

DATE: March 19, 2007

In re:

SSN: -----

Applicant for ADP I/II/II Position

P Case No. 06-12130

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has approximately \$16,314 in unresolved delinquent debt. She has taken no steps to resolve the majority of her delinquent debts. She failed to list her delinquent accounts that were over 180 days old on her trustworthiness application. She did not provide a sufficient explanation for her omission. She has failed to mitigate the trustworthiness concerns raised under financial considerations and personal conduct. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF CASE

On August 25, 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 30, 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.

On September 25, 2006, DOHA received Applicant's response to the SOR allegations. Applicant elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on January 3, 2007. The FORM was mailed to Applicant on January 5, 2007, and received on January 19, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on February 7, 2007. Her submission consisted of four pages. Department Counsel stated they had no objections to Applicant's additional information on February 21, 2007. The case was assigned to me on February 28, 2007.

FINDINGS OF FACT

In her SOR response, Applicant denies the allegations in SOR ¶¶ 1.b, 1.g, 1.l, 1.n and 1.o and admits to all the

remaining SOR allegations. Although she admits the allegation in SOR ¶ 2.a, which deals with Guideline E, she states she did not intend to falsify her trustworthiness application. As such, I conclude she is actually denying the allegation. 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 27-year-old employee of a Department of Defense contractor who is seeking a position of public trust. She has worked for her employer for three years. She has a high school diploma and some college. She is married and has one child, age five, and a stepchild, age 22. ⁽²⁾

On August 25, 2004, Applicant completed a Public Trust Position Application (SF 85-P). ⁽³⁾ In response to question 22b. Your Financial Record, 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," she answered "no." Her background investigation revealed 15 delinquent accounts with a total approximate balance of \$16,314. ⁽⁴⁾ Three of these delinquent accounts, SOR ¶¶ 1.i, ⁽⁵⁾ 1.k, ⁽⁶⁾ and 1.m, ⁽⁷⁾ were more than 180 days old at the time Applicant signed her SF 85-P.

In her answer to interrogatories, dated June 26, 2006, Applicant indicated that she did not list her bad debts on her security clearance application because she did not have a copy of her credit report with her. She claims the employee she turned her SF 85P into told her to leave it blank if she did not know. ⁽⁸⁾ There is no additional evidence to corroborate this assertion.

The delinquent accounts include a \$443 telephone account placed for collection in February 2003 (SOR ¶ 1.a); a \$349 credit card account that was charged off in April 2004 (SOR ¶ 1.b); a \$362 account placed for collection in August 2005 (SOR ¶ 1.c); a \$176 account charged off in May 2005 (SOR ¶ 1.d); a \$304 telephone account placed for collection in October 2004 (SOR ¶ 1.e); a \$312 account placed for collection in November 2005 (SOR ¶ 1.e); a \$3,275 account charged off in April 2005 (SOR ¶ 1.g); a \$301 student loan account which was past due 120 days (SOR ¶ 1.h); a \$1,370 credit card account charged off in 1999 (SOR ¶ 1.i); a \$250 account placed for collection in January 2004 (SOR ¶ 1.j); a \$769 credit card account placed for collection in November 2002 (SOR ¶ 1.k); a \$312 account placed for collection in June 1999 (SOR ¶ 1.l); a \$5,157 amount owed after a voluntary car repossession in approximately June 2000 (SOR ¶ 1.m); a \$1,491 account placed for collection in September 2004 (SOR ¶ 1.n); and a \$1,443 account placed for collection in February 2004 (SOR ¶ 1.o).

Applicant disputes the account alleged in SOR ¶ 1.b. She claims that she cancelled this credit card account before she made any charges. ⁽⁹⁾ She provided a document verifying that she cancelled the account in her response to the FORM. ⁽¹⁰⁾ I find for Applicant with respect to this debt. She denies the debts alleged in SOR ¶¶ 1.g, 1.l, 1.n, and 1.o because she has no knowledge of the accounts. ⁽¹¹⁾ She formally disputed the debts alleged in SOR ¶¶ 1.n and 1.o with the credit reporting agencies. ⁽¹²⁾ The outcome of the dispute is unclear.

She initially encountered financial problems in 1999 while she was a college student. She was unable to pay the accounts alleged in SOR ¶¶ 1.a, and 1.i when her employment was reduced to part-time. ⁽¹³⁾ She was not able to make payments on the credit card account alleged in SOR ¶ 1.k because she had to quit her job due to a complicated pregnancy in 2001. ⁽¹⁴⁾ She purchased a car in 1997. She stopped making payments on the car in 1999 after she got in a car accident. The car was not repaired properly. She could not afford to make further repairs so she turned the car into the dealership. The debt alleged in SOR ¶ 1.m is the amount owed after the repossession. ⁽¹⁵⁾ The student loan debt alleged in SOR ¶ 1.h was initially 120 days past due. In November 2005, the account went into default and has a balance of \$1,460. ⁽¹⁶⁾

