

DATE: December 28, 2006

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In re:

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SSN: -----

Applicant for ADP I/II/III Position

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P Case No. 06-13504

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Gina L. Marine, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 32 years old and works for a contractor that manages health care benefits for the federal government. Over the last five years she accumulated a significant amount of delinquent debt, which remains unpaid or unresolved. When she completed her SF-85P, she did not disclose the debt. She mitigated the trustworthiness concerns raised by her personal conduct, but did not mitigate those raised by her financial problems. Her eligibility for assignment to a sensitive position is denied.

**STATEMENT OF THE CASE**

On October 7, 2004, Applicant submitted a public trust position questionnaire (SF-85P). 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 June 29, 2006, detailing the basis for its decision---concerns raised under Guideline F (financial considerations) and Guideline E (personal conduct) of the Directive.

In a sworn statement, dated July 28, 2006, Applicant responded to the SOR allegations, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel prepared the Government's file of relevant material (FORM) containing seven Items on October 10, 2006. The FORM was mailed to Applicant and received on October 17, 2006. On or about November 3, 2006, Applicant submitted a letter in response to the materials. Department Counsel did not object to the additional information, which I marked Applicant Exhibit (AX) A. The case was assigned to me on December 1, 2006.

**PROCEDURAL MATTERS**

The Department filed a Motion to Amend the Statement of Reasons that was contained in the FORM. Applicant did not file an objection to said Motion. Therefore, the Motion is granted and the following wording from the first paragraph of

the SOR is stricken: and the following language is inserted:

"paragraph 3-614, Department of Defense Regulation 5200.2-R and."

### **FINDINGS OF FACT**

Based on the entire record, including Applicant's admissions in her Answer to the SOR, I make the following additional findings of fact:

Applicant is 32 years old and has two children. She is in the process of obtaining a divorce from her husband. (AX A) Since August 2004, she has worked for a company that administers health care benefits for the federal government. Prior to this position she worked for other health care employers. In October 2004, she submitted a SF-85P. (Item 5)

When Applicant completed her SF-85P, she certified her answers were true, complete and correct to the best of her knowledge. In response to Question 22.b Your Financial Record (*Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded by the Federal Government*), she answered "No," and failed to list the debts alleged in SOR ¶ 1.a. through ¶ 1.h. She admitted she did not list the debts, but denied she knowingly left them off the form. She stated, "This was indeed an error on my part, due to misinterpreting the question. I understood it to mean if I had any loans/obligations that had been funded by the government...I made an honest mistake; I did not intentionally fail to disclose any information to anyone." (Item 4) I find her explanation credible.

In her July 2006 Answer, Applicant admitted owing the delinquent debts listed in the SOR, totaling \$23,514. However, she asserted that her husband is responsible for all of them, except for \$68 listed in ¶ 1.f., and that he refuses to pay them. (Item 4) Some of the debts are four to five years delinquent and consist of utility bills, credit card debt, a defaulted car loan, and housing costs. (Items 6 & 7) She stated she would "do my best to straighten out my credit as soon as possible." (Item 4)

In a November 2006 letter, Applicant claimed she recently paid \$204 to a utility company (¶ 1.k). She acknowledged a poor credit history and numerous personal problems that are affecting her finances, including her husband's poor health and medical condition. She denied that her financial problems created trustworthiness issues, and reiterated she would take care of the credit problems. (AX A)

### **POLICIES**

Positions designated as ADP I or ADP II are classified as sensitive positions. Regulation ¶ AP10.2.1. ADP III positions are nonsensitive positions. Regulation AP102.3.1. By memorandum dated November 19, 2004, the Deputy under Secretary of Defense for Counterintelligence and Security directed DOHA to resolve all contractor cases submitted for trustworthiness determinations, including ADP I, II, and III, under the Directive. Thus, even though they are nonsensitive positions, ADP III cases 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." 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**

I considered all facts in evidence and the application of the appropriate legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth under two guidelines in the amended SOR:

Guideline F: Financial Considerations:

Under this guideline a trustworthiness concern may arise if an individual is financially overextended and at risk of engaging in illegal acts to generate funds.

The Government established a potential disqualification under two conditions: (1) Financial Considerations Disqualifying Condition (FC DC) 1: (*A history of not meeting financial obligations*), and (2) FC DC 3: (*Inability or unwillingness to satisfy debts*). For the past five years, Applicant has a history of not meeting her financial obligations because she was unable or unwilling to do so.

The Government having raised a trustworthiness concern, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the Financial Considerations Mitigating Conditions (FC MC), I conclude 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)*) applies. Applicant is in the process of obtaining a divorce from her husband, whom she claims is responsible for the debts, but presently ill. Those are factors outside of her control. None of the other conditions apply. The problem is on-going and relates to numerous debts, so FC MC 2: (*The behavior was not recent*), and FC MC 2: (*It was an isolated incident*) are not applicable. Other than paying one \$204 delinquent debt, she did not present any evidence that she participated in credit counseling or contacted creditors to investigate or resolve the \$23,514, since learning of the Government's concerns. Hence, 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*) cannot be established.

#### Guideline E: Personal Conduct

Under this guideline, 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.

The Government alleged that Applicant falsified her SF-85P by failing to disclose delinquent debts, which raised a disqualification under 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, or award fiduciary responsibilities*). In her Answer, Applicant made it clear that she did not intentionally conceal information on her application.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant's explanation that she misinterpreted the question and believed it pertained to delinquent government loans is credible given some of the language in the question. Hence, the allegation contained in SOR ¶ 2.a. is concluded for her.

#### Whole Person Analysis

In addition to considering the disqualifying and mitigating conditions under the guideline,

the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

In considering the totality of the evidence in view of this concept, I took into account Applicant's marital status and the difficulties related to it, as well as her assertions in July 2006 and in November 2006 that she would attempt to resolve her credit problems. To-date she has not taken any affirmative steps to demonstrate that she is managing the problems that are several years old, other than recently paying one debt. Without some evidence of financial accountability, including the establishment of a budget and participation in credit counseling, I conclude the conduct is likely to continue. Based on the evidence in the record, Applicant mitigated the concerns arising from her personal conduct, but not from her financial considerations. Accordingly, Guideline E is decided for her. All of the allegations under Guideline F are decided against her, except ¶ 1.k.

### **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 as follows:

Paragraph 1: Guideline F (Financial Considerations) 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

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: For Applicant

Paragraph 2: Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Her application for eligibility is denied.

Shari Dam

Administrative Judge