

DATE: January 26, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-13053

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In February 2003, Applicant and her current husband filed for Chapter 7 bankruptcy. Their debts were discharged in May 2003. Her background investigation revealed eight delinquent accounts incurred post- bankruptcy with a total approximate balance of \$5,709 and a delinquent student loan account with a total approximate balance of \$35,416. Half of the debts were mitigated at hearing. Her student loans were actually in deferment rather than delinquent. She is in the process of divorcing her current husband due to his physical abuse resulting in her current financial issues. However, her debts are not out of control. I find Applicant mitigated the financial considerations security concern. She did not deliberately omit her delinquent debts on her trustworthiness application. Applicant's eligibility for a assignment to a sensitive position is granted.

STATEMENT OF CASE

On July 28, 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 14, 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, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct.

In a sworn statement dated October 6, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on November 1, 2006. A notice of hearing was issued on November 13, 2006, scheduling the hearing for December 1, 2006. The hearing was conducted on that date. The government submitted Government Exhibits (Gov Ex) 1- 5, which were admitted into the record without objection. Applicant testified on her own behalf, and submitted six exhibits, which were admitted as Applicant Exhibits (AE) A-F. The record was held open until December 15, 2006, to allow Applicant to submit further documents. A six page document was timely submitted and marked as AE G, and admitted without objection. DOHA received the hearing transcript (Tr.) on December 11, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits to the SOR allegations under Guideline F, ¶¶ 1.a, 1.b, 1.c, 1.g, 1.h and 1.j. She denies ¶¶ 1.d, 1.e, 1.f and 1.i. She denies the allegation under Guideline E, ¶ 2.a and the allegation under Guideline J, ¶ 3.a. 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 36 year old woman employed as an enrollment specialist supervisor for a Department of Defense contractor who is seeking a position of public trust. She has worked for her employer since July 2004. She is currently a junior in college. (2) She is separated from her second husband and is in the process of filing for divorce. She is supporting four children, two sons - ages 16 and 17, and two daughters - ages 13 and six. (3)

In 1992, Applicant married her first husband. He became a drug addict. To support his drug habit, he took out credit cards in Applicant's name (unbeknownst to Applicant) and took out cash advances. These accounts became delinquent. (4) They divorced in 1999. (5) Her ex-husband does not provide child support for their two children. (6)

Applicant married her current husband in August 1999. (7) Both had significant debts from their first marriages. They incurred additional delinquent debt as a result of her husband's three month period of unemployment and their move to Arizona. (8) In February 2003, they filed for bankruptcy under Chapter 7. Their total liabilities were \$144,120.13. The debts were discharged on May 30, 2003. (9)

In January 2004, Applicant separated from her current husband after she discovered he had fathered a child with another woman during their marriage. Her husband also became physically abusive. Applicant has a restraining order against him. There is an active warrant out for her husband's arrest on domestic violence charges. She has no contact with her husband. He is unemployed. He moved to Las Vegas and provides no child support for her youngest daughter, who was born during their marriage. (10)

On July 28, 2004, Applicant completed a Public Trust Position Application (SF 85-P). (11) In response to question 19. Your Financial Record - Bankruptcy, Liens, Judgments, she answered "yes" and listed her bankruptcy. In the remarks section, she indicated that some items on her credit report are still listed as delinquent even though they were discharged. She indicated that she had no debts that were over 180 days delinquent. She answered "No" in response to question 20 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.)."

Applicant's background investigation revealed nine delinquent accounts with a total approximate balance of \$41,125. (12) The account with the highest balance is a \$35,416 student loan account that went into default in November 2005 (SOR ¶ 1.j). The remaining accounts include a \$1,000 collection account for three returned checks turned over for collection in August 2003 (SOR ¶ 1.b); a \$375 delinquent check account turned over for collection in September 2003 (SOR ¶ 1.c); a \$418 utility bill referred for collection in January 2004 (SOR ¶ 1.d); a \$900 judgment for unpaid rent entered in June 2004 (SOR ¶ 1.e); a \$890 delinquent account charged off in July 2004 (SOR ¶ 1.f); \$1,074 for three monthly car payments for a car repossessed in November 2004 (SOR ¶ 1.g); a \$530 delinquent cable account turned over for collection in August 2005 (SOR ¶ 1.h); and a \$522 delinquent cable account referred for collection in August 2005 (SOR ¶ 1.i).

