

DATE: October 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 06-12852

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant and her first husband had more than \$68,800 in financial liabilities discharged in bankruptcy in 1997. Thereafter she divorced her husband, was the primary support for her two children, remarried, and accepted legal guardianship of her sister's two children. Since her bankruptcy, she has incurred more than \$8,200 in delinquent debt which she has made no effort to resolve. Eligibility for an ADP I/II/III position is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue applicant's eligibility for an ADP I/II/III position. In accordance with 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 20 June 2006 detailing the basis for its decision-concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Regulation. Applicant answered the SOR in writing on 16 July 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on 16 August 2006. With the consent of the parties, I convened a hearing on 13 September 2006, to consider whether it is clearly consistent with the interests of national security to grant Applicant eligibility to occupy an ADP I/II/III position. [\(U\)](#) DOHA received the hearing transcript (Tr.) on 20 September 2006.

FINDINGS OF FACT

Applicant is a 43 years old and has worked in an ADP II position for a defense contractor since September 2004. She has worked for the company for six years. The director of the division in which she works rates Applicant's duty performance as superior and her coworkers find her to be honest and trustworthy.

Applicant and her first husband were married in 1991. They have two children; one is 12 years old and the other is 7. In 1997, Applicant and her husband were granted a Chapter 7 bankruptcy, discharging debts totaling more than \$68,800.

The couple divorced in April 2000, and he was ordered to pay \$350 a month in child support. He did not pay until Applicant contacted his military supervisor. Since then he has paid the child support.

After her divorce, Applicant ran into financial difficulties trying to support herself and her two boys. She currently has four charged off accounts totaling more than \$4,900 (SOR ¶¶ 1.b-1.e) and eight accounts in collection totaling more than \$3,100 (SOR ¶¶ 1.f, 1.h-1.m). Applicant asserts the \$117 debt alleged in ¶ 1.g was discharged in her 1997 bankruptcy, but the last activity noted in her credit report for that account was in February 1999. Applicant never made any attempt to contact these creditors to establish a settlement or payment plan.

Applicant married her current husband in September 2002. They keep their finances separate. He pays the mortgage on the house, which is in his name, and she pays for the utilities, the food, and the medical insurance, and apparently most of the other expenses. She pays her personal bills and he pays his. She is in good standing on her student loan on which she pays \$81 a month. She thinks her husband makes about \$3,600 a month. She believes these debts are hers and not her husband's, as they were incurred before they were married.

In May 2005, Applicant's sister died. Applicant took over the care of her sister's children.

The children's father pays support of \$350 a month. She has legal guardianship over her 17-year-old nephew who is in his last year of high school. He works part-time. Applicant's niece, who is 21 years old, has a temporary position working for the same defense contractor. She still lives with Applicant.

Applicant completed a Public Trust Position Application (PTPA) on 12 September 2002 by certifying that her answers were "true, complete, and correct" to the best of her knowledge and belief, and acknowledging that a knowing and willful false statement could be punished by a fine and/or imprisonment under 18 U.S.C. § 1001. Question 20 asked if Applicant was then delinquent more than 180 days on any loan or financial obligation. Applicant answered "no."

POLICIES

Positions designated as ADP I or ADP II are sensitive positions. DoD 5200.2-R ¶ AP10.2.1 (Jan. 1987), as amended. "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." Regulation ¶ C6.1.1.1.

Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. Regulation ¶ C8.2.1.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had liabilities of more than \$68,800 discharged in bankruptcy in May 1997 (¶ 1.a); has four charged off accounts totaling more than \$4,900 (SOR ¶¶ 1.b-1.e) and eight accounts in collection totaling more than \$3,200 (SOR ¶¶ 1.f-1.m). In her Answer, Applicant admitted each of the allegations, except that in ¶ 1.g, which she asserted had been discharged in bankruptcy.

