

DATE: March 21, 2007

In re:

SSN: -----

Applicant for Public Trust Position

P Case No. 06-13516

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

James F. Duffy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes about \$38,770 in delinquent debt incurred after a June 1999 Chapter 7 discharge in bankruptcy. As of September 2006, her vehicle had been repossessed due to nonpayment and her home was in foreclosure. While her financial situation has been negatively impacted by several job changes for herself and her spouse, she has not shown she can live within her means. It is not clearly consistent with the national interest to grant her a position of trust. The application for a position of trust is denied.

STATEMENT OF THE CASE

On September 29, 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 Directive 5220.6 (Directive), *Defense Industrial Personnel Security Clearance Review Program*, dated January 1992, as amended and modified ("Directive").⁽¹⁾ In a Statement of Reasons (SOR) dated August 31, 2006, DOHA proposed to deny or revoke access to an ADP sensitive position for Applicant because of conduct alleged under Guideline F (financial considerations) of the adjudicative guidelines. Applicant answered the SOR on September 25, 2006, and elected to have a decision on the written record without a hearing.

The government submitted a File of Relevant Material (FORM) on December 13, 2006, consisting of 11 exhibits (Items 1-11).⁽²⁾ In the FORM, the government moved to amend the SOR to add two new allegations (SOR ¶¶ 1.h and 1.i) under Guideline F. On December 15, 2006, DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt, including to the motion to amend.⁽³⁾ Applicant was notified that in the event of a failure to respond to the proposed amendment, the government would ask that the SOR be amended and findings entered accordingly by the administrative judge.

No response was received by the January 26, 2007 due date. On February 28, 2007, the case was assigned to me to consider whether it was clearance consistent with the national interest to grant Applicant a position of trust.

RULINGS ON PROCEDURE

In the FORM, the government moved to amend the SOR to add the following allegations:

1.h. You are indebted for medical bills in the approximate amount of \$2112.00 on an account [account number omitted] charged off in about March 2006. As of August 11, 2006, this debt had not been paid.

1.i. You are indebted to [creditor omitted] in the approximate amount of \$142,000.00 for a home mortgage in about August 2004. Foreclosure of that mortgage started in about January 2006 and, as of August 11, 2006, this mortgage has not been paid.

Authority to consider the motion is set forth in ¶ E3.1.10 of Department of Defense Directive 5220.6 (*The Administrative Judge may rule on questions of procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner*). The government is not precluded from raising issues of potential security concern, even at the hearing level, provided the proposed allegations have a reasonable basis, are not confusing, and are relevant to a determination of Applicant's suitability (*see* ¶ E3.1.17 *The SOR may be amended at the hearing to render it in conformity with the evidence admitted or for other good cause*). Absent a valid, compelling basis to deny the motion, the amendment will be granted.

Due process requires that Applicant be given adequate notice and opportunity to respond. Applicant had timely notice of the proposed allegations and filed no response. Accordingly, the SOR is amended to include ¶¶ 1.h and 1.i.

FINDINGS OF FACT

In the SOR as amended, DOHA alleges Applicant filed for Chapter 7 bankruptcy listing \$87,142 in liabilities, and was granted a discharge in June 1999 (¶ 1.a); owed \$38,577 in delinquent debt after the bankruptcy (¶¶ 1.b through 1.h); and that foreclosure had commenced on her home for failure to timely pay her mortgage of about \$142,000 (¶ 1.i). Applicant admitted the bankruptcy and that she had been indebted as alleged in SOR ¶¶ 1.b, 1.c, 1.f, and 1.g. Applicant submitted in mitigation that she was making \$40 payments on the debt in ¶ 1.b, had proposed repayment terms with the creditor in ¶ 1.c, and had paid in full the debt in ¶ 1.f. She denied the debts in ¶¶ 1.d and 1.e, which she maintained were discharged in the bankruptcy, and did not file a response to ¶ 1.h or ¶ 1.i. Applicant's admissions to the bankruptcy and to the delinquencies alleged in ¶ 1.b, 1.c, 1.f, and 1.g, are incorporated as findings of fact. After a thorough review of the documents before me for consideration, I make the following additional findings.