In a signed sworn statement provided on November 19, 2004, Applicant indicated that her student loans are in a deferred status and are not delinquent. The only delinquent account she had was an automobile loan (SOR ¶ 1.g). She was three months behind in car payments. She also mentions owing another auto dealership for three bounced checks (SOR ¶ 1.b). She stated that she would start making payments at the end of the month of \$200 a month. She believes the debts in SOR ¶¶ 1.d and 1.f were discharged in bankruptcy. She was not familiar with the creditor in SOR ¶ 1.f. (13) She admits to living above her means at times but intends to pay as many bills as she can. (14) Applicant submitted a financial worksheet on November 19, 2004. After expenses, she had a net remainder of \$491 a month. At the time, she received \$350 per month from her husband. (15)

At hearing, Applicant indicated that the debts alleged in SOR ¶¶ 1.b, 1.c, 1.g are not paid yet.

The balance in SOR ¶ 1.c is \$200 rather than \$375.⁽¹⁶⁾ Applicant's student loans were not delinquent but in a deferred status.⁽¹⁷⁾ She listed her student loans in her bankruptcy based on the advice of her attorney but is aware that they were not discharged.⁽¹⁸⁾ She is required to start paying her student loans on January 28, 2007. Payments are \$208 a month. The total balance of her student loans is \$26,395, as opposed to \$35,416 as alleged in the SOR.⁽¹⁹⁾ She recently discovered another student loan account that was in default. She is attempting to rehabilitate that account.⁽²⁰⁾

Of the debts that Applicant denies, the debt in SOR ¶ 1.d is a \$418 utility bill which was discharged in her bankruptcy.⁽²¹⁾ Applicant formally disputed this debt with the credit reporting agency after the hearing.⁽²²⁾ She never had an account with the creditor alleged in SOR ¶ 1.f and formally disputed this debt as well.⁽²³⁾ She was not aware of the judgment against her as alleged in SOR ¶ 1.e, until she received the SOR. She and her current husband were leasing a property with the option to buy. She moved out of the property after her husband began beating her. He remained in the property. She never received notice of any court action. She contends the debt is her husband's responsibility.⁽²⁴⁾ The debts alleged in SOR ¶¶ 1.h and 1.i are the same debt. The amount is for a cable box which the cable company claims Applicant did not return. Applicant claims she had returned the cable box and had the receipt at home.⁽²⁵⁾ The record was held open for her to submit the receipt. She was unable to find the receipt after the hearing.⁽²⁶⁾

Applicant intends to make payments towards her debts with her income tax return which should be around \$3,000, and with the money she receives from a part-time job as an income tax preparer during tax season. From January to April, she works an extra 60 hours a month and is paid \$6.50 an hour.⁽²⁷⁾ In her current budget, she has \$374 left over each month after expenses. When her student loan payments begin in late January 2007, she will have approximately \$174 left over each month.⁽²⁸⁾

In January 2007, Applicant is going to start taking college courses part-time. She is six courses away from earning her accounting degree. She attends an on-line university.⁽²⁹⁾

Applicant answered "No" to question 20 on her public trust application because she sincerely believed that she did not have delinquent debts that were over 180 days past due.⁽³⁰⁾ Several debts became 180 days delinquent after she submitted the public trust application. Several of the accounts she did not become aware of until the SOR was issued. One debt was discharged in bankruptcy. She did not deliberately fail to list her delinquent debts on her public trust application. She did not intend to falsify her trustworthiness application. Department Counsel conceded this point in his closing argument.⁽³¹⁾

Applicant is highly regarded by her superiors. The Director of Enrollment states he is aware of the issues pertaining to her trustworthiness investigation and believes that she is the first person to present a convincing explanation for her issues. Of the five supervisors in his department, he ranks Applicant as number one. He notes her integrity is reflected in her work ethic. He fully supports her for a position of trustworthiness.⁽³²⁾ The Manager of Enrollment states that Applicant has been recognized many times by the staff and received several performance awards. She worked many long hours to help earn the trust of the staff and to keep the department within contract compliance. She has outstanding customer service and team building skills. Her integrity is beyond question and she is a role model for other supervisors.⁽³³⁾

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."⁽³⁴⁾ 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.