An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

Applicant has a history of not meeting her financial obligations (DC 1) and is unable or unwilling to satisfy her debts (DC 3). She has more than \$8,100 in delinquent debt and has made no effort to resolve it. Although she claims the debt alleged in ¶ 1.g was resolved through bankruptcy, she produced no evidence to support that assertion. The relevant evidence from her credit report shows the last activity on the account occurred two years after her other debts were

discharged. Therefore, I conclude Applicant is still delinquent on that debt.

An applicant may mitigate financial considerations concerns by establishing the behavior was not recent (MC 1); or, it was an isolated incident (MC 2). Applicant's evidence did not raise MC 1 or C 2. The debts still exist, are listed on her credit reports, and were incurred with different creditors over a period of time.

It may be mitigating if the delinquent debts resulted from conditions largely beyond the applicant's control. MC 3. Applicant raised this mitigating concern by testifying about her divorce, her difficulty in supporting her sons as a single parent, and her recent acceptance of responsibility for raising her sister's children.

It may also be mitigating if an applicant is able to establish she has received counseling for her financial problems and there are clear indications the problem is being resolved (MC 4) or she initiated a good-faith effort to repay overdue creditors or otherwise resolve her debts (MC 6). Applicant presented no evidence to suggest she has received counseling, has made any effort to repay the debts, or the problem is being resolved in any other manner. All the debts remain unpaid. One account for \$50 (¶ 1.1) was referred for collection in October 2004 and is still unsatisfied. Applicant failed to establish the applicability of either MC 4 or MC 6 to her case.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on her PTPA by denying that she had any financial obligations that were delinquent more than 180 days. ¶ 2.a. In her Answer, Applicant denied the allegation.

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. The deliberate falsification or omission of relevant and material facts from any SCA is a concern and may be disqualifying. DC 2. Information is material if it would affect a final agency decision or would impede a thorough and complete investigation of an applicant's background. An applicant's financial situation is a matter that could affect a final agency decision on whether to grant a clearance, and her failure to disclose it would impede a thorough investigation of her background.

After carefully listening to her testimony, observing her demeanor, and considering all other evidence in the case, I am not convinced Applicant deliberately falsified the PTPA about her financial condition. Therefore, I find for Applicant on ¶ 2.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant committed a felony by deliberately falsifying her PTPA as alleged in ¶ 2.a. Applicant failed to admit or deny the allegation in her Answer.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation or knowingly make or use a false writing in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. As I was not convinced Applicant deliberately falsified her PTPA, I am unable to conclude that she violated 18 U.S.C. § 1001. I find for Applicant on ¶ 3.

Whole Person Analysis

"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." Regulation (app. 8) at 132. It involves "the careful weighing of a number of variables known as the "whole person concept." *Id.* 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. *Id.*

Applicant is intelligent, mature, hard-working, and has the trust of her supervisors and peers.

Her financial situation was clearly exacerbated by her divorce, her attempts to support two children, and her subsequent guardianship over her sister's children. She asserts that she intends to pay these debts. Nevertheless, she has done nothing to resolve her debts. She has not made payments or otherwise attempted to resolve her debts. She has not even contacted the creditors or paid off her \$50 debt. I conclude the likelihood that her debts will be a continuing problem is substantial. I am unable to conclude it is in the interest of national security to grant her eligibility for an ADP I/II/III position.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.m: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.a: For Applicant

DECISION

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

James A. Young

Administrative Judge

1. The adjudication process extends only to sensitive positions. ADP I and II positions are sensitive positions, ADP III positions are not. Regulation ¶ AP10.2. By memorandum dated 19 November 2004, the Deputy Under Secretary of Defense for Counterintelligence and Security purported to extend the adjudication process to ADP III positions as well. As far as I could determine, the contents of this memorandum have never been published in the Federal Register, as appears to be required by 5 U.S.C. § 552(a)(1) before the memorandum could become effective. Nevertheless, I am required to follow the directions of the Deputy Under Secretary.