

DATE: January 3, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 06-10645

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has 11 delinquent debts with an approximate balance of \$12,443. Her current financial situation is complicated by her recent divorce and her ex-husband's failure to provide child support for their three-year-old daughter. Applicant's plan to pay her debts one at a time is not sufficient to mitigate the financial considerations concern. She indicates that she does not have much money left over each month, so it is too soon to conclude that she will be able to follow her debt repayment plan. She has failed to mitigate the trustworthiness concerns raised under financial considerations. Applicant's eligibility for a assignment to a sensitive position is denied.

STATEMENT OF CASE

On September 7, 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 14, 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.

In a sworn statement dated September 7, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on October 20, 2006. A notice of hearing was issued on November 3, 2006, scheduling the hearing for November 28, 2006. The hearing was conducted on that date. At hearing, the SOR was amended by deleting the reference to paragraph 3-614, DoD Regulation 5200.2-R in the introductory paragraph. The SOR was amended to reflect Applicant's current name. The government submitted Government Exhibits (Gov Ex) 1- 3 which were admitted into the record without objection. Applicant testified on her own behalf, and submitted no exhibits. The record was held open until December 12, 2006, to allow Applicant to submit further documents. An eight page document was timely submitted and marked as AE A and admitted without objection. DOHA received the hearing transcript (Tr.) on December 8, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits to all the SOR allegations under Guideline F. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 29 year-old woman employed with a Department of Defense contractor who is seeking a position of public trust. She has worked for her employer since November 2000. She was initially hired as a technical coach but recently assumed a new position as an analyst for Client and Benefit Administration.⁽²⁾ She attended vocational school to become a pharmacy technician.⁽³⁾ She is divorced and has one daughter, age 3.⁽⁴⁾

When Applicant was 19, several credit cards were sent to her. She activated the credit cards and used them but did not pay on the accounts.⁽⁵⁾ The accounts went delinquent and were eventually turned over for collection or charged off (SOR ¶¶ 1.a, 1.c, and 1.g). She married in June 2001.⁽⁶⁾ She and her husband opened a joint credit card account and used the account to make a down payment on a house (SOR ¶ 1.b). The house was eventually foreclosed in late 2002/early 2003.⁽⁷⁾ Approximately six months after the marriage, her husband got fired. He decided to stop working which aggravated their financial situation.⁽⁸⁾

When her daughter was born in 2003, Applicant underwent an emergency C-section. This created more medical expenses than she anticipated. Several of these medical accounts went delinquent (SOR ¶¶ 1.h, 1.i, 1.j, and 1.k).⁽⁹⁾

On September 7, 2004, Applicant completed a Public Trust Position Application (SF 85-P).⁽¹⁰⁾ Her background investigation revealed 11 delinquent accounts with a total approximate balance of \$12,444.⁽¹¹⁾ The accounts included a \$1,230 credit card account charged off in December 2001 (SOR ¶ 1.a); a \$5,385 credit card account charged off in December 2001 (SOR ¶ 1.b); a \$1,198 delinquent account turned over for collection in December 2001 (SOR ¶ 1.c); a \$35 delinquent account turned over for collection in December 2001 (SOR ¶ 1.d); a \$101 late charge for library books turned over for collection in June 2002 (SOR ¶ 1.e); a \$327 delinquent account turned over for collection in June 2002 (SOR ¶ 1.f); a \$1,128 delinquent credit card account referred for collection in August 2002 (SOR ¶ 1.g); an \$88 medical account turned over for collection in November 2003 (SOR ¶ 1.h); an \$814 medical account placed for collection in December 2003 (SOR ¶ 1.i); a \$1,482 delinquent medical account placed for collection in January 2004 (SOR ¶ 1.j); and a \$655 delinquent medical account placed for collection in May 2004 (SOR ¶ 1.k).

In September 2005, Applicant and her husband divorced.⁽¹²⁾ In 2005, her ex-husband made two child support payments totaling \$237.75. In 2006, he has made only one child support payment for \$117.75.⁽¹³⁾ Applicant has taken responsibility for all of the marital debt because her ex-husband's employment is sporadic and she knows he will not pay any of the debt.⁽¹⁴⁾

Applicant paid off two debts, the \$35 debt alleged in SOR ¶ 1.d and another \$85 medical bill that was not alleged in the SOR. She did not provide a receipt or other documentation verifying the debts were paid. She returned the library books that resulted in the late library charges in SOR ¶ 1.e. She is not sure whether she still owes the library for the overdue charges.⁽¹⁵⁾

In June or July 2006, Applicant consulted a credit counselor. The credit counselor advised her to pay the oldest delinquent accounts last because it is likely they will fall off her credit report before she is able to pay them.⁽¹⁶⁾ Applicant's plan is to pay off the debts one at a time. She is able to take care of her current bills but is not able to pay her delinquent accounts from the past.⁽¹⁷⁾

On June 26, 2006, Applicant answered interrogatories pertaining to her financial situation. She indicated that when she was interviewed in the summer 2005, she told the Special Agent who interviewed her that she would start making payments on her debts in July 2006. She wanted to get herself in a better financial position before paying her debts. She stated she would be making payments of at least \$40 per month beginning June 30, 2006.⁽¹⁸⁾ She was unable to keep up

with her proposed payment plan because other issues arose.⁽¹⁹⁾ Her truck broke down. Her parents gave her a car to drive but she is responsible for the payments and the insurance.⁽²⁰⁾ She also recently required some extensive dental work. She took out \$8,800 from her 401(k) to pay for the dental expenses. Her 401(k) has about \$7,000 balance remaining. She contributes six percent of her income to a 401(k).⁽²¹⁾ Approximately \$82 is deducted for her paycheck each pay period to deposit in her 401(k) account. As of November 11, 2006, she has contributed \$2,008 to her 401(k) account for tax year 2006.⁽²²⁾

