

DATE: March 29, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-08202

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 38-year-old employee of a defense contractor. She has four dependent children and does not receive child support. She has six delinquent debts totaling approximately \$10,000, of which a little more than \$7,000 is for a repossessed car. She wrote her creditors requesting information about those accounts. Four of the delinquent debts, including the repossessed car, are no longer on her August 2006 credit report. Applicant has mitigated the financial considerations, personal conduct, and criminal conduct trustworthiness concerns. Eligibility for an ADP I/II/III position is granted.

STATEMENT OF THE CASE

On December 21, 2004, Applicant applied for a determination of eligibility for assignment to sensitive positions and completed a Questionnaire for Public Trust Positions (SF 85P).⁽¹⁾ On July 15, 2006, the Defense Office of Hearings and Appeals (DOHA) issued her a Statement of Reasons (SOR) detailing the basis for its preliminary determination that she was not eligible for assignment to an Information Systems Position designated ADP I/II/III.⁽²⁾ The SOR alleges trustworthiness concerns under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct).

In a sworn, written statement, dated August 9, 2006, Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing.⁽³⁾ Department Counsel submitted the Government's written case on September 28, 2006. A complete copy of the file of relevant material (FORM)⁽⁴⁾ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. In a written statement dated October 24, 2006, Applicant responded to the FORM, and submitted several attachments. The case was assigned to me on December 1, 2006.

FINDINGS OF FACT

Applicant admitted some of the factual allegations pertaining to financial considerations under Guideline F, specifically subparagraphs 1.a through 1.c, 1.e, and 1.f. Those admissions are incorporated herein as findings of fact. She denies the other factual allegations. After a thorough and careful review of the record, I make the following additional findings of fact:

Applicant is a 38-year-old employee of a defense contractor. She has worked as an enrollment specialist since December 2004. Since June 2004, she is attending a local university to get a bachelor's of science degree in accounting and expects to graduate in 2008.

Applicant's husband divorced her in 2001.⁽⁵⁾ The record does not reflect much information about her marriage or divorce. As a single parent, she is raising her four dependent children, aged 12, 9, 7, and 2. Applicant failed to indicate why she is not receiving child support.⁽⁶⁾ Her financial difficulties began in 2002, shortly after her divorce, when some of her debts became delinquent and went unpaid.

Applicant's Response to Interrogatories, dated May 19, 2006,⁽⁷⁾ serves as a basis for the allegations in the SOR. In her response, she indicated that she intended to write to each creditor listed in the SOR and request information of those accounts. The SOR lists six delinquent debts totaling approximately \$10,084. The largest debt totals \$7,212, was an account referred for collection in October 2002, after her car was repossessed and resold. She contends the two debts for \$435, are duplicates. She is challenging a \$138 debt with a credit bureau because she states that this belongs to her ex-husband, representing his share of filing fees when they divorced. Because of her financial situation, her \$138 filing fee was waived.⁽⁸⁾

In her response to the FORM, Applicant once again challenged the accuracy of the debts and submitted letters she wrote to her creditors requesting information on those accounts. A Credit Bureau Report, dated August 25, 2006,⁽⁹⁾ does not reflect four of the debts in the SOR. One debt listed is for \$138, and this is the debt Applicant contends belongs to her ex-husband, which she is challenging. A debt is listed for \$11,485 on the 2006 credit report as: "Fairln Crd 'closed or paid account/zero balance' auto." This appears to be for the car she owned that was repossessed, and listed on the SOR for \$7,212. These four debts were removed from the August 2006 credit.

In the summer of 2004, Applicant qualified for a mortgage and purchased a home. Her 2006 credit report shows an outstanding mortgage balance of \$88,920 as of August 2006. Her monthly mortgage is \$651, and she is current on payments.⁽¹⁰⁾ Applicant has not acquired any new debt.

Applicant submitted an updated personal finance statement, dated October 23, 2006, which shows her net monthly income is \$2,056, her monthly expenses are \$1,977, leaving a net remainder of \$79 per month. Applicant's personal financial statement, dated April 13, 2005, indicated she had a monthly net remainder of \$423 after expenses.

Applicant responded "no" to Question 20 on the SF 85P, executed on December 21, 2004, which asked the following question (*Your Financial record 180 day delinquencies Are you now over 180 days delinquent on any loan or financial obligations? (Include loans or obligations funded or guaranteed by the Federal Government)*). Applicant failed to list those debts that were at least 180 days delinquent, as set forth in subparagraphs 1.a through 1.e of the SOR. Applicant contends that she misunderstood the question because she thought that it meant:

. . . anything that I currently was paying on was over 180 days old. The question is misleading, it should state whether anything current or old (meaning appears on your credit report) is over 180 days. I assumed you were talking about my current bills. It [question] did not say anything regarding past due, like my credit report.⁽¹¹⁾

Applicant's failure to disclose that she had debts that were at least 180 days delinquent, could constitute a violation of federal law, Title 18, U.S., Section 1001, a felony.