No payments have been made towards any of Applicant's debts. In a signed sworn statement provided to a Special Agent of the Office of Personnel Management (OPM) on May 9, 2005, she indicated she fully intended to pay her debts and that several of the debts would be paid off in four to five months. ⁽¹⁷⁾ In her response to interrogatories dated June 26, 2006, she indicated no payments were made towards her debts. ⁽¹⁸⁾ In her response to the FORM dated February 7, 2007, Applicant states that she was unable to pay her creditors due to recent family hardships. She and her family

moved to another state in March 2006 to be closer to her ill father-in-law. In May 2006, she learned her mother was in a coma and had a brain tumor. She and her family spent their savings in order to travel to where her mother was located. In July 2006, they arranged to have her mother move in with them. In August 2006, her father-in-law passed away. They had to pay for his burial. In 2007, she plans to pay off current accounts and old debt. She hopes to eliminate some of her debt within the next six to nine months. She is obtaining part-time employment and disputing several accounts with the credit agency. [\(19\)](#)

In conjunction with a signed, sworn statement, provided to OPM on May 9, 2005, Applicant provided a Personal Financial Statement. In May 2005, she and her husband had a total net monthly income of \$3,808.94. Their monthly household expenses were \$2,318.34. Their monthly debt payments were \$834.69. The debt payments did not include payments towards the delinquent accounts listed in the Statement of Reasons. They had a net remainder each month of \$655.91. [\(20\)](#) Applicant has not provided an update on her current financial situation.

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." [\(21\)](#) 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." [\(22\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(23\)](#) 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. [\(24\)](#)

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. [\(25\)](#) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. [\(26\)](#) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." [\(27\)](#) Any doubt as to whether access to classified information is clearly consistent with national security will be resolved

in favor of the national security. ⁽²⁸⁾ 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. She has incurred delinquent debts since 1999. She continues to have financial difficulties. Currently, she has 14 delinquent debts with an approximate total balance close to \$16,000. She has no plan in place to repay her delinquent debts.

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. Applicant first encountered difficulty paying her debts in 1999 when her work hours were reduced to a part-time status. However, it is unclear how long she worked part-time. In 2001, she indicated she was unable to pay debts because she had to quit a job due to a complicated pregnancy. In 2006, she has been unable to pay her debts due to her mother's unexpected illness and the death of her father-in-law. Although MC 3 applies, an applicant's actions towards resolving the debt should be considered as well. There is no evidence that Applicant reduced or monitored her expenses in response to these situations. In 1999 and 2001, she simply stopped paying on her accounts. Applicant intends to pay her delinquent debts off in the future but she currently has no plan to resolve her delinquent accounts. Between 1999 and 2006, there were times where she had extra money to apply towards her delinquent debt but she did not do so. Her Personal Financial Statement dated May 9, 2005, indicates that she has a remainder of \$655 each month after expenses. She did not use any of the extra money towards resolving her delinquent debt. As such, 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. There is no evidence that Applicant attended financial counseling. It is unlikely her problems will be resolved or under control in the near future because her debts remain unresolved.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. Applicant made no formal attempts to resolve her delinquent accounts. Admittedly, there were times when she struggled financially. However, there were also times when she had money that could have been applied towards her delinquent accounts. At the close of the record, she had not provided evidence that she entered into a formal repayment plan with any of her creditors. 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.

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.

In this case, Applicant claimed that she did not list her delinquent debts that were over 180 days old in response to question 22b because she did not have a copy of her credit report. She also claims that she was advised by the employee who accepted her SF 85-P to not to put anything down if she did not remember. Aside from her own testimony, she provided no independent evidence to corroborate her version of events. A statement from the employee in question could have corroborated this issue. Lacking a statement, I do not find this explanation credible. At the very least, she was aware that she had delinquent debt. She should have answered "yes" in response to question 22b and could have indicated that she was unable to recall all of her debt.

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 falsify her trustworthiness application, she answered "no" to question 22b even though she was aware that she had delinquent debts. She should have answered "yes" to the question. 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 admits that she was aware of the delinquent debts but did not provide a sufficient explanation for answering "no" in response to question 22b. I find her actions were deliberate.

I find that none of the mitigating conditions apply under personal conduct. Applicant has failed to mitigate the personal conduct concern. 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 history of financial irresponsibility since 1999, her lack of action towards resolving her delinquent accounts, and her deliberate omission of her delinquent debts on her trustworthiness application. 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: For 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

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. Item 4.

3. *Id.*

4. Items 5, 6, 7, 8, 9.

5. Item 5 at 2.

6. Item 5 at 3.

7. Item 5 at 4.

8. Item 8 at 6.

9. Item 8 at 4.

10. Response to FORM, dated February 7, 2007 at 4.

11. Items 6 and 8.

12. Item 5 at 5.

13. Item 6 at 1, 5.
14. Item 6 at 2.
15. Item 6 at 3.
16. Item 9 at 2.
17. Item 6.
18. Item 8.
19. Response to FORM.
20. Item 6 at 8.
21. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
22. Directive, ¶ E2.2.1.
23. *Id.*
24. *Id.*
25. Directive, ¶ E3.1.14.
26. Directive, ¶ E3.1.15.
27. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
28. Directive, ¶ E2.2.2.