

DATE: February 21, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 06-09942

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred approximately \$11,944 in delinquent debt, for which she has no payment plan in place. She intentionally falsified one answer on her public trust application. She has failed to mitigate the trustworthiness concerns raised under financial considerations and personal conduct. Applicant's eligibility for a trustworthiness position is denied.

STATEMENT OF THE CASE

On March 1, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").⁽¹⁾ On July 10, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.

On an undetermined date, 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 26, 2006. Applicant received a complete file of relevant material (FORM) on October 11, 2006, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case.⁽²⁾ Applicant did not submit any information or written response to the FORM by November 10, 2006. The case was assigned to me on January 11, 2007.

FINDINGS OF FACT

Applicant admitted allegations 1.a, 1.b, 1.d, 1.h, 1.i, 1.k, 1.l, 1.m, 1.n, 1.o, 1.s, 1.t, 1.v, but denied the other allegations in her SOR response under Guideline F because she disputed them or they were deleted from her credit report. She denied

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the allegation under Guideline E concerning her alleged failure to disclose debts on her ADP application. The 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 28-year-old woman employed as a pharmacy technician in a position of public trust for a defense contractor. She has worked for her employer for almost four years. She completed her high school education in 1997, and is currently enrolled in college. She has six children, ages 8 to 14. She and the father of her children never married. She lives with the father of her youngest child, and receives some financial support from him.⁽⁴⁾

Applicant's financial statement, dated April 8, 2005, reflects that her gross monthly income was \$1,800, and her net monthly income was \$3,500, including her boyfriend's net salary of \$2,000. She itemized her monthly expenses as \$972 for rent, \$500 for groceries, \$100 for clothing, \$240 for utilities and telephone, \$330 for car expenses, \$20 for medical, \$100 for miscellaneous expenses. She also included her monthly car payment of \$314, master card of \$20, and student loan of \$80 for total monthly expenses of \$2,262, leaving an \$824 net remainder after total monthly debt payments of \$414.⁽⁵⁾ She has no savings or assets except for her automobile.

On March 1, 2004, Applicant completed a Public Trust Position Application (SF 85-P).⁽⁶⁾ She answered "No" in response to question 22.b. Your Financial Record - 180 Day Delinquencies which reads: "Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government.)" Her background investigation revealed 24 delinquent accounts with a total approximate balance of \$11,994.⁽⁷⁾

Applicant's 24 debts in SOR total approximately \$11,944. The debts in SOR ¶ 1.a, 1.b, 1.d, 1.h, 1.i, 1.j, 1.l, 1.m, 1.n, 1.o, 1.s, 1.t, and 1.v. 1.i are not disputed.⁽⁸⁾ She admitted that they were delinquent debts but due to the age of the debts was generally advised not to pay them. She provided little or no information on the origin of the debts. She denied the other debts listed in allegations 1.c, e, f, k, q, and u because Applicant disputed them. However, they were verified in the 2006 credit report. Applicant did pay the debt in allegation 1.r in the amount of \$138. Several of the debts have been in collection since 1998.⁽⁹⁾ The record is devoid of any information concerning counseling or debt consolidation plans. Although Applicant, proclaimed she is currently saving money in order to settle some debts, she admitted her current strained financial situation would need to improve before she could plan to repay the debt. Applicant provided no evidence of any mitigating conditions involving medical problems or other extenuating circumstances.⁽¹⁰⁾ However, Applicant's March public trust application reported unemployment from July 2000 until December 2003. She provided no details about unemployment or how it directly impacted her finances in her response to the SOR.⁽¹¹⁾

Her outstanding debts corresponding to the SOR ¶ 1. g, 1.p, 1.w, and 1.x have been deleted from her latest credit report. However, there is no evidence in the record they were paid.⁽¹²⁾ In fact, in her answer to the SOR, she stated several times she did not want to ruin her credit report status due to old debt and would wait until some items were deleted from her credit report.

Applicant's sworn affidavit, dated April 8, 2005, explained she is a single mother with some support from the father of her youngest child who lives with her. She has no other child support or financial aid from the state. She is making enough money to make payments on her current bills. In 2005, she reported making payments of \$80 on her student loans. In the 2005 affidavit, she also promised to pay a telephone account (\$132) within the month, but did not do so. By her own admission in her SOR response, she still owes that debt.

Applicant denied that she deliberately failed to list her delinquent debts on her public trust application form in response to question 22 b. She offered no explanation for the omission. The debts have been charged off or placed in collection since 1998. I do not find this reasonable under the circumstances.

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 such

information."⁽¹³⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F - Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal Conduct - 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 classified information.

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽¹⁴⁾ 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⁾

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.⁽¹⁷⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽¹⁸⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁹⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽²⁰⁾ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations, and Guideline E - Personal Conduct.

Financial Considerations

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Applicant had difficulty meeting her financial obligations since 1999. Currently, she has 24 delinquent debts with an approximate total balance of \$11,944. She admits her financial situation is strained. Her 2006 credit report confirms the debt and verifies disputed accounts.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant's delinquent debts remain

outstanding. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*) because she still carries a significant amount of delinquent debt.

