

DATE: September 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 06-08243

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 41-year-old divorced mother who has worked for a federal contractor since 2004. She was underemployed and made some poor personal choices several years ago that effected her finances. When she became aware that her credit card debt was out of control, she took the initiative and worked with a debt consolidation agency to start repaying her delinquent debts. She has consistently followed the plan for more than two years and has made significant strides in reducing her debts. Although she is still repaying her debts, her good faith effort to repay them clearly mitigates any trustworthiness concerns. Eligibility for assignment to sensitive positions is granted.

STATEMENT OF CASE

On May 9, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant her eligibility for assignment to information systems positions designated ADP I/II/III. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges trustworthiness concerns under Guideline F, financial considerations.

In a sworn statement dated May 17, 2006, Applicant responded to the SOR allegations. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on June 12, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on July 11, 2006. The case was assigned to me on July 27, 2006.

FINDINGS OF FACT

Applicant is a 41-year-old divorced mother of one son who has worked for a government contractor since 2004, as a claims resolution processor. Prior to 2004, she worked in a low paying job, was living with a person who failed to pay his share of the household expenses and was remodeling her home so she could sell it. When the home was sold her now ex-boyfriend took the profit from the sale. Applicant did not provide clarifying information regarding their financial

arrangement on the house. In addition, her son has medical problems and she is responsible for a \$750 annual deductible payment and other out of pocket expenses. Applicant did not provide any documents to substantiate the medical expenses.

In January 2004, Applicant was hired by her current employer, which paid more money but required her to commute farther away from home with increased transportation expenses. Applicant admitted she was overextended on her credit cards and getting behind on the payments in March/April 2004. In approximately February 2004, she sought assistance with a debt consolidation agency.⁽²⁾ She has been making payments to the debt consolidation agency since March 2004. They have in turn been paying some of her debts. The debts in SOR ¶¶ 1.b and 1.c are the same debt that went to judgment in ¶ 1.f.⁽³⁾ She has been making monthly payments of \$360 on these accounts/judgment since February 28, 2005 and anticipates the debt to be paid off in full in November 2006.⁽⁴⁾ Applicant's debt in SOR ¶ 1.e was settled and paid through her debt consolidation agency in May 2005. The accounts in SOR ¶¶ 1.a and 1.d are part of the consolidation plan, but have not yet been paid because Applicant is still saving money so a settlement offer can be made by the debt consolidation agency. When Applicant completes the payment plan on the debts in SOR ¶¶ 1.b and 1.c, she will have additional money to pay her remaining debts.

Applicant is committed to paying off all of her delinquent debts. Upon entering the debt consolidation program she destroyed all of her credit cards and has not incurred any new debt. She has consistently made payments to her consolidation plan since early 2004. Of the five accounts listed in the SOR, one has been settled and paid, two others should be paid by the end of 2006, leaving two unpaid. She will start repaying those debts when she finishes paying off the other two.

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."⁽⁵⁾ 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."⁽⁶⁾

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."⁽⁷⁾ The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.⁽⁸⁾ 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 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."⁽⁹⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹⁰⁾ 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. ⁽¹¹⁾

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. ⁽¹²⁾ 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. ⁽¹³⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. ⁽¹⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ⁽¹⁵⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽¹⁶⁾

A person granted access to classified 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 to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. ⁽¹⁷⁾ 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 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) 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 in this case. Applicant accumulated delinquent debts and continues to owe creditors. She has made some payments on delinquent debts and resolved them, however, she has other debts that she has not paid.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), 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)*), 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 is under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Some of Applicant's debts are recent because she has failed to pay them and they are still owed. She had many delinquent debts so her financial problems are not isolated, thus FC MC E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply. Applicant was underemployed before she started working at her present employment. She made some poor personal decisions with regard to her ex-boyfriend that impacted her finances, but was not fully explained. ⁽¹⁸⁾ Although her son may have medical problems, she did not show how this caused her to run into problems beyond her control, with credit cards and the expenditures she made to remodel the house. The difficulties she ran into regarding her finances were not from behavior beyond her control. Therefore, FC MC E2.A6.1.3.3 does not apply. Applicant admits she owes the debts listed in the SOR. In 2004, when she became aware that her finances were getting out of control she enlisted a debt consolidation agency to help her set up a plan to repay all of her delinquent debts. She had diligently and faithfully followed the plan they instituted and made significant progress in reducing her debts. All of her debts are listed in the consolidation plan, although two she has not begun to make payments on. It appears the way the plan works is Applicant makes monthly payments into an account and when she accumulates enough money the debt consolidation agency makes a settlement offer to pay off the debt for a reduced amount. Applicant has not sought any financial counseling, and FC MC E2.A6.1.3.4 does not apply. However, she has initiated a good faith effort to resolve all of her delinquencies even if she has not made payments on two of them. They are part of her payment plan and with her continued consistent payments it is anticipated they too will be paid in full. It is noted that Applicant started addressing her financial problems before she received the SOR, which indicates her initiative and resolve in satisfying her debts. I

find FC MC E2.A6.1.3.6 applies.

The Whole Person

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 all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered that Applicant made some poor personal choices with regard to her ex-boyfriend and her finances. However, she took action on her finances and made a concrete repayment plan that she has abided by for more than two years. Applicant is obviously committed to resolving her delinquent debts and it is unlikely that she will put herself in this position again. I find Applicant has successfully mitigated the trustworthiness concern raised by the financial considerations concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive positions. Accordingly, Guideline F is decided for Applicant.

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 Financial Considerations (Guideline F): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive positions.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Response to Form (Letter from Freedom Group dated June 27, 2006).
3. Response to Form (Court documents dated January 3, 2006).
4. Response to Form (documents included).

5. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
6. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
7. DoD 5200.2-R, ¶ C6.1.1.1.
8. *Id.* at Appendix 8.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at ¶ C8.2.1.
13. Directive , ¶ E3.1.14.
14. *Id.* at ¶ E3.1.15.
15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
16. Directive, ¶ E2.2.2.
17. Exec. Or. 10865 § 7.
18. Not enough facts were provided by Applicant to determine if her boyfriend was the sole owner of the house or if they owned it jointly and what their financial arrangements were regarding the sale of the house. It is also unclear why she expended money to renovate the house she shared with her boyfriend, especially if she did not have a financial interest in the house.