

DATE: January 29, 2007

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 06-08085

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of failing to meet her financial obligations preceding the submission of her Questionnaire For Public Trust Positions submitted in August 2004. As of the date she answered the SOR in June and July 2006, she had 12 delinquent accounts exceeding \$14,000.00, raising financial considerations concerns. She falsified her Questionnaire For Public Trust Position by denying she was over 180 days delinquent on any loan or financial obligation raising personal and criminal conduct concerns. She failed to mitigate any of these concerns. Eligibility for assignment to public-trust position is denied.

STATEMENT OF THE CASE

On May 18, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant her eligibility for a public-trust position. [\(1\)](#)

On June 19, 2006 and July 11, 2006, Applicant answered the SOR (Answer), admitted allegations 1.a, 1.b., 1.f., 1.h., 1.j., and 1.m. She denied allegations 1.c., 1.d., 1.e., 1.g., 1.i., 1.k., 1.l., 2.a. and 3.a., and requested a clearance decision based on the written record without a hearing. On October 23, 2006, Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on October 26, 2006. She acknowledged receipt of the FORM on November 10, 2006, and did not object to anything contained in the FORM. She did submit additional information for consideration within the 30-day period provided to her. On November 16, 2006, the case was assigned to me.

FINDINGS OF FACT

Applicant's partial admissions are incorporated as findings of facts. After a thorough review of the pleadings and the

evidence, I make the following additional findings of facts:

Applicant is a 44-year-old claims associate for a Department of Defense contractor and has been employed by that contractor since December 1989. She was married in December 1980, had two sons, who are now ages 25 and 15, was abandoned by her husband in 1995, and granted a divorce in January 2001. She was awarded \$115.00 child support per week, but was unable to collect because her ex-husband's whereabouts are unknown. After her husband left, she became the sole provider for her children. She attended a technical school from January 1980 to June 1980.

As part of a routine background investigation, Applicant submitted a Questionnaire For Public Trust Positions (SF 85P) in August 2004. The ensuing investigation revealed Applicant had numerous bad debts or collection accounts exceeding \$14,000.00, forming the basis of SOR ¶¶ 1.a. through 1.l. (12 debts).

Applicant attributes her financial difficulties to being a single mother raising two sons without paternal support, and from being underemployed. She sought financial counseling in the 2002-2003 time frame "for help in reducing interest rates and getting many credit accounts charged off."⁽²⁾ Applicant apparently is of the view that if her debts are charged off, they are resolved.⁽³⁾ There is no evidence in the file to suggest Applicant has a plan in place to resolve her indebtedness or paid any of her debts.

In response to Question 22.b., Applicant denied that she was over 180 days delinquent on any loan or financial obligation, which formed the basis of SOR ¶ 2.a. A review of Applicant's credit reports indicate all the debts listed in her SOR were incurred before she executed her SF-85P in August 2004.⁽⁴⁾ Applicant did not address this falsification concern in any of her submitted material.

Applicant's Personal Financial Statement (DIS Form 154) submitted in December 2004 does not reflect repayment of the 12 debts alleged in the SOR. Furthermore, her Financial Statement shows a monthly negative net remainder of \$1,068.00.⁽⁵⁾ (SOR ¶ 1.m.)

Applicant states, "My job is important and plays a very important part of my family (sic), so much has happened within my life span. (Seventeen years with the company)."⁽⁶⁾

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept. Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations)⁽⁷⁾ is the applicable relevant adjudicative guideline.

BURDEN OF PROOF

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁽⁸⁾ A person who has access to classified information or sensitive information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence⁽⁹⁾ a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a

heavy burden of persuasion.⁽¹⁰⁾ The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

Guideline F - Financial Considerations

Under Guideline F (Financial Considerations), a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk to engage in illegal or unethical acts to generate funds to meet financial obligations.⁽¹²⁾ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life can often indicate how a person may behave in other aspects of life.

Applicant has a history of failing to meet her financial obligations that preceded the submission of her SF 85P in August 2004. In December 2004, she was confronted by a government investigator regarding her indebtedness, and was made aware of the government's concerns in this regard. Since then, there is no record evidence suggesting Applicant addressed any of the debts alleged in the SOR. Her Personal Financial Statement submitted in December 2004 suggests she does not have the ability to repay her 12 outstanding debts in excess of \$14,000.00.

