

DATE: December 29, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-08092

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Melvin Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 53 years old and has worked as an appointment scheduler for a federal contractor since 2000. Prior to 2000, she experienced some underemployed and unemployed. She has tax liens from the 1990s she still owes and many other delinquent debts that she has not made a good faith effort to repay. She failed to mitigate the trustworthiness concerns regarding her finances. Applicant's eligibility for assignment to sensitive duties is denied.

STATEMENT OF THE CASE

On January 27, 2003, 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 Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").
⁽¹⁾ On August 24, 2006, DOHA issued 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). Applicant answered the SOR in writing on October 10, 2006, and elected to have a hearing before an administrative judge. In her answer, Applicant admitted SOR allegations ¶¶ 1.a, 1.b, 1.i-1.n, and denied the allegations in ¶¶ 1.c-1.h. The case was assigned to me on November 6, 2006. A notice of hearing was issued on November 13, 2006, scheduling the hearing for December 5, 2006. I conducted the hearing as scheduled to consider the trustworthiness of Applicant. The Government offered ten exhibits for admission in the record and were marked as Government Exhibits (GE) 1-10. The exhibits were admitted into evidence without objection. Applicant testified on her own behalf and offered eleven exhibits for admission into the record. They were marked as Applicant's Exhibits (AE) A-K and were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 13, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful

review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 53-year-old appointment scheduler for a federal contractor. She is married, but has been estranged from her husband for 20 years. She does not have children. In 2000, she moved from her home state to another state where she continues to reside. While living in her home state the wages were low and she was unable to find work. She moved to her new state and was unemployed for a few months, retained work that was low paying and then changed to her current job. ⁽²⁾ Sometime in 2004 she had an injury and was not working all of her hours. She attended physical therapy for one hour three times a week and was not paid for those hours. ⁽³⁾

Applicant lives in an apartment complex and learned there is another woman who lived in the same complex with the same name as hers, except they had different middle names. Some of the debts attributed to Applicant are actually those of the other woman's. She has since moved from the state. The debts listed in SOR ¶¶ 1. c, 1.d, ⁽⁴⁾ 1.e, 1.f, 1.g, and 1.h. are not Applicants. ⁽⁵⁾ She contacted the creditors on these accounts and confirmed they are not her debts, but that of the other woman. ⁽⁶⁾ She also requested the credit bureaus remove the debts from her credit reports. ⁽⁷⁾

The debts listed in SOR ¶¶ 1.a, 1.b, 1.i, 1.j, 1.k, 1.l, 1.m, and 1. n are Applicant's debts. Debts 1.a. and 1.b are tax liens from a state where she formerly lived in the 1990s. She moved in 1994, she did not provide any forwarding address to the postal service. She claimed she was unaware of these debts until 2004, but it could have been earlier when she reviewed her credit report. ⁽⁸⁾ She contacted the state and although they would not accept a repayment plan from her they agreed to accept whatever payments she did make to credit toward her debt. Since 2004 she has made one payment of \$40 on the two state tax lien debts, totaling \$1,199 and \$646.

SOR debt ¶ 1.i is a cable debt for \$112 that is in collection. Applicant contacted the creditor the morning of the hearing to negotiate the payment of the debt. She did not want to pay the debt over the phone and be charged a service charge so she asked them to send her a written statement. The debt remains unpaid. Applicant does not know what the debt is for in SOR ¶ 1.j. It remains unpaid. SOR ¶ 1.k is a credit card debt for \$2,837 and remains unpaid. Applicant attempted to negotiate a settlement, but did not offer enough payment and the amount was rejected. SOR ¶ 1.l is a \$140 debt for an emergency room visit. Applicant believes the debt was incurred in 2003. She has not paid it and did not have an explanation. SOR ¶ 1.m is a student loan debt for \$26,252. She is unclear when she incurred the debt but believes it is more than ten years old. She secured the loan to go to school to obtain her associate's degree in accounting. She has never paid anything on the debt. SOR ¶ 1.n is a \$508 debt, but it is unclear what the debt is for. Applicant contacted the creditor in August 2006 and they agreed to accept an initial payment of \$40 toward the balance. Applicant did not make the payment.

In answering interrogatories in April 2004, Applicant stated she intended to pay her delinquent debts. ⁽⁹⁾ She claimed she would send \$40 a month toward the state tax lien debts. Documentation of one payment made in June 2006 was provided. ⁽¹⁰⁾ She provided a budget that showed she also owes back federal taxes and pays some amount on them. She does not know how much she has left to pay, nor does she know how much she pays toward the debt each month, or for what tax years the debt is owed, but she believes it is for more than one year. ⁽¹¹⁾ Documentation was provided for one payment of \$25 made in June 2006 to the Internal Revenue Service. ⁽¹²⁾ In 2004, her budget showed a net remainder of \$456.

