

DATE: March 26, 2007

In Re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 06-13049

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who is separated from her husband, has a history of financial problems, including

the repossession of her car and mobile home. She met with an attorney to explore filing Chapter 13 bankruptcy, but she decided not to file. The SOR identifies financial delinquencies of approximately \$54,815. Applicant's net monthly income is \$1,593.44. At the present time, Applicant lacks the financial resources to satisfy her creditors. She has failed to mitigate the Financial Considerations Guideline of the Directive. Eligibility is denied.

STATEMENT OF THE CASE

In August 2004, Applicant submitted an application for a position of public trust. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On July 27, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Financial Considerations Guideline of the Directive. A copy of the Directive was provided to Applicant. The Financial Considerations Guideline of the Directive and the Financial Considerations adjudicative guideline at Appendix 8 of the Regulation are, for all practical purposes, identical.

Applicant answered the SOR in writing on August 4, 2006, and requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 22, 2006. The FORM contained documents identified as Items 1 through 8. By letter dated December 28, 2006, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on January 5, 2007. She did not file any information within the required time period. On February 28, 2007, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains fifteen allegations of disqualifying conduct under the Financial Considerations Guideline of Appendix 8 of DoD 5200.2-R. In her answer to the SOR, Applicant admitted SOR allegations 1.a. through 1. f, 1.n., and 1.o. She denied SOR allegations 1.g., 1.h., 1.i.,1.j., 1.k., 1.l., and 1.m. She noted mitigating conditions. Her admissions are incorporated as findings of fact.

Applicant is 30 years old, a high school graduate, and employed by a government contractor. She was married in 1996 and separated from her husband in 1999. She is the mother of a 10-year-old daughter. (Items 4 and 5.) She executed and signed a SF-85P on August 16, 2004.

Applicant attributes some of her financial difficulty to her separation from her spouse and the loss of his income to support the family household. Applicant's husband helped to pay the family's bills until the separation in 1999. She contemplated filing for Chapter 13 bankruptcy, but did not follow through. (Item 5)

Applicant has a history of financial delinquencies, some of which are six or seven years old. (Item 5 at 3; Item 6., Item 7, Item 8.) In her answer to the SOR and in her signed affidavit, she admitted delinquencies of approximately \$54,000. Many of Applicant's old debts were sold to collection companies. While she denied responsibility for the debts identified at ¶¶ 1.g., 1.h.,1.i., and 1.k. of the SOR because she did not recognize the names of the creditors, she acknowledged them in her affidavit under the names of earlier creditors. (Item 2; Item 5.)

In 2002, Applicant's automobile was repossessed, leaving her with a debt of \$3,355. Her largest delinquent debt, approximately \$45,653, resulted from the involuntary repossession of her mobile home in 2004. (Item 5.) In May 2005, Applicant provided DOHA with a personal financial statement. She stated her total net monthly income was \$1,593.44, her total monthly expenses were \$790, and her total monthly payments of household debts were \$456, leaving a net remainder of \$347.44 (Item 5 at 5.) Applicant presented no evidence to rebut the Government's allegations that the fifteen debts alleged in the SOR remained unpaid.

An examination of Applicant's affidavit and her credit reports indicated the debts identified at SOR ¶ 1.e. and ¶ 1.m. were the same collection account. Applicant admitted the debt at ¶ 1.e. and denied the debt a ¶ 1.m., claiming she did not recognize the creditor. Her credit reports indicate the creditor identified at ¶ 1.e. transferred the account to the creditor identified at ¶ 1.m. (Item 2 at 2; Item 5 at 2; Item 6 at 5; Item 7 at 2.)

Nothing in the record suggests Applicant has sought credit counseling. While she stated in her affidavit she would pay or settle her debts if she had sufficient money to do so, she presented no plan for the payment of her debts. (Item 5.)

POLICIES

The ADP adjudication process extends only to sensitive positions. Positions designated as ADP I or ADP II are classified as sensitive positions; ADP III positions are not. Regulation ¶ AP 10.2. By memorandum dated November 19, 2004, the Deputy Under Secretary of Defense for Counterintelligence and Security directed DOHA to extend the adjudicative process to ADP III positions as well.

"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 B 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

Financial Considerations

The Government's concern under the Financial Considerations Guideline of the Regulation is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal

acts. Applicant has a history of not meeting her financial obligations, and her financial history suggests an inability or unwillingness to satisfy her debts, conditions which raise security concerns under Disqualifying Condition (DC) 1 and DC 3 of the Financial Considerations Guideline. ⁽¹⁾

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. Applicant provided no credible evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under the Financial Considerations Guideline of the Regulation.

I conclude that SOR allegation 1.e. and SOR allegation 1.m. describe the same debt. An applicant should not be held accountable twice for the same debt, and, accordingly, I conclude allegation 1.m. for Applicant.

Applicant's disqualifying conduct might be mitigated under Mitigating Condition (MC) 1 if the behavior was not recent. MC 2 might apply if the financial delinquency was an isolated incident. Some of Applicant's acknowledged delinquencies date to at least 1999. Her financial delinquencies involve long-standing debts, and her inability or unwillingness to pay them is recent. Thus, neither MC 1 or MC 2 applies.

If a person's financial delinquencies were largely caused by conditions beyond his or her control, then MC 3 might apply. Applicant traced her inability to pay her debts to her separation from her husband in 1999 and the loss of his income in meeting family financial obligations. However, the record indicates Applicant has been steadily employed in her present job for several years since the separation, and while she remains separated and not divorced, it appears her husband is no longer active in the family. These facts do not suggest that Applicant's present financial delinquencies have been largely caused by conditions beyond her control. Thus, MC 3 is inapplicable.

Applicant has not sought financial counseling, and she was unable to present clear indications that her financial problems were being resolved or were under control. ⁽²⁾ Therefore, MC 4 is inapplicable. Applicant failed to provide credible evidence that she had initiated a good-faith effort to repay overdue creditors or otherwise resolve her debts. Accordingly, MC 6 is inapplicable.

Whole Person Analysis

Appendix 8 of the Regulation requires that the adjudicative process examine a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. In determining an individual's eligibility for assignment to sensitive duties, an administrative judge must not only assess conduct under the adjudicative guidelines, but he or she must also carefully weigh a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include 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 for continuation or recurrence.

Applicant's failure to pay her debts over a period of many years raises serious security concerns. Applicant, a high school graduate, was a mature woman when she allowed her debts to spiral out of control. She failed to develop a plan to resolve her financial delinquencies. Applicant's unwillingness to acknowledge and carry out her legal duties to pay her just debts suggests she may not take her legal duty to carry out sensitive duties seriously. Her current situation suggests her financial difficulties are likely to continue.

In all adjudications, the protection of our national security is the paramount concern. Adjudications regarding eligibility for assignment to sensitive duties are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for assignment to sensitive duties. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with eligibility for assignment to sensitive duties. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of

Defense Directive, 5220.6., as amended, and Department of Defense Regulation 5200.2-R, as amended.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a. through 1.l.: Against Applicant

Subparagraph 1.m.: For Applicant

Subparagraphs 1.n. and 1.o.: Against Applicant

DECISION

In light of all of the circumstances 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 sensitive duties. Eligibility is denied.

Joan Caton Anthony

Administrative Judge

1. DC 1 reads: "A history of not meeting financial obligations." DC 3 reads: "Inability or unwillingness to satisfy debts."
2. MC 4 reads: "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."