

DATE: January 30, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-08410

ECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred over \$21,000 in delinquent debt, for which she has no payment plan in place. She has been arrested and charged nine times with the misdemeanor crime of issuance of worthless checks. She intentionally falsified one answer on her security clearance application and has a pattern of conduct which reflects rules violation. She has failed to mitigate the trustworthiness concerns raised under financial considerations, criminal conduct and personal conduct. Applicant's eligibility for a assignment to a sensitive position is denied.

STATEMENT OF CASE

In August 2003 and again in October 2004, 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").⁽¹⁾ On July 10, 2006, DOHA issued Applicant 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), Guideline J (Criminal Conduct) and Guideline E (Personal Conduct).

On September 6, 2006 and October 3, 2006, Applicant submitted a notarized response to the allegations. She elected to have her case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on November 17, 2006. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted an undated response, which reflects a postmark of December 27, 2006. This case was assigned to me on January 11, 2007.

FINDINGS OF FACT

In her SOR response, Applicant admits to all the SOR allegations under Guideline F, Guideline J and Guideline E.⁽²⁾ Applicant's admissions 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 39-year-old woman employed as a customer service representative in a position of public trust for a Department of Defense contractor. She has worked for her employer for almost six years. She is a high school graduate. She has three children, ages 19, 18, and 17.⁽³⁾ She and the father of her children never married. She receives sporadic support payments from him (the father of her children).⁽⁴⁾

Guideline F - Financial Considerations

Applicant's financial statement, dated March 16, 2005, reflects that her gross monthly income was \$2032, and her net monthly income, including child support of \$249.00, was \$1,798.00. She itemized her monthly expenses as \$760.00 for rent, \$300.00 for groceries, \$50.00 for clothing, \$346.00 for utilities and telephone, \$170.00 for car expenses, and \$50.00 for medical for total monthly expenses of \$1,676.00, leaving \$122.00 a month for all other expenses, including repayment of her outstanding debts.⁽⁵⁾

Applicant has incurred unpaid debts totaling \$15,898.00. More than \$11,000.00 of this debt is for medical expenses. In addition, eight creditors have obtained judgments against her, totaling \$7,160.06.⁽⁶⁾ She states that two judgments (Allegations w and hh of the SOR) were paid in 2003 through garnishment, but she has not provided documentation to support her statement. She also states that the debt listed in Allegation uu is being paid down, since the father of her children obtained medical insurance. She disputes the debt identified in Allegation o, but has not provided any documentation showing that she formally disputed this debt. If her statements are true, she has resolved \$2,178.25 of her debt, leaving unpaid debt of almost \$21,000.00. She has not presented any evidence which shows how she intends to repay this debt or that she has established a payment plan for these debts.⁽⁷⁾

Guideline J - Criminal Conduct

In 1994, the police charged Applicant with the crime of issuance of worthless checks. She pled no contest to the charge. The court fined her \$338.76, which she has not paid. In 2003, the police cited her for the crime of issuance of worthless checks on seven occasions. When she did not pay the fines, the police arrested, charged, and booked her for these crimes. On the July 2, 2003, the court found her guilty and fined her \$242.00, which has not been paid. The record lacks evidence regarding the disposition of the remaining six charges and documentation of payment, although Applicant states that she has paid all the fines, but two. In 2004, the police again charged her with the crime of issuance of worthless checks on one occasion. The disposition of this charge is unknown as there is no evidence in the record. These criminal charges are Class A misdemeanor crimes. Wisconsin Statute Annotated § 943.24 (1). Finally, the SOR alleges criminal conduct based on its allegation of falsification by her when she completed her SF 85P.⁽⁸⁾

Guideline E - Personal Conduct

On August 3, 2003, Applicant completed a Public Trust Position Application (SF 85-P), which she re-executed on October 22, 2004. She answered "no" then wrote "unsure" to the following question:⁽⁹⁾

Question 20. Your Police Record

"In the last seven years, have you been arrested for, charged with, or convicted of any offenses. (leave out fines of less than \$150)"

In her response to the SOR, she acknowledges her police record, and states that she does not keep a log of each charge for the last seven years. She provides no other explanation for her answer.⁽¹⁰⁾

Although Applicant answered "yes" to the following question about her finances, she only listed only one judgement, when she had eight judgments:

Question 22. Your Financial Record - a

"In the last 7 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had legal judgment rendered against you for debt? If you answered "yes," provide date of initial action and other information requested below.

In her response, she admits having judgments, but states that she did not keep a record or log of each judgment. [\(11\)](#)

Applicant answered "no" to the following question on her SF 85P:

Question 22. Your Financial Record - b

"Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government."

In her response to the SOR, she admitted to the allegation, then stated that she did not keep a record or log of each debt she had incurred. [\(12\)](#)

Finally, the SOR alleges that Applicant was charged with Operating After Suspension and Failure to Pay in February 2000. The record contains no other evidence regarding this allegation, which Applicant admits.

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." [\(13\)](#) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F - Financial Considerations - 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 or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline J - Criminal Conduct - A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

Conditions that could raise a trustworthiness 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. [\(14\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(15\)](#) 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. ⁽¹⁶⁾

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. ⁽¹⁷⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. ⁽¹⁸⁾ 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 security will be resolved in favor of the national security. ⁽²⁰⁾ The same rules apply to trustworthiness determinations for access to sensitive positions.

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 - Financial Considerations, Guideline J - Criminal Conduct, and Guideline E - Personal Conduct - as to allegations 3.c and 3.d..

