

DATE: March 29, 2007

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In re:

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SSN: -----

Applicant for ADP I/II/III Position

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ADP Case No. 06-14093

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 44 years old, divorced, and the mother of two children. She works two jobs, including her primary employment for a defense contractor in the healthcare industry. She mitigated the financial considerations trustworthiness concerns. Eligibility for an ADP I/II/III position is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trust for Applicant<sup>(1)</sup>. On August 14, 2006, DOHA issued a Statement of Reasons<sup>(2)</sup> (SOR) detailing the basis for its decision-trustworthiness concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on August 28, 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on October 5, 2006. On February 2, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness determination for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. Applicant submitted exhibits within the two weeks after the hearing date that were allowed her. The Government had no objection, and they were marked as Exhibits C to N. DOHA received the hearing transcript (Tr.) on February 13, 2007.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 44 years old, divorced in 2001, and the mother of two children. One child is at home and a junior in high school. That child was injured in a house fire some years ago and continues to undergo skin graft surgeries to repair her injuries. Those medical expenses are paid by a charitable organization, otherwise Applicant would not be able to afford

the medical treatments. Applicant works for a defense contractor in the health care industry. Her net monthly income from that job is about \$1,460. She also works a second job in retail to supplement her monthly income with about \$400. She was laid off from one job several years ago and found this part-time job to help herself financially. She has about \$300 monthly in discretionary income with which to repay delinquent debt. Her mother assists her in repaying her debts. (Tr. 44, 88, 92, 102, 103; Exhibits 1, J, L)

Applicant has 19 delinquent debts listed in the SOR. That debt totals about \$25,000. None of the debts are for delinquent credit card bills. Applicant denies two substantial debts relating to automobile loans (SOR subparagraphs 1.g. and 1.i.), totaling about \$20,000. The balance of the delinquent debts she admits. The delinquent debt in subparagraph 1.g. her adult daughter claims is her debt and Applicant is not responsible for it, but Applicant co-signed the loan. The car was totaled for insurance purposes in an accident, and the repair shop bought the car from the lender, according to Applicant's recollection of what information her daughter told her. The other debt in subparagraph 1.i. related to a car her former husband bought her to replace one he destroyed in an auto accident. He was financially responsible for repaying the debt, but defaulted. Applicant paid \$1,300 attempting to repay the delinquent payments, but the lender repossessed the car anyway. Her former husband claims he is responsible for the current debt of \$8,041 and not Applicant. Applicant disputes her obligation to repay these debts. (Tr. 20-32, 60, 61, 64-66; Exhibits 2, C, E, F, Answer attachments)

Of the remaining 17 delinquent debts, 15 are for medical services incurred after Applicant slipped and fell in 2002 in her workplace (Subparagraphs 1.a., 1.b., 1.d., 1.f., 1.h., 1.j. to 1.s.). Workers compensation paid for part of the treatments. Applicant also received a financial settlement through a lawsuit filed against the defendant of \$30,000. Applicant received about \$8,000 after attorneys fees were paid, and other expenses deducted. Of that \$8,000, Applicant used \$4,000 to pay some delinquent debts and other current expenses. She gave \$4,000 to her mother to repay her for money she loaned her. (Tr. 37-39; Exhibits 2, I)

The delinquent debts in Subparagraphs 1.a.(\$1,134.51) and 1.b.(\$579, the original debt without penalty and interest), and 1.j.(\$686) and 1.m.(\$664) are duplicates of the same debt. Factoring into the analysis these duplications, Applicant has 15 delinquent debts. Of these debts, she repaid five of them on August 28, 2006. Those debts are listed in Subparagraphs 1.j., 1.k.(\$95), 1.l.(\$235), 1.o.(\$150), and 1.p.(\$286). Applicant repaid the \$63.30 debt contained in Subparagraph 1.c. on February 13, 2007. Applicant has nine delinquent debts that remain unpaid, totaling \$1,825 and are as follows: Subparagraphs 1.a(\$1,134.51, including b), 1.d. (\$62), 1.e. (\$110.37, for which Applicant contends her former husband is responsible), 1.f. (\$184), 1.h.(\$45), 1.n.(\$6.15), 1.q.(\$128), 1.r.(\$55), and 1.s.(\$100). (Tr. 35-42; Exhibits G, Answer attachments)