Applicant did contact a debt consolidation agency in July 2006 and received financial counseling. ⁽¹³⁾ Based on her budget they were unable to institute a repayment plan because she did not have enough income. The debt consolidation agency's action plan listed goals and objectives for Applicant. It included their recommendation that she needed more income. It also stated that Applicant was unwilling to stop tithing and recommended getting a second job. ⁽¹⁴⁾ Applicant provided a copy of her leave and earnings statement that shows her take home pay is \$908, for a two week cycle. ⁽¹⁵⁾ Applicant tithes \$425 of her monthly income. ⁽¹⁶⁾ Applicant believes that by reducing her expenses she will have \$421 in expendable income to start paying toward her debts. Her explanation for not getting a second job is that she does volunteer work that she wanted to finish and then find a second job. ⁽¹⁷⁾ Her "action plan" was devised the same week as her hearing. It has not been implemented.

Applicant provided character letters that describe her as a compassionate person and follows through on her promises. She is admired and is believed to have sound judgment in the management of her personal affairs. (18) Her supervisor considers her honest, hard working, dependable, and always willing to help others. (19)

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." (20) The President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." (21)

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "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." (22) The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. (23) The adjudicative guideline at issue in this case is:

Financial Considerations-a security concern exists when a person has significant delinquent debts. 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 information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to the adjudicative guideline, is set forth and discussed in the conclusions below.

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. (24) 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. (25) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (26) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (27) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (28)

A person granted access to sensitive information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (29) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all of the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F .

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 1 (*A history of not meeting financial obligations*), and FC DC 3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant has delinquent debts totaling more than \$31,000 that are listed in the SOR. She began experiencing financial problems prior to 2000 when she was underemployed. In 2000, she moved to a new state and was unemployed for a period, but has

been fully employed since July 2000. Applicant has not made a genuine attempt to satisfy her debts, despite making promises and having expendable income to do so.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 1 (*The behavior was not recent*), FC MC 2 (*it was an isolated incident*) FC MC 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)*), 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*). All of Applicant's debts are recent because none of them have been paid. Due to the number of debts they are not isolated. Therefore, FC MC 1 and 2 do not apply. Applicant experienced a period of underemployment and unemployment six years ago. She has been employed since then. Although those conditions were beyond her control it is necessary to look at what reasonable efforts she has made since she gained employment. Applicant has made only a nominal effort to repay any of her debts despite having some financial means to do so. I find FC MC 3 does not apply. Applicant sought credit counseling through a debt consolidation agency. Their advice was to seek a second job to increase her income and reduce her tithing. She has not done either and prioritized her volunteer work above settling her debts. Applicant has not made any reasonable effort to pay her delinquent debts. She has an "action plan" that was devised the week of her hearing, but not implemented. FC MC 4 and 5 do not apply because there is no evidence the problem is under control and being resolved, or that she is making any good faith effort to repay her creditors.

The Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. 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.

"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."⁽³⁰⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽³¹⁾ 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.⁽³²⁾

I considered the whole person. I considered Applicant is a valued friend and coworker. I also considered most of the debts are quite old. Applicant has not paid anything on most of the debts. The ones she did make a payment on, was a one time occurrence. She has been advised how to reduce her debt, but has not taken action, despite being given the advice months before her hearing. She has made choices on how she spends her income and her debts are not a priority. I am persuaded by the totality of the evidence that she failed to mitigate the trustworthiness concerns regarding Guideline F and that 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: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

DECISION

In light of all the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended.

2. Tr. 50-51

3. Tr. 53.

4. See AE 1 at. 2.

5. AE A, Tr.23-31.

6. *Id.*

7. AE C and D.

8. Tr. 36.

9. GE 3.

10. GE 6.

11. Tr. 86-89. Applicant's debt to the IRS is not considered for disqualifying purposes, but is a consideration when

evaluating the whole person and Applicant's ability to repay her delinquent debts.

12. GE 6.

13. AE E.

14. *Id.*

15. AE G.

16. Tr. 64.

17. Tr. 57.

18. AE I.

19. AE J.

20. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

21. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

22. DoD 5200.2-R, ¶ C6.1.1.1.

23. *Id.* at Appendix 8.

24. *Id.* at ¶ C8.2.1.

25. Directive , ¶ E3.1.14.

26. *Id.* at ¶ E3.1.15.

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

28. Directive, ¶ E2.2.2.

29. Exec. Or. 10865 § 7.

30. *Id.*

31. *Id.*

32. *Id.*