Guideline J - Criminal Conduct - Criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets and/or sensitive information. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling 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."⁽³⁵⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽³⁶⁾ 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.⁽³⁷⁾

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.⁽³⁸⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽³⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽⁴⁰⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽⁴¹⁾ 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; but did not establish a *prima facie* case for disqualification under Guideline E - Personal Conduct and Guideline J - Criminal 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. Applicant has incurred delinquent debt for several years resulting in her 2003 bankruptcy filing. She continues to operate on a thin margin financially.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant has several delinquent debts which 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*).

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. Applicant's initial financial problems were partially caused by her first husband. He ran up excessive credit card debt, unbeknownst to Applicant, to support his drug habit. He provides no support for their children. Applicant and her current husband sought to resolve these debts by filing for bankruptcy. Several months after the bankruptcy discharge, she was forced to move out of her home due to her husband's physical abuse. He provides no support for their six year old daughter. She is in the process of divorcing her husband. Several circumstances beyond Applicant's control has aggravated her financial situation. MC 3 applies.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Although Applicant has not made payments towards the delinquent debts that were incurred after the bankruptcy, she is actively attempting to resolve these accounts. Of the accounts alleged in the SOR, I find she is not responsible for the debts alleged in SOR ¶¶ 1.d, 1.e, 1.f and 1.i. Four delinquent accounts with a total approximate balance of \$2,979 remain. Her largest debts are her student loans. She has been proactive in attempting to resolve those accounts. Based on the unfortunate circumstances that Applicant recently endured, I find that she has initiated a good faith basis to resolve her debts.

While I acknowledge Applicant operates on a thin margin financially each month after her expenses are paid and there is no demonstrated track record of financial stability, circumstances beyond her control contributed to her recent financial issues. Even though she has some delinquent debts that remain unresolved, her financial situation is controllable. Ordinarily, a promise to pay off debts in the future is not sufficient to mitigate the concern under financial considerations. However, her recent separation and pending divorce from her second husband is a contributing factor to her current situation. Her superiors vouch for her integrity and work ethic. Based on these recommendations, I conclude that it is likely that Applicant will follow through with her intention to pay off the remaining delinquent debts with her 2006 tax return. She has mitigated the financial considerations trustworthiness concern. Guideline F is decided for 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 explained that she did not list delinquent debts in response to question 20 on the public trust application because she did not believe that she had debts that were over 180 days delinquent. Several of the debts she was not aware of until after the SOR was issued. I find her testimony credible. She did not deliberately falsify her trustworthiness application.

Criminal Conduct

I find for Applicant under Criminal Conduct for the reasons explained under Personal Conduct above.

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. Although she has experienced recent financial issues, they were created by circumstances that were beyond her control. Her superiors vouch for her outstanding work performance and integrity. Even though, she is in the middle of divorce proceedings, she is attempting to resolve her delinquent accounts and appears to live within her means which is a challenge as a single parent providing for four children with no support. I find Applicant has demonstrated that she is eligible for a position of trustworthiness. Based on the evidence in the record, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For 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 evidence presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

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. Tr. at 6; Gov Ex 1.

3. Tr. at 22.

4. Tr. at 26.

5. Tr.. at 25-26.

6. Tr. at 22, 26.

7. Tr. at 26.

8. Tr. at 27, Gov Ex 2.

9. Gov Ex 3.

10. Tr. at 22-23, 33-34.

11. Gov. Ex. 1.

12. Gov. Ex. 4, 5.

13. Gov Ex 2 at 7.

14. *Id.* at 10.

15. *Id.* at 11.

16. Tr. at 32.

17. AE D.

18. Tr. at 18.

19. AE E; AE F.

20. Tr. at 20, 38-39.

21. Tr. at 18-20, 29; Gov 3, Debt # 16.

22. AE G at 3-4.

23. Tr. at 34-35; AE G at 2.

24. Tr. at 21, 33.

25. Tr. at 35-36.

26. AE G at 1.

27. Tr. at 48.

28. AE G at 2. (This budget does not include her salary from her part-time job.)

29. Tr. at 41-42.

30. Tr. at 18.

31. Tr. at 58.

32. Ae A.

33. AE B.

34. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

35. Directive, ¶ E2.2.1.

36. *Id.*

37. *Id.*

38. Directive, ¶ E3.1.14.

39. Directive, ¶ E3.1.15.

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

41. Directive, ¶ E2.2.2.