Applicant has paid other debts with tax refunds and her income. She repaid her three bank credit cards shown on her May 17, 2005, personal financial statement, and closed those accounts. She monthly pays \$140 on her \$10,000 student loan she used to obtain her associates degree in healthcare business. That degree helped her get her current job with the defense contractor which employs her. She eliminated all bank loans and credit agency loans. She is attempting to increase the amount she has in a savings account. She tries to pay cash and not use credit cards for most purchases. Her current boyfriend does not like debt and is helping Applicant eliminate her debt through proper management of her finances. (Tr. 53-72, 103; Exhibits C, H, K-N)

Applicant's employee evaluations for 2005 and 2006 show she received ratings of achieving or exceeding expectations in every category of evaluation criteria. Her supervisors comment that she is a very hard-working and dependable employee. She also maintains excellent attendance., Applicant's character letters from co-workers at her second job and members of her church comment favorably on her integrity and energetic participation in all work and church activities. (Tr. 16-18; Exhibits A and B)

## POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information

"only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. *See* Directive ¶ 2.3. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination." *See* Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (*See* Directive, Section E2.2.1. of Enclosure 2). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's trustworthiness suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F:Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

"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

**Guideline F:** Applicant has various debts, mostly for medical treatments resulting from a workplace accident she suffered in 2002. The only non-medical debts listed in the SOR are for two automobile loans for which her older daughter and former husband take responsibility, and a telephone bill for \$110.37 that Applicant contends is owed by her former husband. There are no credit card delinquent debts listed. Nor do any appear on her credit record that are delinquent.

The Disqualifying Conditions (DC) applicable are DC 1 (A history of not meeting financial obligations E2.A6.1.2.1), and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3).

Applicant has made an effort to repay her delinquent debts. She repaid some of them from a lawsuit settlement she received in 2006. She repaid five delinquent debts in August 2006 and one \$63.30 debt in February 2007. She lives within her means. She disputes the two automobile loans for the reasons stated. The nine remaining debts total \$1,825, well within her financial capability to repay within the next 12 months. The Mitigating Conditions (MC) applicable are MC 3 (The conditions that resulted in the behavior were largely beyond the person's control, such as Applicant's underemployment and loss of income in her second job, her divorce, and her medical expenses resulting from her 2002 workplace accident. E2.A6.1.3.3), and MC 6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. E2.A6.1.3.6), as evidenced by the resolution of many 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" trustworthiness decision. Directive E2.2.1. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." *Id.* In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive ¶ E2.2.1.

Applicant is a single mother with a teen-age daughter at home. Applicant works two jobs to earn about \$1,800 monthly net income. From that amount she supports herself and her daughter, while also paying her delinquent debts. She has not increased her delinquent debts, but pays her current financial obligations regularly, while devoting part of her net income to paying down her delinquent debt. Her increased income from her primary employment through the raises she received for superior job performance will help her repay these debts. She disputes two debts, supported by the statements of her older daughter and former husband that they are primarily responsible for each of two debts listed in the SOR. Without those two debts, her debt load decreases by about \$20,000. After subtracting duplicate billings, the two automobile loans for which her daughter and former husband are responsible and against which Applicant has filed disputes as to her liability, and the debts she paid since August 2006, the delinquent debt remaining is \$1,825. That amount of debt Applicant could repay within one year at the rate of \$200 monthly. While the debt continues to be recent, she is using her tax refunds in or from recent years, the balance of money she received from an injury lawsuit, and her current income, to repay her debts.

At age 44 she is sufficiently mature to be responsible for her actions, and she has obviously assumed that responsibility by working two jobs. Some of the debts listed in the SOR resulted from her injury in 2002 that workers compensation and insurance should have paid. Her inability to repay these debts before now resulted from her low income and underemployment. There is evidence of rehabilitation exhibited by her self-discipline, positive attitude toward ridding herself of this debt, the help from her mother and current boyfriend, and stable employment in her two jobs to produce income to reduce the debt. Applicant demonstrated this attitude by her repayment of five debts in August 2006. Also, her new commitment is shown by Applicant's intention is to reduce her debt until her delinquent debts are paid. Within the context of her income, Applicant is making every effort to repay or resolve her delinquent debt situation. I conclude, also, that she is truthful and credible in her explanations of how her financial situations arose. I am persuaded by her evidence. Balancing and considering all factors present, I conclude the "whole person analysis" for Applicant. I conclude Applicant mitigated the financial consideration trustworthiness factors and make this determination for Applicant.

## FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: to 1.s. For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Her application for eligibility for an ADP I/II/III position is granted.

Philip S. Howe

Administrative Judge

1. Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).

2. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.