Applicant is a 39-year-old registered nurse who seeks a position of trust with the TRICARE contractor charged with administering the TRICARE program in her region. Applicant graduated from nursing school in June 1990. From January 1993 to May 1997, she was paid a generous salary as a nurse for a home health agency.⁽⁴⁾ While she and her spouse were dating in 1996, she began acquiring consumer goods for their joint benefit. They eventually married in July 1998.

Starting in May 1997, Applicant changed jobs in nursing five times over the next four years as she and her husband were forced to relocate frequently for his employment. Applicant's gross income from her job was about \$42,000 in 1996, \$44,000 in 1997, and \$40,000 in 1998. She and her spouse did not earn enough to cover all their obligations and accounts became delinquent. In July 1997, she financed the purchase of a mobile home through a loan of \$16,328. Her account was referred for collection in October 1998. In August 1997, she took out an automobile loan for \$18,143. That vehicle was repossessed in about November 1997. The following month, she took out a new automobile loan for \$17,435. The vehicle was repossessed and a deficiency balance of \$8,486 was charged off in June 1998. She bought a 1996 model-year motorcycle valued at \$5,844 that was subsequently repossessed. A delinquent credit card balance of \$1,732 was charged off in July 1998. A cellular phone debt of \$616 (SOR ¶ 1.g) was placed for collection in March 1998. A personal loan taken out in July 1997 for \$696 was placed for collection in August 1998 with \$123 past due. In October 1998, the telephone company placed a \$235 balance for collection (¶ 1.e). A cable provider placed a \$59 debt balance for collection in September 1998 (¶ 1.f).

On the recommendation of her attorney, she filed individually and under her maiden name for Chapter 7 bankruptcy in

February 1999. She listed \$87,142 in liabilities and assets of \$46,110. Among the secured claims were \$27,800 for her mobile home and \$8,000 for a resort condominium, both to be surrendered in the bankruptcy, and \$27,000 (\$9,000 unsecured) for a 1997 model-year pickup truck to be reaffirmed. Applicant had taken out a loan of \$26,387 for the truck in January 1997, to be repaid over four years. Applicant also planned to continue payments on a mattress on which she owed \$600. Unsecured nonpriority claims of \$23,317 included two \$5,000 debts for the repossessed vehicles, credit card debt totaling \$3,600, loan debt of \$6,995 (\$2,000 of it for a boat purchased for \$22,766 that was repossessed in September 1997), and \$1,600 for phone service. Applicant reported that her monthly expenses exceeded her income by \$348.33. On March 18, 1999, the trustee determined there were no assets to be distributed to the creditors over and above that exempted by law. On June 15, 1999, Applicant was granted a Chapter 7 discharge in bankruptcy. She failed to make her payments on the vehicle loan reaffirmed in the bankruptcy, and the creditor charged off a debt of \$11,126 in August 1999 (¶ 1.d).

In August 2004, Applicant took out a mortgage loan of \$142,000, to be repaid at \$1,180 per month. On September 29, 2004, Applicant executed a Questionnaire For Public Trust Positions (SF 85P), presumably for her position with the TRICARE contractor. Concerning her financial record, Applicant listed her bankruptcy (albeit as in May 1999) in answer to question 22a ("In the last 7 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had legal judgment rendered against you for a debt?"), and unpaid medical bills owed a hospital since June 2004 in response to question 22b ("Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government.").

A check of Applicant's credit on November 19, 2004, disclosed the bankruptcy but reported as outstanding balances for some accounts included in her bankruptcy, most notably the \$8,486 vehicle repossession debt and \$1,732 credit card debt. Applicant was reported to have made no progress toward satisfying collection debts of \$616 (¶ 1.g), \$235 (¶ 1.e), and \$59 (¶ 1.f). The vehicle loan reaffirmed in the bankruptcy had been reportedly charged off in September 1999 in the amount of \$11,126 (¶ 1.d). A line of credit for \$6,000 opened in October 2004 was noted to be in good standing, as was an automobile loan taken out in August 2003 for \$18,986 (balance \$15,695) and an installment loan for recreational merchandise taken out in April 2004 for \$9,056 (balance \$7,908).