POLICIES

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in the

Regulation. "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."⁽¹²⁾ Appendix 8 of the Regulation sets forth the 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."⁽¹³⁾ Each eligibility determination must be a fair, impartial, and commonplace decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation.⁽¹⁴⁾ *An administrative judge should consider: (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 the 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.*⁽¹⁵⁾

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable determination may be made.⁽¹⁶⁾ *In trustworthiness determination cases, the Government initially must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible to occupy an ADP position.*⁽¹⁷⁾ *Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.*⁽¹⁸⁾ *In security clearance cases, an applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."*⁽¹⁹⁾ *"Any doubt as to whether access to classified information is clearly consistent with national interest will be resolved in favor of the national security."*⁽²⁰⁾ *The same rules apply to trustworthiness determinations for access to sensitive positions.*

CONCLUSIONS

Financial Considerations

Under Guideline F, a trustworthiness concern exists for an individual who is financially overextended. The person 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 unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant has a history of financial problems. Her current delinquent debts total approximately \$10,084. Thus, Financial Considerations Disqualifying Conditions (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.

Various conditions can mitigate trustworthiness concerns arising from financial difficulties. Applicant, a single parent, has four children ranging in age from 2 to 12. In 2001, she was divorced. The record is silent as to why she is not receiving child support. Consequently, debts that were usually paid timely, became delinquent. Her largest debt is \$7,212, which is the balance due on a car repossessed and resold. This account has been in collection since October 2002. This account no longer appears as an outstanding debt on her 2006 credit report. \$7,212. Given that three other debts were removed from the August 2006 credit report in less than seven years, and given her efforts to clarify the accounts, the accounts were previously satisfied or otherwise withdrawn as erroneous. Despite her allegedly precarious financial situation, in the summer of 2004, Applicant was able to purchase a house. Moreover, she has not acquired any new debts. Applicant does not appear vulnerable to coercion, exploitation, or duress because of her finances. Thus, 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, a business downturn, unexpected medical emergency, or a death, divorce or separation) and E2.A6.1.3.6 (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies.

Personal Conduct

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question of a

person's past conduct justifies confidence the person can be trusted to properly safeguard sensitive information. Applicant did not deliberately falsify a material fact on her SF 85P. I believe she was truthful when she stated that she failed to disclose debts that were over 180 days delinquent because she misunderstood the question. Thus, Personal Conduct Disqualifying Condition 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) does not apply. None of the available Personal Conduct itigating Conditions apply.

Criminal Conduct

Criminal conduct under Guideline J is always a trustworthiness concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Since I do not find that Applicant deliberately falsified a question in her SF 85P, her omission does not constitute a violation of federal law, Title 18, U.S.C., Section 1000. Thus, neither the Criminal Conduct Disqualifying nor Mitigating applies here.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant is a single-parent, raising four children without the benefit of child support. Despite her alleged delinquent debt, she was able to purchase a home for her family in 2004. She is not likely to be vulnerable to coercion, exploitation, or duress because of her debt. Under these circumstances, Applicant has mitigated the Government's case under the pertinent financial considerations, personal conduct, and criminal conduct guidelines. Accordingly, I conclude that it is consistent with the national interest to grant a favorable trustworthiness determination to 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 one. Guideline F (Financial Considerations): 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

Subparagraph 1.g: For Applicant

Paragraph 2. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3. Guideline J (Criminal Conduct): FOR APPLICANT

Subparagraph 3.a: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest

to make a favorable trustworthiness determination for Applicant. Eligibility is granted.

Jacqueline T. Williams

Administrative Judge

- 1. Item 4 (Questionnaire for Public Trust Positions (SF 85P), dated December 21, 2004).*
- 2. This action was taken under Executive Order 10865, Safeguarding Classified Information within Industry (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (Jan. 2, 1992), as amended and modified (Directive). The procedural rules set out in the Directive for security clearance cases are applied to ADP trustworthiness determinations. The adjudicative guidelines set out in Department of Defense Regulation 5200-2R, Personnel Security Program (Jan. 1987), as amended and modified (Regulation), are used to make ADP trustworthiness determinations.*
- 3. Item 3 (Applicant's Answer, dated August 9, 2006).*
- 4. The Government submitted 10 exhibits in support of the allegations in the SOR.*
- 5. Item 6 (Response to Interrogatories, dated May 19, 2006).*
- 6. Ex. 5 (Sworn Statement, dated April 19, 2005).*
- 7. Ex. 6 (Response to Interrogatories, dated May 29, 2006).*
- 8. Ex. 5 (Applicant's Affidavit and attachments, dated April 19, 2005).*
- 9. Ex. 7, note 7, supra.*
- 10. Ex. 7 (Equifax Credit Bureau Report, dated August 25, 2006).*
- 11. Applicant's Response to the FORM.*
- 12. Regulation ¶ C6.1.1.1.*
- 13. Regulation Appendix 8.*
- 14. Id.*
- 15. Id.*
- 16. Regulation ¶ C8.2.1.*
- 17. Directive, ¶ E3.1.14.*
- 18. Directive ¶ E3.1.15.*
- 19. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).*
- 20. Directive ¶ E2.2.2.*