

DATE: March 28, 2007

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 06-12472

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 38 years old and has worked for a medical contractor for the federal government since 2001. She has significant delinquent debt that remains unpaid and unresolved. Applicant failed to divulge her delinquent debt on two trustworthiness applications. Applicant failed to mitigate the trustworthiness concerns raised under Guideline F (financial considerations) and Guideline E (Personal Conduct). Therefore, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is denied.

STATEMENT OF THE CASE

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 August 7, 2006, detailing the basis for its decision-concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Regulation. Applicant answered the SOR in writing on August 26, 2006, and September 28, 2006. Applicant elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on December 19, 2006. The FORM was mailed to Applicant on December 21, 2006, and received on January 3, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant had no response. The case was assigned to me on February 28, 2007, to consider whether it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility to occupy an ADP I/II/III position.

FINDINGS OF FACT

Applicant is 38 years old and has worked for a medical contractor for the federal government since March 2001. Prior to then she was employed continually from 1995 with a three month period of unemployment from June 2000 to September 2000. Applicant married in 1986 and separated from her husband in June 2003. They have two children.

Applicant did not provide any information as to whether she receives child support.

Applicant and her husband filed for bankruptcy in August 1996, and had their debts discharged in December 1996. She admitted she owes the debts in SOR ¶¶ 1.d, 1.e, 1.g, and 1.i. The debt in SOR ¶ 1.d is a deficiency balance for an involuntary repossessed car. She admits she owes the account ¶ 1.e, but disputes the amount. Regarding the account in SOR ¶ 1.g, she stated "yes this is my account and I was making payment arrangements on this."⁽¹⁾ She did not provide any documentation to show whether she made any payments or made any arrangements with the creditor. No other information was provided on this delinquent debt. The account listed in SOR ¶ 1.i was a medical bill for her son that was due in 2003. She stated "I will start making payments."⁽²⁾ She stated there was no medical insurance coverage at the time. No documentation was provided to show if Applicant actually started making payments toward this debt.

Regarding the account in SOR ¶ 1.b, Applicant stated she activated this account but never used the credit card. She did not provide any information that she has contacted the credit card company or done anything to dispute the debt or that she has deactivated the card. She stated she is not familiar with the delinquent debts listed in SOR ¶¶ 1.c and 1.h. She did not provide any information that she has researched these debts to ensure they did not belong to her or disputed them. She denied she owes the account listed in SOR ¶ 1.f and stated she does not believe she could maintain a current account with this telephone company if she had a delinquent account. Applicant did not provide any information as to what efforts she took to research the account, contact the creditor about the account, or dispute the legitimacy of the account. She stated most of the accounts were opened before June 2003, when she separated from her husband. She did not provide any information about her financial status or information as to which debts were held jointly, what the debts were for, what if any conditions that affect her financial stability were beyond her control, or what substantive or good-faith efforts she has taken to resolve her delinquent debts.

On Applicant's December 11, 2002, Questionnaire for Public Trust Positions (SF 85P) in response to question 22b which asked if she had debts that were over 180 days delinquent, she listed one debt. On her November 8, 2004, SF 85P, in response to the same question she answered "no" that she did not have any debts over 180 days past due.

Applicant denied she intentionally falsified her trustworthiness determination applications (SF 85P). She stated she disputes some of the items in the SOR (1.b through 1.e) and she was not aware of the charges in others until May of 2006. Applicant admitted she owes the debts listed in SOR ¶¶ 1.d, 1.e, 1.g, and 1.i. Applicant was aware that she had her car involuntarily repossessed in August 2000, and owed the deficiency balance on the debt.⁽³⁾ Applicant admitted she had an account with the listed phone company in SOR ¶ 1.e, but disputed the amount owed. This debt was charged off in August 2001. Applicant stated she was making payments on the debt in SOR ¶ 1.g. That debt was charged off in April 2003, so she had to have stopped making her payments before the debt was satisfied. She also admitted owing the medical bill in SOR ¶ 1.i. She stated she did not have insurance at the time, so she was aware that insurance did not pay for the debt, so it was her responsibility. I find Applicant was aware that she had some delinquent debts when she filled out her SF 85Ps. It is not credible to believe that based on the number of debts, the lengthy period of time that many have been in a delinquency status and assigned to collection agencies or charged off, that she was unaware that she had any delinquent debts over 180 days. I find she intentionally and deliberately falsified her SF 85P dated December 11, 2002 and November 8, 2004.

