

DATE: November 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 06-09044

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 31-year-old employee of a defense contractor who has longstanding delinquent debt totaling \$39,000. She has not made any good faith efforts to resolve the debt. She has failed to mitigate the trustworthiness concerns raised under financial considerations. Applicant's eligibility for an assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On August 16, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. On July 17, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant⁽¹⁾ under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (the Regulation); Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, (Directive); a memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security, *Adjudication of Trustworthiness Cases*, dated November 19, 2004; and a memorandum from the Deputy Director for Personnel Security, office of the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence, dated August 4, 1999.

The SOR detailed reasons under Guideline F (financial considerations), why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for occupying an Information Systems Position designated ADP I/II/III to support a contract with the Department of Defense. DOHA recommended referral to an Administrative Judge to determine whether such eligibility should be granted, continued, denied, or revoked.

On August 7, 2006, Applicant submitted a notarized response to the SOR, and elected to have her case decided on the record in lieu of a hearing. Department Counsel submitted the government's written case on September 18, 2006. Applicant received a complete file of relevant material (FORM) on October 2, 2006, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case. ⁽²⁾ Applicant submitted a

written response to the FORM on October 18, 2006. The case was assigned to me on November 15, 2006.

FINDINGS OF FACT

Applicant admitted all allegations in the SOR. ⁽³⁾ Those admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a married, 31-year-old claims associate of a defense contractor, seeking a position of public trust. She has been with her current employer for ten years, and has received evaluations rating her as "exceeding standards." ⁽⁴⁾ She submitted an application for a position of trust in connection with her employment in August 2004. ⁽⁵⁾

In 1997-1998, Applicant opened several revolving credit card accounts to pay for household items, and to finance a vacation. In 1999 or 2000, Applicant opened another revolving credit account to pay for car insurance and other necessities. ⁽⁶⁾ Also, in 1999, Applicant purchased a four-wheeler bike, and opened a line of credit with a bank. Finally, Applicant leased a vehicle for 11 months, but decided to return the car because she was pregnant. The car was repossessed in 2003. ⁽⁷⁾

By 2003, all of Applicant's accounts were delinquent. She acknowledged receiving notices of the delinquencies from all the creditors. She considered a debt consolidation plan, but has not yet done so. She also admitted she has not received any financial counseling. Finally, she has not contacted any creditors to resolve the debts. ⁽⁸⁾

Her outstanding debts corresponding to the SOR ¶ 1. a. through 1.h. are as follows: \$6,617 account charged off in June 2003; \$8,852 credit account in collection in September 2003; \$3,222 collection account in September 2003; \$12,813 collection account October 2003; \$7,239 account charged off in February 2004; \$662 account charged off in April 2004; and \$556 account closed in April 2004.

There is no record of unemployment for Applicant in the past ten years. However, her husband's employment was "unstable" in 2003. She provided no details about his employment or how it directly impacted their finances. ⁽⁹⁾

In March 2005, Applicant and her husband had a total net monthly income of \$2,998. The reported expenses of \$770 left a net remainder of \$1,059.04. Their mortgage, car and boat payment bills were listed on the financial statement. However, none of the surplus net remainder was allocated to the delinquent debts. ⁽¹⁰⁾

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 information." ⁽¹¹⁾ In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness to abide by regulations governing the use, handling, and protection of classified information."

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in the Regulation. ⁽¹²⁾ "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." ⁽¹³⁾ Appendix 8 of the Regulation sets forth 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 ⁽¹⁴⁾

that the person is eligible for a security clearance." 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⁾

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:

Financial Considerations- Guideline F: 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.

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable determination may be made. ⁽¹⁷⁾ 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. ⁽¹⁸⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. ⁽¹⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ⁽²⁰⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽²¹⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. ⁽²²⁾ It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

Upon consideration of all facts in evidence, and after application of the appropriate adjudicative factors, I concluded the following with respect to the allegations set forth in the SOR:

The government established its case under Guideline F. Since 2003, Applicant has six delinquent accounts totaling approximately \$39,961. No payments have been made to the various creditors in three years, giving rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*history of not meeting financial obligations*), and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Applicant's debts resulted from her misuse of credit cards. Her employment has been steady over the years and there is no evidence that her husband's unstable unemployment 2003 is sufficient to mitigate the concerns, as contemplated in 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)*).

Applicant was forthright in her interrogatories that she has not sought counseling nor has she decided to consolidate her debt. Although she has received overdue notices she has not contacted the creditors to resolve the debts. She did not provide proof any payments or a structured plan for the future. FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply.

Finally, I considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I balanced the factual circumstances and applied them to the adjudicative criteria established in the Regulation in light of the whole person concept. Applicant has ten years or more of acceptable service with her employer. However, she does not appear to realize the importance of handling her finances responsibly. It is premature to grant Applicant a

trustworthiness position based on her lack of affirmative action toward resolving her delinquent accounts. Under these circumstances, Applicant has not mitigated the government's case. Allegations 1.a. through 1.h. of the SOR under Guideline F are concluded against Applicant. Accordingly, I conclude it is not clearly consistent with the national interest to grant a trustworthiness determination to Applicant. Eligibility is denied.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR are:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1. e. Against Applicant

Subparagraph 1. f. Against Applicant

Subparagraph 1. g. Against Applicant

Subparagraph 1. h. Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant's request for a determination of trustworthiness and eligibility for assignment to sensitive duties. Eligibility is denied.

Noreen A. Lynch

Administrative Judge

1. In ADP trustworthiness determinations, I am required to follow the procedural rules of the Directive but the substantive guidelines from the Regulation.
2. The government submitted nine items in support of its contentions.
3. Item 2 (Applicant's Answer to SOR, dated August 7, 2006) at 1-2.
4. Item 4 (Application for Public Trust Positions (SF 85P), dated August 16,2004) at 1-7.
5. *Id.*
6. Item 5 (Applicant's Interrogatories, dated May 30, 2006) at 1-7.
7. Item 6 (Applicant's Affidavit, dated March 22, 2005) at 1-5.
8. *Id.*
9. *Id.* at 2.

10. Applicant's Personal Financial Statement, dated March 22, 2005.
11. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
12. DoD 5200.2-R, ¶ C6.1.3.1.
13. *Id.* at ¶ C6.1.1.1.
14. DoD 5200.2-R, Appendix 8.
15. *Id.*
16. *Id.*
17. DoD Directive 5220.6; DoD 5200.2-R, ¶ C8.2.1.
18. Directive, ¶ E3.1.14.
19. Directive, ¶ E3.1.15.
20. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
21. Directive, ¶ E2.2.2.
22. Exec. Ord. 10865, § 7.