On April 19, 2005, Applicant was interviewed by a special investigator for the Office of Personnel Management (OPM) about her record of financial delinquency. Applicant attributed her debt to a progressive decline in job income as she and her spouse moved frequently for his job. Concerning the hospital debt listed on her SF 85P, Applicant admitted she had not made any payments "due to a payment schedule on an existing bill." She related that the \$8,486 vehicle repossession debt and the \$1,732 credit card debt that appeared on her credit report had been included in her 1999 bankruptcy. Applicant explained that she tried to pay the cellular phone debt (¶ 1.g) but her payment was refused. She indicated the \$11,126 vehicle debt (¶ 1.d) had been included in the bankruptcy, and that she had no recollection of the \$235 (¶ 1.e) telephone debt. Applicant expressed her belief the \$59 (¶ 1.f) reportedly in collection had been paid. Applicant expressed an intent to bring all of her accounts current. She provided a personal financial statement in which she indicated that she had a net monthly remainder of \$1,795, based on monthly debt payments erroneously tabulated at \$2,337. Listed debt payments total \$2,717, which would give Applicant and her spouse \$1,415 each month in discretionary funds.

DOHA furnished interrogatories to Applicant requesting that she provide proof she was not responsible for the \$11,126 balance (¶ 1.d) of the truck loan reaffirmed in the bankruptcy, as her credit report showed a subsequent charge off. Applicant was also asked about any steps to resolve her outstanding medical debts totaling \$2,364 (¶ 1.h), as well as the debts in collection (¶¶ 1.e, 1.f, 1.g). In her response of July 20, 2006, Applicant indicated she was disputing the debt in ¶ 1.d with the credit bureau, but admitted she had not rectified the other financial obligations "due to continued income challenges." Applicant also listed as other delinquent debts her mortgage (¶ 1.i), a personal loan (line of credit opened in October 2004), and a vehicle loan for a recently repossessed truck. Applicant added that her spouse had changed his job three times over the past year in an effort to increase their income but that it led to an actual decrease. As a result, they lost their home and vehicle. She added they had arranged to repay the delinquent personal loan through allotment from their bank account and planned to make similar arrangements with the other creditors.

A check of Applicant's credit on August 11, 2006, revealed two medical debts placed for collection in December 2005

in the amounts of \$120 and \$132, and a charged off medical debt of \$2,112 (¶ 1.h). The personal loan had been refinanced in July 2006 with a balance owed of \$4,386. Applicant was reportedly past due \$2,454 on a vehicle loan with a balance of \$23,601. The loan, taken out in June 2005 for \$32,576, is likely for the truck that had been recently repossessed (¶ 1.c). Applicant was also past due \$95 on a credit card account with a balance of \$828 as of July 2006 (¶ 1.b). Her mortgage (¶ 1.i) was reported to be in foreclosure proceedings as of January 2006. She was current on an automobile loan taken out in February 2005 for \$25,100. The loan balance was reportedly \$20,987.

As of September 2006, Applicant had satisfied the \$59 cable debt in ¶ 1.f. She still owed the other delinquent debts alleged in the SOR as well as medical debts of \$120 and \$132 in collection (not alleged). She failed to prove she was not responsible for either the \$235 telephone debt (¶ 1.e) or on the truck loan reaffirmed in the bankruptcy (¶ 1.d).

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines set forth in the Regulation. "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.

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. Regulation ¶ C8.2.1. Appendix 8 of the Regulation sets forth the adjudicative guidelines, as well as the specific factors disqualifying and mitigating conditions for determining eligibility for access to classified information and assignment to sensitive duties. In evaluating the trustworthiness of an applicant, the administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person in light of the adjudicative process factors: 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 of continuation or recurrence. Regulation AP8.

