

DATE: January 24, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-10890

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has approximately 18 delinquent accounts with a total approximate balance of \$23,281. She has provided proof of payment of eight medical collection accounts which were not alleged in the SOR. She has taken no steps to resolve the delinquent accounts alleged in the SOR. She deliberately failed to list her delinquent debts on her trustworthiness application. She failed to mitigate the trustworthiness concerns raised under financial considerations and personal conduct. Applicant's eligibility for a assignment to a sensitive position is denied.

STATEMENT OF CASE

On January 3, 2005, 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 June 27, 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.

In a sworn statement dated September 12, 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 29, 2006. The hearing was conducted on that date. The government submitted Government Exhibits (Gov Ex) 1- 4 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 13, 2006, to allow Applicant to submit further documents. An additional extension was granted until December 27, 2006. A nine 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 and denies the allegation under Guideline E. 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 as a benefit service representative for a Department of Defense contractor who is seeking a position of public trust. She has worked for her employer for two years.⁽²⁾ She has a high school education.⁽³⁾ She is married and has two children from a prior relationship, ages 11 and 14, and a child with her husband, age 5.⁽⁴⁾

At the age of 13, Applicant became a mother. Between age 13 to 24, she lived with her boyfriend, the father of her two oldest children. He was abusive towards her.⁽⁵⁾ They broke up in 1999. He has not paid any child support. She has not filed for a child support order because she prefers that he just stay away based on his abusive nature.⁽⁶⁾

In January 1999, Applicant was seriously injured in a car accident. She was unable to work for six months and got behind on her bills. She also incurred several medical debts as a result of her injury.⁽⁷⁾

She married her current husband in 2001. He works full-time for a federal government agency.⁽⁸⁾ He provides support.⁽⁹⁾

On January 3, 2005, Applicant was hired by her current employer. On that same date, she

completed a Public Trust Position Application (SF 85-P).⁽¹⁰⁾ She answered "No" in response to question 20. 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.)."

Applicant's background investigation revealed 18 delinquent accounts with a total approximate balance of \$23,281.⁽¹¹⁾ The accounts included a \$1,835 department store credit card account placed for collection in September 1999 (SOR ¶ 1.a);⁽¹²⁾ a \$1,617 account related to past due rent placed for collection in November 1999 (SOR ¶ 1.b);⁽¹³⁾ a \$170 medical account placed for collection in February 2001 (SOR ¶ 1.c);⁽¹⁴⁾ a \$4,723 account placed for collection in August 1999 (SOR ¶ 1.d);⁽¹⁵⁾ a \$747 debt placed for collection in November 1999 (SOR ¶ 1.e);⁽¹⁶⁾ a \$494 medical account placed for collection in September 2002 (SOR ¶ 1.f);⁽¹⁷⁾ a \$74 overdue library book account placed for collection in July 2002 (SOR ¶ 1.g);⁽¹⁸⁾ a \$2,223 jewelry store account placed for collection in arch 2001 (SOR ¶ 1.h);⁽¹⁹⁾ a \$264 account placed for collection in September 2000 (SOR ¶ 1.i);⁽²⁰⁾ a \$335 account placed for collection in December 2001 (SOR ¶ 1.j);⁽²¹⁾ a \$218 speeding ticket account placed for collection in March 2006 (SOR ¶ 1.k);⁽²²⁾ a \$483 medical account placed for collection in July 2001 (SOR ¶ 1.l);⁽²³⁾ a \$1,164 account placed for collection in October 2002 (SOR ¶ 1.m);⁽²⁴⁾ a \$2,621 credit card account placed for collection in February 2000 (SOR ¶ 1.n);⁽²⁵⁾ a \$277 account charged off in January 2004 (SOR ¶ 1.o);⁽²⁶⁾ a \$375 account placed for collection in October 2004 (SOR ¶ 1.p)⁽²⁷⁾; a \$1,627 medical account placed for collection in November 2004 (SOR ¶ 1.q);⁽²⁸⁾ and a \$4,034 balance due after an automobile repossession which was charged off in November 2004 (SOR ¶ 1.r).⁽²⁹⁾

Around late 2004, early 2005, Applicant suffered from severe headaches and pneumonia. She incurred several medical bills during this period. She was not covered by insurance through her employer. Several other medical bills were incurred by family members.⁽³⁰⁾ The record is silent as to whether she or her children were covered by her husband's medical insurance.

