

DATE: March 15, 2007

In Re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-13501

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of failing to meet her financial obligation preceding the submission of her Questionnaire For Public Trust Positions submitted in August 2004. As of the date she answered her Statement of Reasons in January 2007, she had nine delinquent debts exceeding \$37,000.00, raising financial considerations concerns. She offered no evidence mitigating this concern. Eligibility for assignment to public trust position is denied.

STATEMENT OF THE CASE

On August 15, 2006, the Defense Office of Hearings and Appeals (DOHA), issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline F (Financial Considerations). The SOR informed Applicant that based, on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant her eligibility for a public trust position. [\(1\)](#)

In a signed and sworn statement, dated October 6, 2006, Applicant responded to the SOR allegations. She requested her case be decided on the written record in lieu of a hearing. On December 21, 2006, Department Counsel submitted the government's case through a file of relevant material (FORM), [\(2\)](#) a copy of which was provided to the Applicant. Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted an additional document, dated January 23, 2007, without objection from Department Counsel. The case was assigned to me on February 1, 2007.

FINDINGS OF FACT

Applicant admitted subparagraphs 1.a., 1.c., 1.d., 1.f., 1.g., and 1.i. These admissions are incorporated as findings of fact. Applicant denied the allegations in subparagraphs 1.b., 1.e., and 1.h. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 31-year-old customer service representative for a Department of Defense contractor and has been

employed by that contractor since October 1998. The FORM does not reflect whether she has ever married. However, Applicant does mention in her January 23, 2007 Response to the FORM that she is a "single mom" raising "two kids" and is "expecting" her third child. She attended a technical school from June 1996 to August 1998, and was awarded a certificate. (3)

In August 2004, Applicant submitted a Questionnaire For Public Trust Positions (SF 85P) in August 2004. The ensuing investigation revealed Applicant had nine bad debts or collection accounts exceeding \$37,000.00, reflected in SOR ¶¶ 1.a. through 1.i.

Applicant attributes her financial difficulties to being a single mother raising two children. She is also expecting her third child. She informed the Office of Personnel Management (OPM) investigators (4) that she "will try her best to pay off some of my debt," (5) stating "I live from paycheck to paycheck." (6)

The debt alleged has been ongoing. As of the date the SOR was issued in August 2006, Applicant owed approximately \$37,000.00 to nine different creditors. Applicant was placed on notice of the government's financial concerns during the two interviews by OPM Investigators in June and July 2005. Applicant's December 2006 credit report indicates her delinquent debts exceed \$39,500.00. (7) Although she denies three of the debts alleged, i.e. ¶¶ 1.b., 1.e., and 1.h., she offers no explanation for her denial.

There is no evidence in the file to suggest Applicant has paid any of the debts alleged, or that she made any effort to settle or otherwise resolve her debts. The monthly budget she submitted in July 2005, indicates she has a net remainder of \$45.54. None of the line items on her budget apply to any of the debts alleged. (8)

Applicant stated she believes "it is unconstitutional and unfair in a way for a person who has been under contract within a company such as myself for several years to be demoted or terminated for security clearance or (sic) purposes if I never committed crime before . . ." She further states she is a "good U.S. citizen" and has to think "about the welfare of my children and I would never use other identities to get what I want." She concludes, "I would love for you to make the determination for me to keep my job so I can grow more years within the company." (9)

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, 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." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." See Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." See *Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline F - Financial Considerations

Under Guideline F (Financial Considerations), a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk to engage in illegal or unethical acts to generate funds to meet financial obligations.⁽¹⁰⁾ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life can often indicate how a person may behave in other aspects of life.

Applicant has a history of failing to meet her financial obligations that preceded the submission of her SF 85P in August 2004. In June and July 2005, she was confronted by government investigators regarding her indebtedness, and was made aware of the government's concerns. Her June 2005 Personal Financial Statement suggests she does not have the ability to repay her nine outstanding debts in excess of \$37,000.00.

Applicant's financial problems are recent and ongoing. Applicant's unwillingness or inability to honor her financial obligations is evidenced by the delinquent debts she has been carrying for years, and her failure to show meaningful efforts to repay creditors or otherwise resolve her financial situation. Financial Considerations Disqualifying Condition (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.

After reviewing the evidence, I am unable to find any applicable mitigating conditions. Applicant's response is not sufficient to show she has dealt responsibly with her financial obligations. Applicant presented no evidence of paid debts, settlements, negotiations, payment plans, budgets, financial assistance/counseling, or that she has otherwise made meaningful efforts to resolve her financial situation. Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility.

I considered Applicant's case in light of the whole person concept. Based on the limited evidence available, it appears Applicant is financially overextended. It is unlikely she will be able to overcome her financial difficulties based on her personal situation. I considered the fact she is a single mother with two children living from paycheck to paycheck, and expecting her third child. I specifically considered that she is a good citizen, that she "loves" her job, and desires to remain employed. Applicant has not mitigated this security concern.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: Against the Applicant

Subparagraphs 1.a. - i.: Against the Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for assignment to a public trust position. Eligibility is denied.

Robert J. Tuider

Administrative Judge

1. Effective April 9, 1993, the Composite Health Care Systems Program Office, DOHA, and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence entered into a memorandum of agreement under which DOHA was authorized to adjudicate

trustworthiness cases involving personnel working on unclassified automated systems in ADP-I and ADP-II sensitivity positions as defined by DoD Regulation 5200.2-R (Directive). By memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) dated November 19, 2004, DOHA was authorized to utilize the procedures of DoD Directive 5220.6 to resolve contractor cases forwarded to it by the Defense Security Service (DSS) or the Office of Personnel Management (OPM) for trustworthiness determinations, including those involving ADP-I, ADP-II, ADP-III positions.

2. The Government submitted nine items or exhibits in support of its contention.
3. Item 4. The FORM does not elaborate regarding the type of certificate awarded.
4. Applicant was interviewed on two occasions by an OPM Investigator, in June 2005 and July 2005. Items 5 and 6, respectively.
5. Applicant's Response to FORM, dated January 23, 2007.
6. *Id.*
7. Item 9.
8. Item 5.
9. *Fn 5, supra.*
10. Directive, ¶ E2.A6.1.1.