

DATE: November 29, 2006

In Re:

Applicant for Security Clearance

ADP Case No. 06-09293

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

This 27-year-old employee of a defense contractor has a history of 22 delinquent debts beginning in about 1998 and still unresolved. She did not truthfully describe her financial situation when she completed her security clearance application. Mitigation has not been established. Trustworthiness Determination Denied.

STATEMENT OF THE CASE

On April 9, 1993, the Composite Health Care System Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD C³I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987.

On June 14, 2006, DOHA issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability, and eligibility for Applicant to hold a sensitive Information Systems Position (ADP). The Applicant responded to the SOR in writing on June 27, 2006 and requested a decision made on the written record, i.e., without an administrative hearing. A File of Relevant Materials (FORM) was issued on August 7, 2006. Applicant was informed that any response had to be submitted within 30 days of receipt of the FORM. Any such response was due by September 17, 2006, but none has been received at DOHA. This case was assigned to me for decision on September 22, 2006, to determine whether a determination of trustworthiness should be made or continued, denied or revoked.

FINDINGS OF FACT

Applicant is a 27-year-old employee of a defense contractor. The SOR contains twenty-two (22) allegations under Guideline F (Financial) and one (1) allegation under Guideline E (Personal Conduct). Applicant admits all 22 allegations (1.a. -1.v) under Guideline F. She denies the single allegation (2.a.) under Guideline E. All admissions are accepted and incorporated herein as Findings of Fact. The Government opposes the Applicant's request to for a determination of trustworthiness and access to personal sensitive information on the basis of allegations set forth in the SOR. After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the

status of each SOR paragraph and allegation.

Guideline F (Financial Considerations)

As of the issuance of the SOR, Applicant had delinquent debts owing to the following creditors in the approximate amounts shown:

1.a. Creditor A -----	\$368.00
1.b. Creditor B -----	\$3,678.00
1.c. Creditor C -----	\$6,393.00
1.d. Creditor D -----	\$192.00
1.e. Bank E -----	\$207.00
1.f. Credit Card F -----	\$1,620.00
1.g. Creditor G -----	\$980.00
1.h. Creditor H -----	\$568.00
1.i. Bank I -----	\$2,769.00
1.j. Creditor J -----	\$369.00
1.k. Creditor K -----	\$1,078.00
1.l. Creditor L -----	\$6,850.00
1.m. Bank M -----	\$3,833.00
1.n. Creditor N -----	\$811.00
1.o. Bank O -----	\$650.00
1.p. Creditor P -----	\$234.00
1.q. Creditor Q -----	\$889.00
1.r. Creditor R -----	\$733.34
1.s. Creditor S -----	\$113.00
1.t. Creditor T -----	\$15,142.00
1.u. Creditor U -----	\$3,991.00
1.v. Creditor V -----	\$386.00

The amount of undisputed delinquent debt, as cited in the SOR, currently exceeds \$51, 854.00, plus additional unknown penalties and interest.

Guideline E (Personal Conduct)

2.a. Appellant falsified material facts on her Questionnaire for Public Trust Positions (SF 85P), executed on August 16,

2004), as to Question **22 Your Financial record** - b. Are you now over 180 days delinquent on any loan financial obligation? She knowingly did not disclose most of her delinquent debts.

POLICIES

The Directive requires that an applicant be considered under the "whole person concept."

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: E2.2.1.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. Each adjudicative decision must also include an assessment of nine generic factors relevant the conduct, to include knowing participation. I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance [and to work in Information Systems Positions]. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government, based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Applicant is an employee of a defense contractor. In her response to the SOR, she admits all 22 financial allegations, without accompanying explanations or excuses (Item 2). The FORM she received contained all of the Government's supporting documentation and a statement of the Government's evaluation of the evidence. Applicant chose not to provide any documents refuting the Government's evidence.

Guideline F (Financial Considerations)-

In the absence of any evidence showing the recent paying off or other resolution of the 22 delinquent debts, the evidence compels the conclusion that all 22 delinquent debts remain open and owing in at least the amounts shown in the SOR.

Applicant explains that her getting into debt began when she purchased a home in 1998 and began receiving unsolicited credit cards. She began using the cards, and within six months was unable to pay the credit card bills along with her monthly operating expenses. She recognized she

has acted irresponsibly, but was unable to fix the problem. The debts increased rapidly as described in her sworn statements of December 2003, December 2004 and February 2005 (Items 6, 7, and 8).

As of December 2004, she had delinquent debts of more than \$51,800.00 and a monthly earnings remainder of \$244 (Item 6 at 6). There is no evidence of any financial improvements since that time.

The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions: E2.A6.1.2.1. A history of not meeting financial obligations; and E2.A6.1.2.3. Inability or unwillingness to satisfy debts. *Mitigating Conditions:* None that are established by the record; e.g., E2.A6.1.3.1. The behavior is recent; E2.A6.1.3.2. It was not an isolated incident; E2.A6.1.3.3. There is no evidence that the conditions that resulted in Applicant's failure to timely resolve the debts 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 has not initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. As of the closing of the record, her efforts toward financial rehabilitation appear to be nonexistent.

Under both of the above Guidelines and the Directive's "whole person concept," Applicant has not come close to overcoming the evidence supporting the Government's concerns, as stated in the SOR. She has simply not demonstrated that she possesses the good judgment, reliability, and trustworthiness required of someone seeking to hold a sensitive Information Systems Position.

In the year that must pass after this decision becomes final before Applicant can reapply, she will have the opportunity to resolve her delinquent debts, and to demonstrate financial rehabilitation.

Guideline E (Personal Conduct)

I have carefully considered Applicant's explanations for not answering Question 22b correctly on her SF 85P. Applicant asserts in her response to the SOR that she believed she did not have to report debts if they were the same as the previous year (Item 5). Her explanation is unsupported by any other evidence and lacks credibility. In addition, in her sworn statement of 2003, and in her SF 85P, she also did not report most of her delinquent debts (Items 2 and 5).

The Concern: 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 sensitive information while operating in an Information Systems Position.

Disqualifying Conditions: 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.

Mitigating Conditions: None that is established by the record.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline F (Financial Considerations) Against the Applicant

Subparagraph 1.a. - 1.v. Against the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a. Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability and eligibility for applicant to hold a sensitive Information Systems Position.

BARRY M. SAX
ADMINISTRATIVE JUDGE