CONCLUSIONS

Guideline F--Financial Considerations

Under Guideline F, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Starting in about 1996/97 Applicant overextended herself financially by making several high dollar purchases in a short period of time and then being unable to make the payments once she changed jobs. In July 1997, she financed the purchase of a mobile home with a loan of \$16,328 (\$266 per month). In August 1997, she took out a car loan of \$18,143. In December 1997, she took on repayment obligations for another car with a loan of \$17,435. She bought a 1996 model-year motorcycle for about \$5,844 and a 1993-model year boat valued at \$22,766 that were subsequently repossessed. She bought a condominium for \$8,000 that was later surrendered.

Afforded a financial fresh start through a Chapter 7 bankruptcy discharge in June 1999, Applicant failed to make her payments on a vehicle loan affirmed in the bankruptcy and a \$11,126 balance was charged off. Telephone debts not included in the bankruptcy and totaling \$851 remained unpaid as she opened yet new loan accounts, including a \$9,056 joint installment loan for recreational equipment, and in June 2005, a vehicle loan of \$32,576 to be repaid at \$551 per month. As of September 2006, the truck bought in June 2005 had been repossessed, her home mortgage was in foreclosure, and she owed about \$2,364 in delinquent medical debt. Her record of financial problems raises concerns under DC (1) *A history of not meeting financial obligations* and DC (3) *Inability or unwillingness to satisfy debts*.

Applicant had to change employment frequently as a result of her and her spouse's relocation for his job. While the record reflects a decrease in her income from \$44,000 in 1997 to \$40,000 in 1998, she has failed to prove her case for

mitigation under mitigating condition (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)*. As of April 2005, she reported a net monthly remainder in excess of \$1,000. In behavior similar to that which led to her financial difficulties before the bankruptcy, she took on new consumer debt (a \$32,576 vehicle loan) in 2005 rather than make an effort to resolve her old debt. Her recent defaults on the vehicle loan and the mortgage have been explained as due to "challenges beyond [their] control" that led to a decrease in their joint income despite three reported job changes by her spouse. She has provided no specifics as to what those challenges were. Even if I accept that these new financial delinquencies were due to circumstances beyond her or her spouse's control, Applicant has failed to show the good financial judgment that must be demanded of those persons given a position of trust. Satisfying the \$59 cable debt and arranging to pay the personal loan taken out in October 2004 are not enough to satisfy either 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*, or MC (6) *The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*.

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 eligible for a security clearance," or as applied to trustworthiness cases, a position of trust. AP8. Applicant has had very serious financial problems for the past ten years (*The nature, extent, and seriousness of the conduct*). Changes in employment have apparently led to some decrease in income, and Applicant is credited for being candid about her delinquencies. While she intends to resolve her delinquent debts once she is in a financial position to do so, she has failed to show a significantly favorable change in her behavior to grant her a position of trust (*The presence or absence of rehabilitation and other pertinent behavioral changes*).

FORMAL FINDINGS

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

Paragraph 1. Guideline F: 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: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant a position of trust. The application for a position of trust is denied.

Elizabeth M. Matchinski

Administrative Judge

1. 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 determination, including those involving ADP-I, ADP-II, and ADP-III positions. Applicant's trustworthiness is adjudicated under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified ("Regulation").
2. The August 11, 2006 credit report, identified in the FORM as Item 10, is mis-marked as Item 12 in the file of record.
3. In its correspondence forwarding the SOR to Applicant, DOHA Columbus erroneously notified Applicant she would have 20 days in which to submit her written response to the documentary information supporting the SOR. (See Item 2.) In the FORM, and in correspondence forwarding the FORM to Applicant, Applicant was properly notified that she had 30 days from receipt of the FORM to file any objections or information for consideration.
4. When interviewed by a government investigator in May 2005, Applicant described her salary in that position as generous. (Item 6.)