

DATE: December 27, 2006

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 06-09390

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant deliberately falsified her Public Trust Position Application concerning two judgments and outstanding delinquent debts totaling more than \$50,000. Eligibility is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trust for Applicant. As required by Department of Defense Regulation 5200.2-R (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on 21 June 2006 detailing the basis for its decision--concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Regulation. Applicant answered the SOR in writing on 30 August 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on 16 October 2006. With the consent of the parties, I convened a hearing on 15 November 2006 to consider whether it is clearly consistent with the interest of national security to grant or continue Applicant's eligibility to occupy an ADP I/II/III position of trust. DOHA received the hearing transcript (Tr.) on 29 November 2006.

### **FINDINGS OF FACT**

Applicant is a 56-year-old medical coder for a defense contractor that manages the civilian health care provided to military members and their dependents. She has worked there since September 2004. She is currently out of work due to a broken wrist. As soon as her doctor clears her, she will return to her position with the defense contractor.

Applicant is single, but her unemployed 31-year-old daughter and three grandchildren live with her. The daughter does not assist Applicant financially with any of the family's living expenses.

In January 2003 or 2004, Applicant's manufactured home, the contents of her home, and her two cars were destroyed

[\(1\)](#)

after fumes from the glue on recently installed flooring was ignited by her water heater.

In the SOR, DOHA alleged Applicant had 15 debts totaling more than \$10, 700 that had been placed in collection status (¶¶ 1.a-1.h, 1.j, 1.m-1.n, 1.p, 1.r-1.t), two debts totaling approximately \$32,500 that had been charged off (¶¶ 1.l, 1.q), two unpaid judgments totaling more than \$2,260 (¶¶ 1.I, 1.o), and a delinquent debt with a balance of \$8,698 after the resale of a repossessed automobile (¶ 1.k). In her Answer, Applicant admitted the allegations in ¶¶ 1.e, 1.g, 1.I, 1.k-1.l, 1.o-1.p, some with explanation, and denied the others.

<b>Debt</b>	<b>Status</b>	<b>Record</b>
1.a-1999 collection acct-\$696	Denies-no action	Tr. 14
1.b-2000 collection acct-\$75	Denies-suggests may be identity theft-no action	Tr. 14
1.c-2000 collection acct-\$107	Denies-suggests may be identity theft-no action	Tr. 14-15
1.d-2000 collection acct from medical provider-\$2,834	Denies-no action	Tr. 15
1.e-2000 collection acct-\$471	Admits-plans to pay when returns to work	Tr. 15-16
1.f-2001 collection acct-\$107	Denies-no action	Tr. 16
1.g-2002 medical collection acct-\$215	Admits-thought her insurance would pay-will pay when returns to work	Tr. 16
1.h-2002 collection acct-\$417	Admits-plans to pay when returns to work	Tr. 16
1.i-January 2003 judgment-\$437	Admits, but associates it with her home fire <a href="#">(2)</a>	Tr. 18; Ex. 3 at 3
1.j-2003 collection acct-\$1,000	Denies	Tr. 19
1.k-\$8,698 for repossessed car	Admits-claims her payments were current	Tr. 20
1.l-\$31,965 charged off debt	Admits-still owes	Tr. 20
1.m-July 2003 collection acct-\$144	Denies	Tr. 20
1.n-July 2003 collection acct-\$124	Denies	Tr. 20
1.o-Oct 2003 judgment-\$1,824	Admits-broke a lease on apt.	Tr. 21
1.p-2003 collection acct-\$3,767	Debt for damages to apt.-denies any damage	Tr. 21-22
1.q-2004 bad debt-\$535	Cell phone-she claims she never owned one	Tr. 22
1.r-2004 collection acct-\$311	Stolen tv satellite system-thought insurance had paid	Tr. 23
1.s-2005 collection acct-\$214	Wireless service-denies ever holding	Tr. 23
1.t-2005 collection acct-\$311	Claims same as ¶ 1.r	Tr. 23-24

On 13 September 2004, Applicant completed a Public Trust Position Application (PTPA) by certifying that her statements therein were true, complete, and correct to the best of her knowledge and belief, and by acknowledging that a knowing and willful false statement could be punished by fine and/or imprisonment under 10 U.S.C. § 1001. Item 19 asked if, in the previous seven years, Applicant had any legal judgments rendered against her for a debt. Item 20 asked if Applicant was then delinquent more than 180 days on any loan or financial obligation. Applicant answered "no" to both questions.