Guideline F - Financial Considerations

Based on all the evidence, 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 to Applicant's case. Applicant has had difficulty meeting her financial obligations since 1993. Currently, she has more than 50 delinquent debts with an approximate unpaid balance of \$21,000.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant's delinquent debts remain outstanding. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*) because she more than delinquent debts.

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)*) does not apply because Applicant has not explained how she incurred all these debts, although it does appear that about \$11,000.00 of her unpaid debts are for medical bills. She has not provided any information explaining the circumstances which caused her to incur these medical bills.

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 under control*) does not apply. Applicant has not met with or retained the services of a consumer credit counseling nor has she developed any repayment plans for her outstanding debts.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. While Applicant states that three debts have been paid and she disagrees with a fourth debt, she has not made any effort to repay more than 90% of her delinquent debts. Applicant has not mitigated the financial considerations trustworthiness concern. Guideline F is decided against Applicant.

Guideline J - Criminal Conduct

Based on the Applicant's admissions, the government has established its case under Guideline J as to allegations 2.a through 2.i. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.2. (*A single serious crime or multiple lesser offenses*) applies. Applicant has been charged with issuing worthless checks, a Class A misdemeanor, on nine different occasions between 1994 and 2004, with 7 charges in 2003. On at least one of the charges, the court found her guilty. In addition, Applicant falsified answer to Questions 22b on her security clearance application, *see discussion infra*.

I have consider the Criminal Conduct Mitigating Conditions and conclude that none apply. Applicant's conduct is recent, not isolated, and the result of her decisions. She has provided no evidence of successful rehabilitation or acquittal. She has not mitigated the government's concerns. Guideline J is found against Applicant.

Guideline E - Personal Conduct

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question of whether a person's past conduct justifies confidence the person can be trusted to properly safeguard classified and/or sensitive information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a trustworthiness concern. It is deliberate if it is done knowingly and willfully.

In this case, Applicant answered "no" then wrote "unsure" in the space for additional information for Question 20 on her public trust application. Her answer indicates that she did not understand what specific information the question asked her to provide. Her lack of understanding is not sufficient to establish that she intentional falsified her answer to this question. The government has not established its case as to allegation 3.a., which is found in favor of Applicant.

When she completed the SF 85P, she answered Question 22a in the affirmative. She, however, only listed one judgment when there were five judgments. She acknowledged these judgments in her response, stating that she did not keep a list or log of all the judgments. Given the extensive and varied unpaid debts she has, it is highly probable that she did not have immediate recall on her outstanding judgments. I find that she did not deliberately falsify her answer to this question. Allegation 3.b. is found in favor of Applicant.

However, regarding allegation 3.c. in the SOR, 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. Applicant admits that she did not acknowledge that she had delinquent debts more than 180 days over due. Given the numerous debts she has and the length of time many of these debts are overdue, she knew that she had delinquent debts. I find her failure to answer "yes" to this question was deliberate.

As to allegation 3.d. of the SOR, Applicant admits the conduct alleged. Based on her admission, PC DC E2.A5.1.2.5 (*A pattern of dishonesty or rules violation, including violation of any written or recorded agreement made between the individual and the agency*) applies. Applicant failed to pay the fine imposed, just as she has failed to pay other court fines and her debts. Her conduct demonstrates a long pattern of failure to pay legal fines and debts owed.

I find that none of the mitigating conditions apply under personal conduct. Applicant has failed to mitigate the personal conduct concern. Guideline E is decided against Applicant.

Whole Person Analysis

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

Applicant has a long history of non-payment of debt. In conjunction with her failure to pay debt, she has a criminal record for writing bad checks, which is more evidence of her failure to properly manage her finances and to pay her bills. She has not been forthright about her finances, despite knowing about her long delinquent debts. Based on the record, 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:

SOR ¶ 1-Guideline F: AGAINST APPLICANT

Subparagraphs a-fff: Against Applicant

SOR ¶ 2-Guideline J: AGAINST APPLICANT

Subparagraphs a-j: Against Applicant

SOR ¶ 2-Guideline E: AGAINST APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

DECISION

In light of all of 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.

MARY E. HENRY

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.
2. Item 5 (Applicant's response to SOR, dated October 3, 2006)
3. Item 6 (Applicant's questionnaire for public trust positions) at 1-3, 5.
4. Applicant's response for FORM, undated, at 1; Item 8 (Applicant's signed, sworn statement, dated August 26, 2004) at 1.
5. Item 7 (Applicant's signed, sworn statement, dated March 16, 2005) at 6.
6. Three creditors obtained judgments in 1993 and one creditor obtained a judgment in 1998. Under Wisconsin law, these creditors have five years from the date of judgment to execute on the judgment (seek to collect the judgment by lawful means). *See* Wisconsin Statute Annotated (W.S.A) § 815.04a. If these creditor wish to execute on these judgment after this time, they must request leave of court to do so. W.S.A. § 815.04b. 20 years from the date of judgment, the creditors have no further rights of execution. W.S.A. § 815.04c.
7. Item 1 (Statement of Reasons (SOR), dated July 10, 2005) at 1-7.
8. *Id.* at 7; Item 7, *supra* note 5, at 1.
9. Item 6, *supra* note 3, at 7.

10. Item 5, *supra* note 2, at 8.
11. *Id.*; Item 6, *supra* note 3, at 7.
12. *Id.*
13. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
14. Directive, ¶ E2.2.1.
15. *Id.*
16. *Id.*
17. Directive, ¶ E3.1.14.
18. Directive, ¶ E3.1.15.
19. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
20. Directive, ¶ E2.2.2.