

DATE: February 27, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 06-10051

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 36-year-old employee of a defense contractor who has longstanding delinquent debt totaling \$25,484. He has not made any good faith efforts to resolve the debt despite his promises. He has failed to mitigate the trustworthiness concerns raised under financial considerations. Applicant's eligibility for a trustworthiness position is denied.

STATEMENT OF THE CASE

On November 24, 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 August 21, 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. On October 17, 2006, Applicant responded to the SOR allegations and requested a hearing.

The case was assigned to me on January 3, 2007. A notice of hearing was issued on January 11, 2007, scheduling the hearing for January 30, 2007. The hearing was conducted as scheduled. The government submitted four exhibits that were marked as Government Exhibits (GE) 1-4. The exhibits were admitted into the record without objection. Applicant submitted five exhibits which were marked and admitted into evidence as Applicant Exhibits (AE) A through E. The exhibits were admitted without objection. Applicant testified in his own behalf. DOHA received the hearing transcript (Tr.) on February 8, 2007.

RULING ON PROCEDURE

On January 30, 2006, the government moved to amend the SOR by striking the introductory paragraph on page one, first sentence, third line, (paragraph 3-614, DoD Regulation 5200.2-R and) from this to read as follows:

A review of your eligibility for occupying Information Systems Position designated ADP-II to support a contract with

the Department of Defense (DoD) has been made pursuant to DoD Directive 5220.6, dated January 2, 1992, This office recommends that your case be submitted to an Administrative Judge for a determination that you are not eligible for occupying such a position.

The Applicant did not object to the motion. I granted the government's motion to amend the SOR.

FINDINGS OF FACT

Applicant admitted all allegations in his SOR response under Guideline F. (2) 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 single, 36-year-old project specialist of a defense contractor, seeking a position of public trust. (3) After graduating from high school in 1989, he attended a community college. In 1995, he moved out of state for employment, and attended a state university. (4) He has no prior military experience. He has been with his current employer since October 2004, receiving two promotions. (5) His 2005 performance evaluation rated him as "exceeding expectations." (6)

On November 24, 2004, Applicant completed a Public Trust Position Application (SF 85-P). (7) Applicant's work history prior to his current employment was steady until September 2001. The industry took a down turn and Applicant was furloughed. After six months his position was abolished. He was earning \$37,000 at the time and received severance pay. He took lower paying jobs from June 2002 until June 2004. The company downsized and he was again unemployed. He collected unemployment between June 2004 and November 2004. (8)

Applicant's twelve debts in SOR ¶ 1.a through 1.l are not disputed. (9) He provided no clear information on the origin of the debts. He acknowledges that all the debts are delinquent and "currently not in repayment." Several of the debts have been in collection since 1999. (10) Although Applicant proclaimed he is committed to the repayment of the debt, he admitted he has not paid any debt except a loan from his parents and his school loan.

Applicant's outstanding debts, corresponding to the SOR ¶ 1. a. through 1.l., are as follows: \$666 credit account in collection in 2002; \$126 account in collection in 2003; \$5,419 account charged off in 1999; \$153 collection account charged off in 1999; \$8,481 collection account charged off in 1999; \$5,610 account in collection in 2005; \$4,114 account in collection in 2000; \$95 account in collection in 2000; \$951 collection account in 1999; \$2,111 amount charged off in 2004; \$1,785 student loan paid in 2006; \$3,611 account charged off in 2002. (11)

Applicant considered filing for bankruptcy in 2005, but could not afford the attorney and filing fees. (12) He contacted Consumer Credit Counseling Services in July 2006 to seek help with the debts listed in the SOR. (13) He met with them one time but did not sign an agreement. He was unhappy with their lack of response to him. However, he did not contact any other agency or financial counselor. (14) Applicant also stated that he was "negotiating with his creditors" in 2006. (15) At the hearing, Applicant noted that he contacted Superior Debt Relief two weeks ago. He has not signed an actual agreement with them, but expects to do so in the near future. (16)

Applicant now earns \$38,000 a year. He has a net monthly income of \$2,200. After reported expenses, he has a net remainder of \$398. (17) Applicant listed on his latest financial statement a \$400 repayment on an \$8,000 loan from a family friend. (18) He has \$764 in savings. He has two additional open credit card accounts, but is current on those payments. He repaid his parents \$5,000. (19) He does not have a written budget. His 2006 credit report confirms the debts listed in the SOR. (20)

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."⁽²¹⁾ 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 guideline at issue in this case is:

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.

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."⁽²²⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²³⁾ 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.⁽²⁴⁾

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.⁽²⁵⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽²⁶⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁷⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽²⁸⁾ 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.

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 has experienced difficulty meeting his financial obligations since 1999. Currently, he has eleven delinquent debts with an approximate total balance of \$24,000. He admits his financial situation is strained.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant's numerous delinquent debts remain outstanding. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), nor FC MC E2.A6.1.3.2 (*The behavior was isolated*) because he 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)*) partially applies. Applicant had periods of unemployment, but provided no evidence as to the effect on his finances. Moreover, some of the debt precedes the unemployment. The accounts are unexplained, but the majority are consumer accounts. Applicant provided no evidence to support this mitigating condition. Also, an applicant's actions toward resolving the debt should

be considered. Applicant's unemployment is insufficient to mitigate Applicant's financial irresponsibility.

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 he intends to repay based on an improved financial situation. A promise to pay in the future is not sufficient to mitigate the financial considerations concern. All of the debts remain outstanding. He has not taken steps to resolve these debts. Applicant's financial problems remain. It is unlikely they will be resolved in the near future. The record is devoid of any information concerning financial counseling. He made an attempt to get help from an agency, but did not follow through with the plan.

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 he established a record of steady payments or financial stability. He made no attempts to resolve any of the delinquent accounts I cannot conclude that he made a good-faith effort to resolve his debts despite his good intentions.

Whole Person

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. Applicant is a single man with no financial dependents, yet he has a significant amount of unexplainable debt. In addition, he has personal loans from family and friends. 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 his delinquent debts, and his lack of action toward resolving his delinquent accounts. In this case, Applicant did not meet his burden. 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 For Applicant

Subparagraph 1.l 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. Applicant's Answer to SOR, dated October 10, 2006) at 1-2.
3. AE A (Job Description), dated September 2005 at 1-3.
4. Tr. 36.
5. GE 1 (Application for Public Trust Positions (SF 85P), dated November 24, 2004) at 1-5.
6. AE B (Annual Performance Evaluation), dated June 2, 2005.
7. GE 1, *supra* note 6, at 1-5.
8. Tr. 23, 24.
9. Applicant's Answer to SOR, *supra* note 3, at 1-2.
10. GE. 4 (Credit Bureau Report), dated April 20, 2006 at 1-3.
11. *Id.* at 1-5.
12. GE. 2 (Affidavit and Personal Financial Statement),dated June 9, 2005 at 1-7.
13. Item 3, *supra* note 3.
14. Tr.21.
15. GE. 3 (Interrogatory Responses), dated July 5, 2006 at 1-13.
16. Tr.40.
17. GE 3, *supra* note 16 at 12.
18. Applicant's Personal Financial Statement, dated July 5, 2006.

19. Tr. 49, 50, 51.

20. AE E (Credit Bureau Report), dated January 30, 2007.

21. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

22. Directive, ¶ E2.2.1.

23. *Id.*

24. *Id.*

25. Directive, ¶ E3.1.14.

26. Directive, ¶ E3.1.15.

27. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

28. Directive, ¶ E2.2.2.