

DATE: September 29, 2006

In re:

SSN: -----

Applicant for Security Clearance

P Case No. 06-11471

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an employee of a defense contractor. Since 2002, he experienced a financial downward spiral when his wife's work hours were reduced from 30 to 8. Delinquent bills accumulated and they now total approximately \$24,912.16. His expenses continue to exceed his income. Applicant has not mitigated the financial considerations security concerns. Eligibility for an ADP I/II/III position is not granted.

STATEMENT OF THE CASE

On August 16, 2004, Applicant applied for a determination of eligibility for assignment to sensitive positions and completed a Questionnaire for Public Trust Positions (SF 85P).⁽¹⁾ On June 13, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary determination that Applicant was not eligible for assignment to an Information Systems Position designated ADP I/II/III.⁽²⁾ The SOR alleges trustworthiness concerns under Guideline F (Financial Considerations).

In a sworn, written statement, dated June 26, 2006, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.⁽³⁾ Department Counsel submitted the Government's written case on July 13, 2006. A complete copy of the file of relevant material (FORM)⁽⁴⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by August 27, 2006, and he chose not to respond. The case was assigned to me on September 12, 2006.

FINDINGS OF FACT

Applicant admitted all of the factual allegations pertaining to financial conduct under Guideline F (subparagraphs 1.a through 1.k). Those admissions are incorporated herein as findings of fact. After a thorough and careful review of the record, I make the following findings of fact:

Applicant is a 42-year-old employee of a U.S. government subcontractor. He has worked for this contractor from July 1996 to present. He completed a SF 85P in August 2004 to continue his position as a claims associate. He has been married since December 1999.

Applicant has a history of financial difficulty going as far back as 2002 to 2003, including having accounts placed for collection or charged off. His financial downward spiral occurred when his wife's hours at work were reduced from about 30 hours per week to 8 hours per week. This caused a financial strain on their budget and numerous debts became delinquent. Although he desires to pay off his debts, his family's income is insufficient to allow that to happen immediately.⁽⁵⁾

A credit bureau report, dated May 12, 2006,⁽⁶⁾ reveals Applicant has at least 10 delinquent debts, which total approximately \$24,912. The accounts delinquent are as follows:

- ¶ **1.a/Bank (\$4,830.00)** This account was charged off as a bad debt in January 2003. It remains unpaid.
- ¶ **1.b/Bank (\$1,828.00)** This account was charged off as a bad debt in August 2003. It remains unpaid.
- ¶ **1.c/Collection agency (\$2,611.00)** This account was referred for collection in December 2003. It remains unpaid.
- ¶ **1.d/Bank (\$102.00)** This account is more than 120 days or more delinquent, since May 2004. It remains unpaid.
- ¶ **1.e/Bank (\$4,902.00)** This account was charged off as a bad debt in June 2004. It remains unpaid.
- ¶ **1.f/Bank (\$2,025.00)** This account was charged off as a bad debt in June 2004. It remains unpaid
- ¶ **1.g/Bank (\$200.00)** This account is 120 days or more delinquent, since June 2004. It remains unpaid.
- ¶ **1.h/Car dealership (\$7,731.16)** On July 15, 2004, his vehicle was repossessed for failure to make time payment. It remains unpaid.
- ¶ **1.i/Medical provider (\$83.00)** This account was referred for collection in November 2003. It remains unpaid.
- ¶ **1.j/Medical provider (\$600.00)** This account was referred for collection in January 2006. It remains unpaid.

Applicant admits that he owes \$24,912.16 for his delinquent debts. However, his expenses continue to exceed his income. Applicant submitted a budget, dated March 9, 2005, which indicates a net positive balance of \$48.84 per month, after paying monthly expenses, which does not include payment for delinquent debts.⁽⁷⁾

POLICIES

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in the Regulation. "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."⁽⁸⁾ Appendix 8 of the Regulation sets forth the personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"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."⁽⁹⁾ Each eligibility determination must be a fair, impartial, and commonplace decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation.⁽¹⁰⁾ An administrative judge should consider: (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 the 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. [\(11\)](#)

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable determination may be made. [\(12\)](#) In trustworthiness determination cases, the Government initially must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible to occupy an ADP position. [\(13\)](#) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. [\(14\)](#) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." [\(15\)](#) "Any doubt as to whether access to classified information is clearly consistent with national interest will be resolved in favor of the national security." [\(16\)](#) The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

Financial Considerations

A trustworthiness concern typically exists for two different types of financial situations: significant unpaid debts and unexplained affluence; this case involves the former. 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, negligent, or careless in properly handling and safeguarding classified information and meeting the fiduciary requests of an ADP position.

From about 2002 to 2006, Applicant has numerous unpaid delinquent debts, which total approximately \$24,912.16. Consequently, 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.

Various conditions can mitigate trustworthiness concerns arising from financial difficulties. Here, Applicant is a prime example of an individual who could benefit from financial counseling so he can get the necessary tools to understand how to manage, prioritize, and eventually pay off his delinquent bills. However, he has failed to pursue such counseling. Thus, Financial Considerations Mitigating Condition (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 is under control*) does not apply.

Applicant's wife had been working a 30-hour week. When her hours were reduced to eight hours a week, which had a significant impact in reducing the family's income. Additionally, there are at least two medical bills that are unpaid, and they total approximately \$683.00, which is not significant, but is problematic for Applicant's budget, which seems stretched to the limit. The record is devoid of what the medical bills represent, other than that they are delinquent. Under these circumstances, FC MC E1.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. However, he took no steps to overcome the problem, so he has not mitigated this condition. None of the other available FC MC apply. Applicant has failed to mitigate or overcome the government's case. Accordingly, allegations 1.a through 1.k of the SOR are concluded against Applicant.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Under these circumstances, Applicant has not mitigated the Government's case under the pertinent guideline. Accordingly, I conclude that it is not consistent with the national interest to grant a trustworthiness determination to Applicant.

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 (Financial Considerations): 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

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to make or continue a trustworthiness determination for Applicant. Eligibility is denied.

Jacqueline T. Williams

Administrative Judge

1. Item 4 (Questionnaire for Public Trust Positions, dated August 16, 2004).
2. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The procedural rules set out in the Directive for security clearance cases are applied to ADP trustworthiness determinations. The adjudicative guidelines set out in Department of Defense Regulation 5200-2R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation), are used to make ADP trustworthiness determinations.
3. Item 2 (Applicant's Answer, dated June 26, 2006).
4. The Government submitted seven exhibits in support of the allegations in the SOR.
5. Item 5 (Applicant's affidavit, with personal financial statement, dated May 19, 2005).
6. Item 6 (Credit Bureau Report, dated May 12, 2006).
7. Item 5, *supra* note 5, at 5.
8. Regulation ¶ C6.1.1.1.
9. Regulation Appendix 8.
10. *Id.*

11. *Id.*

12. Regulation ¶ C8.2.1.

13. Directive, ¶ E3.1.14.

14. Directive ¶ E3.1.15.

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

16. Directive ¶ E2.2.2.