

DATE: January 23, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-09179

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 30 years old, unmarried with a six-year old child, and works for a defense contractor who provides health care services to Department of Defense members. Applicant has 22 listed delinquent debts that she is addressing by making payments to the creditors after contacting them about these debts. Applicant mitigated the financial considerations trustworthiness concern. Her eligibility for assignment to sensitive positions is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue an application for a position of trust for Applicant⁽¹⁾. On August 10, 2006, DOHA issued a Statement of Reasons⁽²⁾ (SOR) detailing the basis for its decision-trustworthiness concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on August 28, 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on October 5, 2006. On November 2, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness determination for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on November 28, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 30 years old, unmarried with six-year old child, and has an associate degree in nursing. She is not a licensed nurse because she has not passed her state licensing examination. She owns a house where her mother lives with her. Her mother contributes to the household expenses by paying for the utilities. They both contribute to food and

other costs. Applicant pays her mortgage payment faithfully each month. That amount is now \$800, having previously been \$400. She refinanced her mortgage in 1999 to increase the amount from \$68,000 to \$72,000, using the \$4,000 she obtained to repay other debts. She bought the house ten years ago with money from an injury settlement paid to her for her auto accident injuries. That \$600 per month lasted for ten years and stopped two years ago. She drives a car with 120,000 miles on it to work 25 miles one way each day. Applicant does not receive child support payments for her son. (Tr. 25-32, 39-42; Exhibit 1, 2)

Applicant has been unemployed twice in the past six years, from December 2002 to June 2003, and again in April 2004 until July 2004 when she started to work for her current employer. At her present job she is rated highly by her supervisors and is considered the second in charge in her consult return work area. She is dependable and conscientious. She has a high daily workload output. She earns \$13.59 per hour, for an annual income of \$21,744. (Tr. 13, 42; Exhibits 1, 2, A-F, Answer)

Applicant has no savings or retirement accounts. She has one credit card with a \$200 balance. She is trying not to incur other debts. Her net income monthly is about \$1,520. After expenses, her financial statement in February 2005 showed she had \$371.66 net remainder. Her current net remainder is not calculated by Applicant. (Tr. 29-31, 38, 39; Exhibit 2)

Of the 22 delinquent debts listed in the SOR, 18 are under \$300. (Exhibits 4, 5) Fifteen of those debts are medical bills (SOR ¶ 1.b., 1.d. - 1.n., 1.r., 1.u., and 1.v.) she incurred a few years ago for treatment of a seizure disorder she had. These bills are for co-pays or services not covered by her health insurance at the time. Seven of the bills are for credit card issuers for items Applicant purchased since 1996 when she bought her house (SOR ¶ 1.a., 1.c., 1.o. - 1.q., 1.s., and 1.t.) She attempted to settle some of the bills and succeeded in that effort. The creditors for other bills did not respond to her offer of installment payments of small amounts but accepted the checks she sent. Specifically, the present disposition of Applicant's debts are as follows:

Credit card, ¶ 1.a., \$2,480, is not paid. (Tr. 14)

Medical bills, ¶ 1.b., 1.d., 1.e., for \$211.50, \$104, and \$105.33, respectively are on one bill from a collection agency for which she pays one amount monthly. (Tr. 16, 18)

A credit card bill for \$191.46 (¶ 1.c.) was settled for \$58.80 and Applicant paid it. (Tr. 17; Exhibits 2, 3)

Two hospital bills, ¶ 1.f. for \$275.73 and ¶ 1.v. for \$161, are being paid at \$10 monthly, and Applicant has paid that amount for the past two months. (Tr. 18)

The medical bills listed in ¶ 1.g. to ¶ 1.n., and ¶ 1.u., with the respective debts being \$14.85, \$29.70, \$93.50, \$153.85, \$25.16, \$14.85, \$19.95, \$185.12, and \$115, are being paid at the rate of \$5 each monthly. Applicant went to the collection agency's website and arranged that payment method. (Tr. 18, 19, 35)

The credit card debt at ¶ 1.o. for \$1,742 Applicant has been paying regularly for several years at \$50 per month. The present amount owed is a result of those payments, with the original debt being about \$2,600. (Tr. 20, 21; Exhibit 3)

The credit card debt in ¶ 1.p. for \$1,695.25 Applicant attempted to arrange a repayment plan, and sent \$10 in good faith to the creditor. The creditor cashed her check but never responded to her. (Tr. 21, 22; Exhibits 2, 3)

The credit card debt in ¶ 1.q. for \$3,091.11 is being repaid at \$26.41 every two weeks. (Tr. 22; Exhibits 3, G)

The credit card debt in ¶ 1.s. for \$145 is the same debt listed in ¶ 1.t. based on a comparison of amounts, account numbers, and Applicant's exhibit showing the debt was paid. Applicant paid the debt September 28, 2006, on a settlement of \$53.09. (Tr. 23, 24; Exhibits 4, 5, H, I)

POLICIES

As Commander in Chief, 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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. See Directive ¶ 2.3. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination." See Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. See Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. See ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F:Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

Positions designated as ADP I or ADP II are classified as sensitive positions. (Regulation ¶AP10.2.1) ADP III positions are nonsensitive positions. (Regulation AP102.3.1) By memorandum dated November 19, 2004, the Deputy under Secretary of Defense for Counterintelligence and Security directed DOHA to resolve all contractor cases submitted for trustworthiness determinations, including ADP I, II, and III, under the Directive. Thus, even though they are

nonsensitive positions, ADP III cases are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

"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

Financial Considerations: Applicant had 22 delinquent debts listed in the SOR. Two listings were duplicates, so she actually had 21 delinquent debts. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations. E2.A6.1.2.1), and DC 3 (Inability or unwillingness to satisfy debts. E2.A6.1.2.3) apply. These debts were credit card debts and medical bills not covered by her medical insurance.

Mitigating Conditions (MC) 3 (Conditions resulting in the behavior were beyond Applicant's control because of unemployment and medical problems. E2.A6.1.3.3), and MC 6 (Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. E2.A6.1.3.6) apply. Applicant's income never exceeded \$22,000 in the past ten years. She also is the single parent of a six year old child. She had two periods of unemployment since 2000 that affected her ability to repay her debts. She paid two debts through settlements (¶¶ 1.c., 1.s. and 1.t.). She is paying two credit card bills at the rate of \$50 each per month. She also has paid \$5 per month on nine medical bills, five will be repaid soon because they are less than \$25 each. The remaining bills will be repaid thereafter. Her credit card bills, but for the first one listed in the SOR, she is repaying to the best of her financial ability. When the other bills are paid, she will turn her attention to the last bill. Applicant has only one active credit card, and is working to repay her delinquent debts.

Whole Person Analysis

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. I considered the totality of the evidence in view of the "whole person" concept, including Applicant's loss of employment twice, her chronic low income, her attempts to contact her creditors, her efforts at repaying all of them, and her regular payments on some of the credit card debts. Applicant has stopped making purchases she cannot afford on her current income, so she is not repeating her past behavior. Purchasing her house in 1996 resulted from her recognition that she should not be wasting the money she was obtaining from her auto accident, but should invest it in real estate. She has made specific efforts to contact her creditors and repay them in a good-faith effort. The one unpaid credit card debt is beyond her financial means now, but based on her past performance, she will use the money freed from the earlier repayments to devote to repaying that debt in the future. Considering all these factors, I conclude the financial considerations trustworthiness concern for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a. to 1.v.: 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 grant Applicant eligibility for assignment to sensitive duties. Her application for eligibility is granted.

Philip S. Howe

Administrative Judge

1. Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).
2. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.