Applicant's take home pay is approximately \$1,860 per month. She is paid \$930 every two weeks.⁽²³⁾ She shares an apartment with her sister. She pays \$450 a month in rent. Her car payment is \$250 per month. She pays \$100 per month in car insurance.⁽²⁴⁾ Day care costs \$408 per month.⁽²⁵⁾

She spends approximately \$200 each pay period to pay for groceries, utilities, phone bills and clothes.⁽²⁶⁾ Based on the figures provided, she has approximately \$252 left over each month after expenses. She is current on her federal income taxes but thinks that she might owe \$50 to \$80 on her state income taxes.⁽²⁷⁾

Applicant received several awards and letters of appreciation as result of her excellent duty performance.⁽²⁸⁾ She started out as a technical coach but has been promoted to an analyst position based on her duty performance.⁽²⁹⁾

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."⁽³⁰⁾ 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. 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.

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, is 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."⁽³¹⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽³²⁾ 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.⁽³³⁾

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.⁽³⁴⁾ Thereafter, the applicant is
⁽³⁵⁾

responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (36) Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. (37) 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. 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 a history of financial irresponsibility since November 2001 when the first credit card account issued to her at age 19 was charged off. Several unwise financial decisions contributed to her indebtedness. She did not pay her credit card balances. She and former husband purchased a house while they were married using a credit card to make the down payment. Between November 2001 and May 2004, she incurred 11 delinquent accounts with an approximate total balance of \$12,443.

I considered the Financial Considerations Mitigating Conditions (FC MC). The majority of 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. The financial irresponsibility occurred over a number of years and cannot be pinpointed to a single isolated incident.

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)*) applies, in part. Applicant's divorce in 2005 and her ex-husband's failure to pay child support are contributing factors to Applicant's current financial situation. Her emergency C-section when her daughter was born in 2003 also complicated her finances because she incurred unforeseen medical costs. MC 3 applies, in part, because Applicant was financially irresponsible prior to these events occurring. Several credit card accounts became delinquent prior to these events happening. In addition, although there were factors which were beyond her control, Applicant's actions towards resolving the debt should be considered as well. She has paid off only two debts. One for \$35 and another for \$85 which is not alleged in the SOR. Although money is tight, she has approximately \$252 left over each month after expenses. The \$82 (\$164 per month) she contributes to a 401(k) account each pay period could also be used towards her financial obligations. Based on the figures provided during the hearing, Applicant has approximately \$406 in discretionary funds per month that she could apply towards her delinquent debts. While certain events complicated Applicant's financial situation, she has taken little action towards establishing a plan to resolve her delinquent accounts. For this reason, I give MC 3 little weight.

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 sought credit counseling in June or July 2006. The credit counselor advised her to pay off the earlier debts first because her older debts would likely fall off the credit report as a result of the passage of time. Applicant's plan is to pay off these accounts one at a time. Most of her debts remain unresolved and are unlikely to be resolved in the near future. As such, MC 4 does not apply.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. In the summer 2005, Applicant indicated that she would start making payments towards her debts in July 2006. She paid off the lowest debt for \$35 and another \$85 debt not alleged in the SOR but has taken no steps towards resolving her other debts. At the same time, she puts six percent of her income into a 401(k) account which has a current balance of approximately \$7,000. Applicant failed to provide sufficient information to show that she has done all she can to resolve her debts. She intends to pay off the debts one at a time but a promise to pay in the future is not sufficient to mitigate the financial considerations concern. I cannot conclude that she made a good-faith effort to resolve her debts.

Applicant has not mitigated the financial considerations trustworthiness concern. Guideline F 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. 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 inability to resolve her delinquent accounts. Although her evidence of rehabilitation is insufficient at this time, this decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a trustworthiness position. Should she be afforded an opportunity to reapply for a security clearance in the future and she were to arrange a satisfactory repayment plan with her creditors to repay her delinquent accounts and pay her debts, she may well demonstrate persuasive evidence of trustworthiness. 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.k: Against Applicant

DECISION

In light of all of the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Erin C. Hogan

Administrative Judge

1. This action was 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. Tr. at 5, 32; Gov Ex 1.

3. Tr. at 5; Gov Ex 1.

4. Tr. at 16.

5. Tr. at 31.

6. Tr. at 18.

7. Tr. at 26.

8. Tr. at 36.

9. Tr. at 19.

10. Gov. Ex. 1.

11. Gov. Ex. 2, 3.

12. Tr. at 18.

13. AE at 3-4.

14. Tr. at 31.

15. Tr. at 17.

16. Tr. at 17, 41.

17. Tr. at 18.

18. Gov Ex 2.

19. Tr. at 25.

20. Tr. at 17.

21. Tr. at 35.

22. AE A at 5.

23. Tr. at 30; AE A at 4-5.

24. Tr. at 22.

25. Tr. at 28.

26. Tr. at 30.

27. Tr. at 29.

28. AE A at 6-8.

29. Tr. at 32.

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

31. Directive, ¶ E2.2.1.

32. *Id.*

33. *Id.*

34. Directive, ¶ E3.1.14.

35. Directive, ¶ E3.1.15.

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

37. Directive, ¶ E2.2.2.