POLICIES

The adjudicative guidelines set out in the Regulation are used to make ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.⁽⁴⁾

An individual may not be assigned to perform sensitive duties unless a competent security authority determines it is clearly consistent with the interests of national security to do so.⁽⁵⁾ Positions designated as ADP I or ADP II are classified as sensitive positions.⁽⁶⁾ ADP III positions are "nonsensitive positions."⁽⁷⁾ However, DOHA has been directed to apply the due process provisions of the Directive for all trustworthiness determinations under ADP I, II, and including ADP III positions by a memorandum from the Deputy Undersecretary of Defense (Counterintelligence and Security) dated November 19, 2004. Thus, even though ADP III positions are nonsensitive, they 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."⁽⁸⁾ Appendix 8 of the Regulation sets forth adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Department of Defense contractor personnel are afforded the adjudicative procedures contained in the Directive.⁽⁹⁾

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."⁽¹⁰⁾ Each eligibility determination must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Regulation. Specifically these are: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹¹⁾ The government has the burden of proving controverted facts.⁽¹²⁾ The burden of proof is something less than a preponderance of evidence.⁽¹³⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽¹⁴⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁵⁾ These same burdens of proof apply to trustworthiness determinations for ADP positions.

No one has a right to a security clearance⁽¹⁶⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁷⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁸⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁹⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Financial Considerations-a security concern exists when a person has significant delinquent debts. 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 information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Personal Conduct-a security concern exists when conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 1 (*a history of not meeting financial obligations*) and FC DC 3 (*inability or unwillingness to satisfy debts*) apply in this case. Applicant has accumulated delinquent debts over a significant period of time, that she has not paid.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 1 (*the behavior was not recent*), FC MC 2 (*it was an isolated incident*), FC MC 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)*), FC 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*), and FC MC 6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). All of Applicant's delinquent debts are recent because none of them have been paid. Due to the number of debts they are not isolated. Therefore, FC MC 1 and 2 do not apply. Applicant has been steadily employed since September 2000. She has been separated from her husband since June 2003. Although separated, she did not provide any information as what the specific financial impact this had on her. Therefore, I cannot apply FC MC 3. No information was provided to show Applicant received or is receiving counseling to resolve her financial difficulties, nor is there evidence that the problem is being resolved or under control. Applicant did not provide any documentation to show she has made any payments to any of the creditors, even to the ones she admits she owes. Applicant has not provided any evidence that she contacted the creditors with whom she disputes the amount owed. She has not provided any supporting evidence to show she is actually disputing delinquent debts she believes are not hers. She has not provided any evidence that she has researched the debts she stated she knows nothing about to resolve whether they are legitimately attributed to her or are mistakes. Applicant was on notice after her first application that financial delinquencies were a concern. She simply has not taken any action to show she is making a good-faith effort to resolve her debts or be actively involved with her past due debts. Therefore, I am unable to apply FC MC 4 or 6.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) 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 determination*) applies. Appellant deliberately and intentionally falsified her SF 85Ps by failing to list she had delinquent debts. It is not credible to believe that when she filled out her trustworthiness application in 2002, that she did not believe she had any overdue debts when she was aware she had a car involuntarily repossessed in 2000. It was also not credible to believe that when she filled out her trustworthiness application in 2004, she was unaware of the 2003 medical debt she owed for her son when she knew she did not have insurance to cover this debt. It is not believable that Applicant was totally unaware that she had even one overdue debt in 2004, considering the number of the delinquent debts, the types of debts, and the fact that some had been sent to collection agencies.

I have considered all of the Personal Conduct Mitigating Conditions (PC MC) and especially considered PC MC 2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC 3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), PC MC 5 (*the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or pressure*) and find they do not apply. I find that the falsification is recent because it has to do with her trustworthiness applications. I also find the falsification was not isolated because it occurred on two applications that were completed two years apart. Therefore, PC MC 1 and 2 do not apply. There is no evidence Appellant voluntarily provided the correct information before being confronted with the facts. Applicant has not provided any evidence that she has taken positive steps to reduce or eliminate vulnerability to coercion or pressure. After considering all of the evidence, I find that Applicant knew when she filled out the SF 85P that she had some delinquent debts and she failed to reveal them as required. I find none of the mitigating conditions apply.

The Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. 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 considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's trustworthiness. I considered Applicant's period of employment. I considered that she admitted owing some of the debts and has not provided any evidence that she is paying or resolving her delinquent debts. I also considered she is separated from her husband and is raising two children. I find Applicant has failed to mitigate the trustworthiness concerns raised by the financial considerations and personal conduct concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a favorable trustworthiness determination. Accordingly, Guideline F and Guideline E are decided against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is denied.

Carol G. Ricciardello

Administrative Judge

1. Answer dated September 28, 2006.

2. *Id.*

3. SOR ¶ 1.d; Answer dated September 28, 2006

4. Regulation ¶ C8.2.1.
5. Regulation ¶ C2.1.2.
6. Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.
7. Regulation ¶ C3.1.2.2.
8. Regulation ¶C6.1.1.1.
9. Regulation ¶ C8.2.1.
10. Regulation Appendix 8 at 132.
11. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).
12. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
13. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
14. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
15. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
16. *Egan*, 484 U.S. at 531.
17. *Id.*
18. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
19. Executive Order 10865 § 7.