Applicant's financial problems are not recent or isolated, but are ongoing. Applicant's unwillingness or inability to honor her financial obligations are evidenced by the delinquent debts she has been carrying for years, and her failure to show meaningful efforts to repay creditors or otherwise resolve her financial situation. Financial Considerations Disqualifying Condition (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.

Applicant raised one potential mitigating factor that may be considered as a circumstance beyond her control contributing to her inability to pay her debts -- i.e., she was underemployed during a portion of the time these debts were owed. Financial Considerations Mitigating Condition (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)*, applies.

Notwithstanding the possible circumstance beyond her control, Applicant's evidence is not sufficient to show she has dealt responsibly with her financial obligations. Applicant presented no evidence of paid debts, settlements, negotiations, payment plans, budgets, financial assistance/counseling, or that she has otherwise made meaningful efforts to resolve her financial situation. Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility.

Guideline E - Personal Conduct

Under Guideline E, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with the rules and regulations could indicate that the person may not properly safeguard classified information.⁽¹³⁾

Applicant's response to Question 22.b. on her SF 85P in August 2004 was clearly incorrect. The record establishes she was aware of these debts, given the fact she consulted with a "credit adjuster" in 2002 -2003. Having provided no explanation to this allegation, I find the government's argument persuasive that her falsification was deliberate. 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.

Record evidence mitigating this concern is absent. I have considered all of the personal conduct disqualifying conditions and conclude none apply. I find Applicant did intentionally falsify her Public Trust Position Application.

Guideline J - Criminal Conduct

Under Guideline J (Criminal Conduct), a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness and raises a security concern.⁽¹⁴⁾

The record establishes Applicant made a materially false statement in her August 2004 SF 85P concerning her financial record. This constitutes a violation of 18 U.S.C § 1001, a felony. Criminal Conduct Disqualifying Conditions (CC DC) E2.A10.1.2.1: *Allegations or admission of criminal conduct, regardless of whether the person was formally charged;* and CC DC E2.A10.1.2.2.: *A single serious crime or multiple lesser offenses;* apply.

Record evidence mitigating this concern is absent. I have considered all of the criminal conduct disqualifying conditions and conclude none apply.

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.

I considered the whole person. I considered the limited evidence Applicant provided leading up to her indebtedness. As noted, Applicant failed to provide sufficient mitigating evidence to overcome the security concerns raised. Accordingly, I conclude against Applicant on Guidelines F E, and J.

FORMAL FINDINGS

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

Paragraph 1-Guideline F: Against Applicant

Subparagraphs 1.a.-1.m.: Against Applicant

Paragraph 2-Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

Paragraph 3-Guideline J: Against Applicant

Subparagraph 3.a.: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for assignment to a public trust position. Eligibility is denied.

Robert J. Tuider

Administrative Judge

1. Effective April 9, 1993, the Composite Health Care Systems Program Office, DOHA, and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence entered into a memorandum of agreement under which DOHA was authorized to adjudicate trustworthiness cases involving personnel working on unclassified automated systems in ADP-I and ADP-II sensitivity positions as defined by DoD Regulation 5200.2-R (Directive). By memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) dated November 19, 2004, DOHA was authorized to utilize the procedures of DoD Directive 5220.6 to resolve contractor cases forwarded to

it by the Defense Security Service (DSS) or the Office of Personnel anagement (OPM) for trustworthiness determination, including those involving ADP-I, ADP-II, and ADP-III positions.

2. Gov. Item 5.

3. Applicant's Response to FORM.

4. Gov. Items 4, 7 and 8.

5. Gov Item 5.

6. Applicant's Response to FORM.

7. Directive, ¶ E2.A6.1.1.

8. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

9. ISCR Case No. 98-0761, at p. 2 (December 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199, at p. 3 (April 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.

10. *Egan*, 484 U.S. 518, at 528, 531.

11. *See Egan*; Directive, ¶ E2.2.2.

12. Directive, ¶ E2.A6.1.1.

13. Directive, ¶ E2.A5.1.1.

14. Directive, ¶ E2.A10.1.1.