Applicant states that the debts in ¶¶ 1.b and 1.e are the same. She states that her ex-boyfriend is responsible for the debt alleged in ¶ 1.r related to the car repossession. They bought the car together in 1999. When they broke up in 1999, he took the car and was responsible for the payments. He failed to make payments and the car was repossessed. He is also responsible for the utility bill alleged in ¶ 1.o. She claims that she returned the overdue library books which are alleged in ¶ 1.g and claims she paid the traffic tickets alleged in ¶ 1.k.⁽³¹⁾ She provided no documentation verifying any of these

assertions.

In a signed sworn statement provided on May 25, 2005, Applicant indicated that she would try to pay off her smaller debts and would try to contact a financial advisor about how to handle the larger bills. She also stated that she would try to contact the creditors with the larger debts in order to set up a payment plan.⁽³²⁾ Applicant also provided a personal financial statement. After monthly expenses, she and her husband had \$539 remaining each month.⁽³³⁾

None of the debts alleged in the SOR were paid or resolved at the time of the hearing. Applicant has paid approximately 13 medical accounts which were not alleged in the SOR.⁽³⁴⁾ After the hearing, she submitted proof that eight medical collection accounts were paid off.⁽³⁵⁾ The documents do not indicate the amount of each debt and when the accounts were paid.

In 1999/2000, Applicant consulted a credit counselor. She was advised that they needed more information from her. She never went back. Since that time, she made no attempts to seek credit counseling.⁽³⁶⁾

Several items have changed on her May 2005 Personal Financial Statement. Her husband's monthly income increased from \$3,000 a month to \$3,800 a month. Her income has decreased slightly since she reduced her work day from eight hours to six hours. In March 2006, they bought a home. Their mortgage payment is \$2,000 a month. Applicant's husband and mother-in-law own the home. They would not have qualified for a loan if Applicant's name was on the mortgage due to her poor credit history.⁽³⁷⁾ They currently have a little over \$300 each month after expenses. Applicant has one open credit card account which has a \$300 credit limit.⁽³⁸⁾ She and her husband still owe approximately \$700 in state income taxes for tax year 2005.⁽³⁹⁾

Applicant intends to pay her debts.⁽⁴⁰⁾ She has no definite plan in place for resolving her delinquent accounts. At hearing, she mentioned paying off the debt by refinancing their home mortgage.⁽⁴¹⁾ She is currently unable to pay her delinquent debts and may now consider bankruptcy as an option.⁽⁴²⁾

Applicant explained that she did not list her delinquent debts in response to question 20 on the public trust application because she hurried through the application.⁽⁴³⁾ Under cross examination, she admitted to being aware that she had several delinquent debts at the time she filled out the application.⁽⁴⁴⁾ In an affidavit, dated May 25, 2005, Applicant acknowledges that she encountered financial problems since 1999 and describes her delinquent accounts in detail. She explained that most of her accounts became delinquent after her 1999 car accident.⁽⁴⁵⁾ Based on her numerous delinquent accounts and her admission that she was aware that she had delinquent debts, I find that she intentionally withheld information about her delinquent debts in response to question 20 on her public trust application signed by her on January 3, 2005. Contrary to her assertions, the evidence indicates that she was aware of her financial situation when she filled out her public trust application.

She provided no documentation pertaining to her work performance.

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."⁽⁴⁶⁾ 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."⁽⁴⁷⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽⁴⁸⁾ 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.⁽⁴⁹⁾

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.⁽⁵⁰⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽⁵¹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽⁵²⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽⁵³⁾ 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. Between 1999 and November 2004, she incurred 18 delinquent accounts that were turned over for collection or charged off. Currently, she has 18 delinquent debts with an approximate total balance of \$23,281.

