

DATE: December 27, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 06-10008

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 32 years old and works for a contractor that manages health care benefits for the federal government. From 1998 until the present he accrued a significant amount of delinquent debt, which he has paid or resolved. He mitigated the trustworthiness concerns raised by his financial problems. His eligibility for assignment to a sensitive position is granted.

STATEMENT OF THE CASE

On September 22, 2004, Applicant submitted a public trust position application (SF-85P). The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue 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 June 27, 2006, detailing the basis for its decision-concerns raised under Guideline F (financial considerations) of the Directive.

In a sworn statement, dated July 28, 2006, Applicant responded to the SOR allegations, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel prepared the Government's file of relevant material (FORM) containing eleven exhibits (GX) on September 6, 2006. The FORM was mailed to Applicant the following day and received on September 26, 2006. On October 31, Applicant submitted material in refutation, extenuation, or mitigation of the matters contained in the FORM. Department Counsel did not object to the additional information, which I marked Applicant Exhibits (AX) A through G. The case was assigned to me on November 13, 2006.

PROCEDURAL MATTERS

The Department filed a Motion to Amend the Statement of Reasons that was contained in the FORM. Applicant did not file an objection to said Motion. Therefore, the Motion is granted and the first paragraph of the SOR is stricken and the

following language is inserted:

"A review of your eligibility for occupying Information Systems Position designated ADP I/II/III 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. This recommendation is based on the following reasons:"

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR, I make the following additional findings of fact:

Applicant is 32 years old. Since February 2003, he has worked as a customer representative for a company that administers health care benefits for the federal government. In September 2004, he submitted a SF-85P.

Applicant admitted that he owed the three delinquent debts listed in the SOR, which are as follows: (1) ¶1.a. for \$3,352, represents the balance on a car loan that became delinquent in 1998 after his car was stolen and he did not have insurance to cover the loss. He paid that debt in full in August 2006. (GX 6 at 2; AX D) (2) The \$72 alleged in ¶1.b. is an old utility bill that he paid in September 2006. (AX E) (3) The debt listed in ¶ 1.c. for \$22,810 is the balance owed on a student loan he obtained to attend college. He made payments for a year, but later was unable to make the payments the creditor demanded. (GX 6 at 4-5) In October 2006, he entered into a repayment agreement and will make monthly payments until the balance is paid in full. (AX C & F)

Applicant presently lives in a duplex with his mother and shares the rent. His budget provides sufficient funds to repay his student loan. (GX 7) He does not have any credit cards. His "goal is to clean up my credit." (GX 6 at 5)

POLICIES

Positions designated as ADP I or ADP II are classified as sensitive positions. Regulation ¶AP10.2.1. ADP III positions are nonsensitive positions. Regulation AP102.3.1. By memorandum dated November 19, 2004, the Deputy under Secretary of Defense for Counterintelligence and Security directed DOHA to resolve all contractor cases submitted for trustworthiness determinations, including ADP I, II, and III, under the Directive. Thus, even though they are nonsensitive positions, ADP III cases are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

"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.

The adjudicative guideline at issue in this case is as follows: Guideline F: A trustworthiness concern may arise if an individual is financially overextended and at risk of engaging in illegal acts to generate funds.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In

evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

CONCLUSIONS

I considered all facts in evidence and the application of the appropriate legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth in the amended SOR under Guideline F (Financial Considerations):

The Government established a potential disqualification under two conditions: (1) Financial Considerations Disqualifying Condition (FC DC) 1: (*A history of not meeting financial obligations*), and (2) FC DC 3: (*Inability or unwillingness to satisfy debts*). From approximately 1998 to the present, Applicant has a history of not meeting his financial obligations because he was unable or unwilling to do so.

The Government having raised a trustworthiness concern, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I concluded Financial Considerations Mitigating Condition (FC MC) 6: (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Recently, Applicant paid the delinquent debts listed in SOR ¶ 1. a. and ¶ 1.b., and entered into a repayment agreement to resolve his student loan, noted in ¶ 1.c. Hence, he has initiated a good-faith effort to repay or resolve his debts as required under this condition.

In addition to considering the disqualifying and mitigating conditions under the guideline, I also considered the totality of the evidence in view of the "whole person concept," including Applicant's age now and at the time he incurred the debt, as well as the basis for assuming the educational loan, viz., to attend school. I took into account his current employment, living situation, and desire to resolve his financial problems. Based on all of the evidence in the record, Applicant mitigated the concerns arising from his past financial troubles. Accordingly, Guideline F is decided for him.

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 as follows:

Paragraph1: Guideline F (Financial Considerations) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. His application for eligibility is granted.

Shari Dam

Administrative Judge