

DATE: January 31, 2007

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 06-11731

## **ECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Ray T. Blank

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a highly regarded claims associate for a defense contractor who accumulated a number of delinquent debts following serious medical procedures with her husband and limited income to address her mounting medical and consumer debts. With little financial help from her husband and barely enough income to support her family, she has still been able to pay most of her debts, including her medically-related obligations. She is considered reliable and trustworthy by her friends and colleagues and has committed to paying her remaining debts when she can; even though most of her debts are barred by applicable statutes of limitation. Applicant's overall efforts in addressing her finances, family and professional responsibilities enable her to mitigate financial concerns. Eligibility for an ADP I/II/III position is granted.

### **STATEMENT OF THE CASE**

On July 17, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of Applicant's eligibility for occupying an ADP I/II/III position, and recommended referral to an administrative judge for a trustworthiness determination.

Applicant responded to the SOR on October 19, 2006, and requested a hearing. The case was assigned to me on November 22, 2006, and was scheduled for hearing on December 5, 2006. A hearing was convened on December 5, 2006, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's application for a trustworthiness determination. At hearing, the Government's case consisted of four exhibits. Applicant relied on two witnesses (including herself) and six exhibits. The transcript (R.T.) was received on December 20, 2006.

### **PROCEDURAL ISSUES**

At hearing, Department Counsel moved to amend the Statement of Reasons (SOR). This proposed amendment entailed changing the reference from Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. In support of its proposed amendment, Department Counsel relied on a memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) to Director, Defense Office of Hearings and Appeals (DOHA), dated November 19, 2004 that directs DOHA to utilize provisions of the Directive to resolve contractor cases involving trustworthiness determinations. The motion was granted. As construed, the procedural rules of the Directive will apply; while the substantive guidelines of the Regulation will continue to control. Although, in financial cases, there are no material differences in the treatment of financial considerations between the guidelines in the Directive and those in the Regulation.

Before the close of the hearing, Applicant asked for leave to keep the record open to afford her the opportunity to supplement the record with creditor identities and receipts to cross-check with creditors listed in the SOR. There being no objection from the Government, and good cause being shown, Applicant was granted 14 days to supplement the record. The Government was, in turn, afforded seven days to respond. Applicant timely provided additional documentation covering the account identities and original bills associated with the payment receipts she provided at hearing, as well as performance reviews, to which the Government did not object. Applicant's post-hearing submissions are accepted as Applicant's exhibits G and H.

### **SUMMARY OF PLEADINGS**

Under Guideline F, Applicant is alleged to have incurred a state tax lien covering taxes, and interest and 22 delinquent debts totaling more than \$20,000.00. She alleged to have monthly expenses that exceed her monthly income, based on her personal financial statement.

For her response to the SOR, Applicant admitted each of her debt-related allegations without any explanations of the circumstances that contributed to her debt difficulties and her plans to resolve her debts.

### **FINDINGS OF FACT**

Applicant is a 38-year-old claims associate of a defense contractor who seeks a trustworthiness determination. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant first encountered financial problems in 1995 when her husband suffered a heart attack and was out of work for six months. This placed added financial stress on Applicant to care for her family. In 1997, he underwent a triple bypass procedure (R.T., at 35). With three children to care for and an unreliable husband who did not help her financially very much, Applicant got behind with her family bills and found it very hard to catch up. When she had gall bladder surgery in 2000, her medical insurance did not cover all of her bills (R.T., at 36), and, as a result, she incurred a significant medical debt of her own (creditor 1.t). Altogether, she accumulated 22 debts exceeding \$20,000.00, in addition to a state tax lien for unpaid taxes, penalties and interest. She continues to hold down two jobs just to meet her monthly expenses and has been unable to make much headway in paying her larger debts.

Among Applicant's unpaid debts are two large deficiency claims from the creditors who repossessed Applicant's cars in September 2001 and June 2005 (creditors 1.r and 1.v), respectively. Applicant had signed for these vehicles jointly with her husband and made payments on them for a number of years with little help from her husband before asking the creditors to retrieve the cars (R.T., at 47-50). Applicant acknowledges receiving the deficiency notices, which credited the amounts received for the vehicles at public sales.

Applicant documents satisfying the state tax lien (*see* exs. B and C) and a number of her smaller debts. She documents settlement of all eight of her listed medical debts (*see* exs. A and G; R.T., at 37-43) and credibly assures that one of the debts (creditor 1.b) is a duplication (*i.e.*, of creditor 1.k). While she has been unable to address her eight remaining listed debts with her limited income sources, she is amenable to setting up monthly payment plans with her individual creditors (R.T., at 36-37). With two children (ages 13 and 15) living with her and relying on her for financial support,

she has had few available resources to work with (R.T., at 33, 62-63). Efforts to enlist more financial contributions from her husband have not been promising (R.T., at 34-35). Occasionally, he has given her as much as \$800.00 towards her bills (R.T., at 53-54). On other occasions he has given her \$400.00, or much less (R.T., at 64-65). However, with a new second job (that nets her about \$1,200.00 a month), she hopes to be able to address her old debts, even without much help from her husband with whom she is separated, but not divorced (R.T., at 51-53). She has since spoken to a credit counselor about consolidating her debts and paid an initial start-up fee (R.T., at 60-61). She hopes to meet with the credit counselor in the near future to explore individual credit plans (R.T., at 61). To date, she has resisted seeking child support from the responsible child support agencies (R.T., at 66-67).