### **POLICIES**

The adjudication process extends only to sensitive positions. Positions designated as ADP I or ADP II are classified as sensitive positions; ADP III positions are not. Regulation ¶ AP10.2. By memorandum dated 19 November 2004, the Deputy Under Secretary of Defense for Counterintelligence and Security directed DOHA to extend the adjudication process to ADP III positions as well.

"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." Regulation ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. Regulation ¶ C8.2.1.

## CONCLUSIONS

### **Guideline F--Financial Considerations**

An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Regulation (app. 8) at 144. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an applicant's reliability, trustworthiness and ability to protect classified information.

Applicant has a history of not meeting her financial obligations (DC 1) and is unable or unwilling to satisfy his debts (DC 3). She has delinquent debts totaling more than \$50,000.

An applicant may mitigate financial considerations security concerns by establishing that the behavior was not recent (MC 1); it was an isolated incident (MC 2); the conditions that resulted in the behavior were largely beyond the applicant's control; (MC 3); the applicant has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control (MC 4); or the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (MC 6). Applicant's evidence has potentially raised MC 3.

Applicant asserts that much of her financial difficulty can be traced to the fire that devastated her life. But many of her debts became delinquent before the fire, whether it occurred in 2003 or 2004. By January 2003 her delinquent accounts totaled more than \$6,000. I have considered that Applicant's inability to resolve these debts has been exacerbated by the fire and the debts she incurred as a result. MC 3 applies. There is no indication Applicant is receiving counseling or that her debts are being resolved or are under control. It appears the allegation contained in SOR 1.t is the same as in ¶ 1.r. Therefore, I find for Applicant on ¶ 1.t.

### **Guideline E--Personal Conduct**

In SOR ¶ 2, DOHA alleged Applicant falsified material facts on her PTPA by deliberately failing to acknowledge that in the previous seven years she had two judgments rendered against her (¶ 2.a), and by denying she had any debts that were then delinquent more than 180 days (¶ 2.b). In her Answer, Applicant denied both allegations.

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Regulation (app. 8) at 142. The deliberate falsification or omission of relevant and material facts from any SCA is a security concern and may be disqualifying. DC 2. Information is material if it would affect a final agency decision or would impede a thorough and complete investigation of an applicant's background. *See* ISCR Case No. 01-06870, 2002 DOHA LEXIS 469 at \*\*13-14 (App. Bd. Sep. 13, 2002). An applicant's financial history is a matter that could affect a final agency decision on whether to grant the applicant a clearance and her failure to disclose it would impede a thorough investigation of an applicant's background. Despite her insistence that she was ignorant of the judgments and delinquent debts when she completed her PTPA, I conclude she knew of them and deliberately failed to report them.

An applicant may mitigate personal conduct security concerns raised in allegations of falsifying a PTPA by establishing the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability (MC 1); the falsification was an isolated incident, was not recent, and the applicant has subsequently provided correct information voluntarily (MC 2); the applicant made prompt, good-faith efforts to correct the falsification before being confronted with the facts (MC 3); the omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided (MC 4); the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress (MC 5). Applicant failed to establish any of the mitigating conditions. I conclude Applicant

failed to establish any of the mitigating conditions.

### **Whole Person Analysis**

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk." Regulation (app. 8) at 132. It involves "the careful weighing of a number of variables known as the "whole person concept." *Id.* 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. *Id.*

Applicant's recent life has been difficult. A fire destroyed her home, the home's contents, and her two cars. She supports her 31-year-old daughter and three grandchildren on a meager salary without financial help. Nevertheless, she has had long-standing financial difficulties dating to at least 2000, well before the fire destroyed her home. Since then, she has made no real progress in resolving these debts. She has not contacted many of the creditors. She deliberately falsified her PTPA. Under all the circumstances, Applicant failed to establish it is clearly consistent with the interests of national security to grant her a position of trust.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.r: Against Applicant

Subparagraph 1.t: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the interest of national security to grant or continue Applicant's eligibility for a position of trust. Eligibility is denied.

James A. Young

Administrative Judge

1. Her PTPA, dated 13 September 2004 (Ex. 1) and her affidavit, signed on 14 March 2005 (Ex. 2) indicate the fire occurred on 17 January 2004. At the hearing she was unsure whether the fire occurred in 2003 or 2004.

2. Even if the fire occurred in January 2003, the debt that was the subject of the judgment must have been delinquent well before the fire.