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)*) applies, in part. In 1999, Applicant was seriously injured in an automobile accident which resulted in her being unable to work for six months. She accumulated several delinquent debts and some medical bills as a result. In addition, her relationship with the father of her two oldest children ended. He has not provided child support for his two children. These are some contributing factors to Applicant's financial problems. However, ten of her 18 delinquent delinquent accounts occurred several years after her accident.⁽⁵⁴⁾ It appears that her financial situation improved after marrying her current husband

in 2001. However, several debts became delinquent after her marriage. Although MC 3 applies which explains the cause of the debt, an applicant's actions towards resolving the debt should be considered as well. It has been over seven years since her accident. Applicant has paid some medical accounts but made no attempts to pay her other delinquent accounts. For this reason, I give MC 3 less 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 consulted a credit counselor around 1999/2000. The credit counselor requested more paper work. Applicant did not return to the credit counselor. Although she has paid several medical bills, all of her other debts remain unresolved. It is unlikely her financial problems will be resolved in the near future. A promise to pay in the future is not sufficient to mitigate the financial considerations concern. It might be helpful for Applicant to seek out some sort of financial counseling in order to learn about budgeting and how to deal with her delinquent debt. At this point it is premature to apply MC 4.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. Although the Applicant paid some medical bills that were not alleged in the SOR. None of the debts in the SOR have been resolved. She took no steps to repay her overdue creditors even though she indicated her intent to do so in her May 2005 statement. I cannot conclude that she made a good-faith effort to resolve her delinquent debts.

Applicant has not mitigated the financial considerations trustworthiness concern. Guideline F is decided against Applicant.

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.

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 did not deliberately withhold her delinquent debts in response to question 20 on the trustworthiness application, her explanation that she hurried when filling out the application is not sufficient to justify the omission of her delinquent debts. When she signed the application, she certified that her answers were "true, complete, and correct to best of her knowledge and belief and are made in good faith." She admitted at hearing that she was aware that she had delinquent debts at the time she filled out her trustworthiness application. The government expects applicants for trustworthiness determinations to tell the truth at all times. Considering the extent of her delinquent debt, I find she deliberately did not list them on her trustworthiness application.

I find that none of the mitigating conditions apply under personal conduct. 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. 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 towards resolving her delinquent accounts. 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: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: 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, 23-24, Gov Ex 1.
3. Tr. at 5; Gov Ex 1.
4. Tr. at 18.
5. Tr.at 19.
6. Tr. at 21-22.
7. Tr. at 18, 30; Gov Ex 2.
8. Tr. at 22.
9. Gov Ex 2 at 7-8.
10. Gov Ex 1.
11. Gov Ex 3; Gov Ex 4.
12. Gov Ex 2 at 3; Gov Ex 4 at 3.
13. Gov Ex 2 at 2; Gov Ex 3 at 2.
14. Gov Ex 4 at 13.
15. Gov Ex 2 at 2-3; Gov Ex 3 at 3; Gov Ex 4 at 2.
16. Gov Ex 2 at 2; Gov Ex 3 at 2.
17. Gov Ex 4 at 4-5.
18. Gov Ex 2 at 7.
19. Gov Ex 2 at 3; Gov Ex 4 at 3.
20. Gov Ex 2 at 2; Gov 3 at 3; Gov 4 at 3.
21. Gov Ex 3 at 4.
22. Gov Ex 2 at 5; Gov Ex 3 at 4.
23. Gov Ex 3 at 4; Gov Ex 4 at 4.
24. Gov Ex 4 at 4.
25. Gov Ex 2 at 6; Gov Ex 4 at 9.
26. Gov Ex 3 at 3; Gov Ex 4 at 5.
27. Answer to SOR.

28. Gov Ex 4 at 9.
29. Gov Ex 2 at 3.
30. Gov Ex 2 5-6.
31. Gov Ex 2.
32. Gov Ex 2 at 8.
33. *Id.* at 10.
34. Tr. at 20, 25.
35. AE A.
36. Tr. at 21.
37. Tr. at 23-26.
38. Tr. at 25.
39. Tr. at 32.
40. Tr. at 31.
41. Tr. at 25.
42. Tr. at 32.
43. Tr. at 29-30.
44. Tr. at 29.
45. Gov Ex 2.
46. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
47. Directive, ¶ E2.2.1.
48. *Id.*
49. *Id.*
50. Directive, ¶ E3.1.14.
51. Directive, ¶ E3.1.15.
52. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
53. Directive, ¶ E2.2.2.
54. *See* SOR ¶¶ 1.c, 1.f, 1.g, 1.h, 1.j, 1.k, 1.l, 1.m, 1.o, 1.p, 1.q, and 1.r.