Friends and colleagues who are well acquainted with Applicant characterize her as reliable and trustworthy (*see ex. F*; R.T., at 69-71). She has received several certificates for achievement from her employer in recognition of her performance efforts (*see ex. D*).

### **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a trustworthiness concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a trustworthiness determination should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

#### **Financial Considerations**

*The Concern:* An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

#### **Burden of Proof**

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's trustworthiness determination may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a trustworthiness depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain an ADP position. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually abused a position of trust before it can deny or revoke a trustworthy determination. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to demonstrate his trustworthiness.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her trustworthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **CONCLUSIONS**

Applicant is a highly regarded claims analyst for a defense contractor who accumulated a number of delinquent debts

during periods of recuperation from major surgical procedures between 1995 and 1997. With children to support and little financial help from her husband, she struggled to stay abreast of her bills. Many of her debts are medically related. Among her remaining debts are two large repossession deficiencies, which she didn't know existed until she was provided a copy of her credit report in 2005. Although most of her debts have long since been barred by applicable statutes of limitation, Applicant has continued to acknowledge her identified debts and has paid her medical debts and most of her smaller debts with the aid of a second job.

Security concerns are raised under the financial considerations guideline of the Adjudicative Guidelines where the individual applicant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts, which until recently she has not been able to address, warrant the application of two of the disqualifying conditions (DC) of the Adjudicative Guidelines for financial considerations: DC 1 (*a history of not meeting financial obligations*) and DC 3 (*inability or unwillingness to satisfy debts*).

Extenuating circumstances are associated with the financial strains placed on Applicant during her husband's extended recuperation from serious medical procedures between 1995 and 1997, her assumed financial responsibilities for her children, her own limited resources, and her lack of anticipated financial support from her husband. MC 3 of the financial consideration guideline (*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)*) is clearly applicable to Applicant's situation.

Because of the limited income available to Applicant and the historic failure of her husband to provide much financial support for Applicant and her children, Applicant has not heretofore been in a position to address her larger debts (especially the deficiency balances on her two vehicle repossessions). Most of her accumulated debts (including her first repossession deficiency) have been charged off since 2003 and are barred from collection by the pertinent statute of limitation in South Carolina for debts. *See* S.C. Code Ann. Sec. 15-3-530. While statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, they have never been equated with good-faith efforts to repay overdue creditors by the Appeal Board. *See* ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001).

Applicant, however, has never relied on potentially available statutes of limitation. To the contrary, she has reaffirmed her debts and repaid most of them. Her efforts reflect considerable good faith and reflect her best efforts to pay the debts she is most familiar with and best able to resolve with her available resources. By virtue of her demonstrated repayment initiatives, MC 6 of the guidelines for financial considerations (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is also applicable. She has received some financial counseling and may rely to some extent on MC 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*).

Holding a favorable trustworthiness determination involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access information covered by privacy rights is required precisely to inspire trust and confidence in the holder of the trustworthiness determination.

Applicant's acknowledging her debts incurred during extenuating circumstances and making concerted efforts to resolve most of her debts that might otherwise be uncollectible by virtue of applicable statutes of limitations reflect very positively on her reliability and trustworthiness. Applicant has made considerable efforts to resolve her debts with the limited resources she has at her disposal. She will need more time to repay her larger debts (two of which represent deficiency balances on car repossessions), and she assures she will do so when she can. Her financial problems in the past were not the result of living beyond her means, and she appears to be doing all she can at this time to resolve her debts, short of filing for Chapter 7 bankruptcy. She is credited by her friends and colleagues with being reliable and trustworthy, and she can be expected to continue to resolve her debts as her available resources permit. Her efforts on the whole demonstrate permanent behavioral changes and create a low likelihood of recurrent debt problems once her listed debts are resolved.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the

positive judgment and trustworthiness impressions Applicant has made on her friends and colleagues, and the commitments she has made to resolving her debt problems, Applicant mitigates security concerns related to her debt. Favorable conclusions warrant with respect to the allegations covered by the financial consideration guideline.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in the preamble of Appendix 8 of Regulation 5200.2-R.

**FORMAL FINDINGS**

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions and guidelines listed above, this Administrative Judge makes the following formal findings:

**FINANCIAL CONSIDERATIONS: FOR APPLICANT**

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: FOR APPLICANT

Sub-para. 1.i: FOR APPLICANT

Sub-para. 1.j: FOR APPLICANT

Sub-para. 1.k: FOR APPLICANT

Sub-para. 1.l: FOR APPLICANT

Sub-para. 1.m: FOR APPLICANT

Sub-para. 1.n: FOR APPLICANT

Sub-para. 1.o: FOR APPLICANT

Sub-para. 1.p: FOR APPLICANT

Sub-para. 1.q: FOR APPLICANT

Sub-para. 1.r: FOR APPLICANT

Sub-para. 1.s: FOR APPLICANT

Sub-para. 1.t: FOR APPLICANT

Sub-para. 1.u: FOR APPLICANT

Sub-para. 1.v: FOR APPLICANT

Sub-para. 1.w: FOR APPLICANT

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a public trust position. Eligibility for an ADP I/II/III position is granted.

Roger C. Wesley

Administrative Judge