stopped paying and Applicant's telephone was disconnected. The debt is listed on Applicant's 2006 credit report. (Item 3 at 7; Item 7 at 1.)

Applicant has not sought credit counseling. She expressed an intent to seek consolidation of her debts at some unspecified time in the future. (Item 6 at 23.)

POLICIES

The ADP adjudication process extends only to sensitive positions. Positions designated as ADP I or ADP II are classified as sensitive positions; ADP III positions are not. Regulation ¶ AP 10.2. By memorandum dated November 19, 2004, the Deputy Under Secretary of Defense for Counterintelligence and Security directed DOHA to extend the adjudicative process to ADP III positions as well.

"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 B 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

Financial Considerations Guideline

In the SOR DOHA alleged Applicant was responsible for three accounts charged off as bad debts (¶¶ 1.a., 1.c., and 1.d.); 17 delinquent accounts referred for collection (¶¶ 1.b., 1.e., 1.g., 1.h., 1.i., 1.j., 1.k., 1.m., 1.n., 1.o., 1.p., 1.q., 1.r., 1.s., 1.t., 1.u., and 1.v.); one account delinquent since November 2002 (¶ 1.f.); and one judgment entered in April 2004 (¶ 1.1.). In the SOR DOHA also alleged Applicant owed approximately \$3,432 in delinquent property taxes (¶ 1.w.); and her personal financial statement of June 2005 indicated she was unable to pay her delinquent debts and had a negative monthly net remainder of -\$122 after paying her monthly expenses. (¶ 1.x.).

An applicant who is financially over extended is at risk of having to engage in illegal acts to generate funds. Regulation (Appendix 8) at 144. The Government established through Applicant's admissions that she has a history of not meeting her financial obligations (DC1) and is unable to satisfy her debts (DC 2.)

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 financial situation was largely beyond the applicant's control (MC 3); the applicant 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).

The record shows Applicant's financial difficulties began in 2000, if not earlier, and have continued to the present time. While her situation was somewhat complicated by using some credit cards to purchase goods and services on behalf of her mother, now deceased, Applicant's credit reports demonstrate she undertook debt which was her sole responsibility or a shared responsibility with her mother. There is ample evidence she did not timely pay her creditors. Applicant's unsupported assertions that various family members used her credit and did not pay bills that accrued in her name does not suggest her financial situation was beyond her control or ability to manage.

On the other hand, her depression and unemployment for one year (March 2003 to March 2004) were circumstances largely beyond her control, and, accordingly, MC 3 applies in part.

Applicant has not received financial counseling and her statements suggest she is overwhelmed by her many financial delinquencies and her inability to satisfy her creditors. Her current financial situation makes it difficult to repay or otherwise resolve her debts.

I have considered the application of MC 1, 2, 3, 4, and 6 to the facts of Applicant's case. With the exception of her answer to allegation 1.f., Applicant failed to provide credible evidence of rebuttal or mitigation.

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, Appendix 8 at 132. It involves careful consideration of several variables that comprise 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.*

Applicant, who is a 41-year-old mature adult, has had a history of substantial financial difficulties that began several years before her mother's death. Since 2003, when her mother passed away, she has accumulated additional indebtedness. She has not sought financial counseling, and she lacks a concrete plan for paying her creditors and managing her money. This suggests that unless she takes some action in the future, Applicant's financial problems will continue and may create the potential for pressure, coercion, exploitation, or duress. Under these circumstances, I conclude Applicant failed to establish it is in the interests of national security to grant her an ADP I/II/III position. As Applicant provided credible evidence to mitigate allegation 1.f. of the SOR, I find for her on that allegation.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are as follows:

Paragraph 1, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a. to 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraphs 1.g. to 1.x.: Against Applicant

DECISION

In light of all the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is denied.

Joan Caton Anthony

Administrative Judge