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)*) does not apply. Applicant had periods of unemployment, but provided no evidence as to the effect on her finances. Moreover, some of the debt precedes the unemployment. Two accounts are for medical care, but the majority are consumer accounts. Applicant provided no evidence to support this mitigating condition. Also, she provided no subsequent evidence of working to resolving the debt.

FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*) does not apply. Applicant indicates that she intends to repay based on an improved financial situation (she is saving her money). A promise to pay in the future is not sufficient to mitigate the financial considerations concern. All but one of the debts remain outstanding. She has not taken steps to resolve these debts. Applicant's financial problems remain. It is unlikely they will be resolved in the near future. She provided no information concerning financial counseling.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. Applicant has not shown that she established a record of steady payments or financial stability. She made no attempts to resolve the majority of the delinquent accounts. She admitted that she would not pay old debts because it would hurt her credit score. Despite that fact that some accounts have been deleted from her credit report, I cannot conclude that she made a good-faith effort to resolve her debts despite her good intentions to do so in the future.

The issue before me is not whether Applicant is still legally liable for any or all of her outstanding debts, but whether she has presented sufficient evidence of extenuation, mitigating or changed circumstances to warrant a favorable trustworthiness determination. Her remaining unpaid

debt constitutes a security risk. In the last few years, she has not made a concentrated effort to repay this debt. For several years, she had no resources to do so, but once she returned to the workforce, she made minimal effort to resolve her debt. Her decision to avoid further contact with creditors and allow the debt to drop off her credit report unpaid raises questions about her willingness to accept responsibility for her conduct and her trustworthiness to hold a position. I find that Applicant's unwillingness to take responsibility and resolve her outstanding debt outweighs any positive factors in this case. She has not mitigated the government's concerns under Guideline F.

Personal Conduct

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified and/or sensitive information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a trustworthiness concern. It is deliberate if it is done knowingly and willfully.

In this case, Applicant explained that she did not list her delinquent debts in response to question 22 b. on the public trust application. On her response to the SOR she made a note that her student loans were in forbearance until 2010. But she provided no reason for not listing any debts on the 2004 public trust application. I find that she intentionally withheld information about her delinquent debts in response to question 22 b. on her public trust application signed by her on March 1, 2004. In her answer, Applicant acknowledges that she has the debts and has not paid due to a strained financial situation. The evidence indicates that she was aware of her financial situation when she filled out her public trust application.

Personal Conduct Disqualifying Condition (PC DC) 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*) applies. Although Applicant claims that she had no intent to report false, inaccurate, or misleading information, she provides no reasonable explanation for not

listing her debts. She was required to provide a truthful answer to question 22. When she signed the application, she certified that his answers were "true, complete, and correct to best of her knowledge and belief and are made in good faith." However, she admits that she had the debts, but did not list them on her public trust application. I find her actions were deliberate.

I find that none of the mitigating conditions apply under personal conduct. Applicant has failed to mitigate the personal conduct concern. Guideline E is decided against Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. Even an applicant with a good or even exemplary work history may engage in conduct that has negative trustworthiness implications. It is premature to grant Applicant a trustworthiness position based on her deliberate failure to disclose her delinquent debts and her lack of action toward resolving her delinquent accounts. Applicant's intention is clearly to move forward based on her statements. She acknowledges mistakes in her past, and a desire to "clean up credit issues" in the future. Based on the evidence in the record, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, 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

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m Against Applicant

Subparagraph 1.n Against Applicant

Subparagraph 1.o Against Applicant

Subparagraph 1.p Against Applicant

Subparagraph 1.q Against Applicant

Subparagraph 1.r For Applicant

Subparagraph 1.s Against Applicant

Subparagraph 1.t Against Applicant

Subparagraph 1.u Against Applicant

Subparagraph 1.v Against Applicant

Subparagraph 1.w Against Applicant

Subparagraph 1.x Against Applicant

Subparagraph 1.y Against Applicant

Subparagraph 1.z Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a. 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. This action is taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.
2. The government submitted nine items in support of its contentions.
3. Item 3 (Applicant's Answer to SOR, undated) at 1-14.
4. Item 4 (Application for Public Trust Positions (SF 85P), dated March 1, 2004) at 1-9.
5. Item 5 (Applicant's Personal Financial statement), dated April 8, 2005.
6. Item 4, supra note 4 at 1-11.

7. Item 7 (Credit Bureau Summary, dated may 2005) at 1-10.
8. Item 3, *supra* note 3, at 1-4.
9. *Id.* at 6.
10. *Id.* at 4-6.
11. Item 3, *supra* note 3.
12. *Id.* at 1-5; Item 9 (Credit Bureau Report, dated September 9, 2006).
13. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
14. Directive, ¶ E2.2.1.
15. *Id.*
16. *Id.*
17. Directive, ¶ E3.1.14.
18. Directive, ¶ E3.1.15.
19. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
20. Directive, ¶ E2.2.2.