

DATE: December 11, 2006

In re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 06-10116

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has more than \$10,000 in delinquent debt. Although she is paying on a few of her bills, she is now financially unable to conclude a debt consolidation plan to get her on the road to financial stability. Eligibility is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a an ADP I/II/III position 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 17 August 2006 detailing the basis for its decision-concerns raised under Guideline F (Financial Considerations) of the Regulation. Applicant answered the SOR in writing on 23 August 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on 8 September 2006. With the consent of the parties, I convened a hearing on 13 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. DOHA received the hearing transcript (Tr.) on 29 November 2006.

FINDINGS OF FACT

Applicant is a 46-year-old coding analyst for a defense contractor working with medical records of military personnel and their families. She has worked there for two years. Her father retired after a career in the Air Force. Applicant loves her country and is well-respected by both and coworkers and her superiors for her hard work, dedication to the mission, honesty, and integrity.

Applicant and her first husband had two children. After separating from her first husband, Applicant was unemployed and collecting unemployment benefits. The unemployment compensation did not cover all of her expenses so she ran up some debts taking care of her two children. She found employment but failed to report that to the appropriate

authorities, and continued to cash the unemployment checks. She was arrested in March 1995 and pled guilty to one count of making false statements. She was placed on probation until April 2001 and ordered to make full restitution of more than \$3,000. Applicant successfully completed her probation and had all of her rights restored.

In August 2001, Applicant's second husband was shot five times when he answered the door of their home late at night. While he was hospitalized, Applicant incurred substantial debt trying to keep all of her bills current. After he was released from the hospital, the family put their home up for sale and moved into her mother's home. Before they could sell their home, they bought another. As Applicant was the sole support of the family they incurred more debt. Between August 2001 and December 2004, Applicant had more than \$7,400 in charged off accounts and more than \$5,900 in collection accounts.

She is also indebted to the IRS for more than \$6,500. She submitted an offer in compromise in November 2006, but thinks it may take up to a year for the IRS to make a decision. She was also indebted to the state tax authority. She has been paying the state at the rate of \$300 per month, has \$80 remaining on the debt, and will satisfy it in December 2006.

Applicant sought to resolve her debts through bankruptcy. An attorney suggested she just wait a few years and the debts would fall off her credit report. When she learned that would probably not help her gain a favorable security clearance adjudication, Applicant went to a credit counseling service (CCS). The CCS set up a debt management program for her. Applicant was unable to agree to the terms because she would have to pay \$533 a month. She does not have sufficient funds to make such payments.

Applicant lives with her 18-year-old daughter. Applicant received child support for that daughter until she turned 18 years old. The daughter now receives \$350 per month in child support and earns additional funds at a part-time job. She does not contribute to the household expenses.

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

In the SOR, DOHA alleged Applicant was convicted of making false statements in connection with a claim for unemployment compensation (¶ 1.a); has more than \$7,400 in charged off accounts (¶¶ 1.b, 1.c, 1.e, 1.g-1.j); has more than \$5,900 in collection accounts (¶¶ 1.d, 1.f, 1.k-1.p); is indebted to the IRS for more than \$4,500 (¶ 1.q); and is indebted to the state taxing authority for more than \$521. In the Answer, Applicant admitted each of the allegations.

An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Regulation (app. 8) at 144. The Government established through Applicant's admissions that she has a history of not meeting her financial obligations (DC 1) and is unable to satisfy her debts (DC 3). She engaged in an illegal financial practice in 1995 by making false statements to acquire unemployment benefits to which she was not entitled. DC 2.

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 financial situation was largely beyond the applicant's control (MC 3);

the applicant has received counseling and there are clear indications the problem is being resolved or is under control (MC 4); or the applicant has made a good-faith effort to repay overdue creditors or otherwise resolve her debts (MC 6).

Applicant's financial difficulties apparently began in 1995 after she separated from her first husband and was unemployed. In 2001, after her second husband was shot, hospitalized, and unable to work, her financial difficulties resurfaced. Applicant established MC 3 and, at least for her debt to the IRS and the state taxing authority, she has made a good-faith effort to resolve the debts. So, I have applied MC 6 as well. None of the other mitigating conditions apply.

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 has had a history of substantial financial difficulties since at least 1995 when she separated from her first husband. Her current debts apparently became delinquent after her second husband was shot, hospitalized, and out of work in 2001. Although she has made some efforts to resolve her delinquent debts since the SOR was issued, her financial situation is still uncertain. Several of the debts have been delinquent since 2001 or 2002. Except for her state tax debt, she has been unable to pay the delinquent debts or to establish a payment plan. Under the circumstances, I conclude Applicant failed to establish it is in the interests of national security to grant her an ADP I/II/III position. As Applicant will finish paying off her state tax debt in December 2006, I find for her on SOR ¶ 1.r.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.q: Against Applicant

Subparagraph 1.r: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is denied.

James A. Young

Administrative Judge