

DATE: December 29, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-14109

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has delinquent debt of more than \$33,000. He and his wife attempted to maintain their lifestyle after she was laid off from her \$120,000-a-year job, he eventually lost his job, and his wife charged their accounts for loans and services provided to her sister's business. Eligibility is denied.

STATEMENT OF THE CASE

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 30 August 2006 detailing the basis for its decision--concerns raised under Guideline F (Financial Considerations) of the Regulation. Applicant answered the SOR in an undated writing and elected to have a hearing before an administrative judge. The case was originally assigned to another judge but was reassigned to me on 17 November 2006. With the consent of the parties, I convened a hearing on 12 December 2006 to consider whether it is clearly consistent with the interest of national security to grant or continue Applicant's eligibility to occupy an ADP I/II/III position. DOHA received the hearing transcript (Tr.) on 20 December 2006.

FINDINGS OF FACT

Applicant is a 34-year-old computer technician for a defense contractor, where he has worked since May 2005. He was married in March 2000⁽¹⁾ but separated from his wife in March 2002. Ex. 1. A licensed marriage and family therapist reports that Applicant is extremely responsible, intelligent, and reliable, but was undermined by his "former spouse." Ex. A.⁽²⁾

When he married, Applicant was a bookkeeper at a doctor's office. His wife worked in corporate sales for a wireless service and made \$120,000 a year. After she was laid off, they lost the ability to maintain their life without misusing

credit cards. He lost his job. In 2002, they moved to Colorado, although neither had a job. It took Applicant six months before he found employment.

In the SOR, DOHA alleged Applicant had three charged off accounts totaling more than \$13,900 (¶¶ 1.a, 1.c-1.d, 1.f) and two accounts in collection status totaling more than \$24,700 (¶¶ 1.b, 1.e). In the Answer, Applicant admitted each of the allegations, except ¶ 1.f. He asserts the debt in ¶ 1.f (\$5,000) is the same as that in ¶ 1.b. Applicant contends the debt alleged in ¶ 1.c (\$1,995) was incurred when his wife signed her sister's business up for wireless service under Applicant's name. Applicant's wife also wrote a credit-card check for approximately \$9,000 (part of the \$18,395 debt alleged in ¶ 1.e) to her sister. Applicant's sister was to repay the debt but never did. All of the debts alleged were charged off or went into collection status between 2000 and 2002.

Applicant currently makes approximately \$52,000 a year. He has three or four credit cards with outstanding balances. He appears to live within his means and is current on all of his monthly bills, including making more than the minimum payments on his credit card debt. He has \$13,000 in a 401(k) plan and about \$3,000 in a savings account.

Since he received the SOR, Applicant has taken some steps to explore his options. He used Suze Ormand's online service. The service suggested his credit rating would benefit by waiting for the debts to drop off his credit report rather than making any payments that would reactivate their status. The week before the hearing, he telephoned a credit counseling service to learn of his options. The counselor explained how the service worked, but he did not receive personal counseling about his situation. He contacted some of his creditors about the debts. He has received settlement offers from two of the creditors. He is reluctant to accept the offers until he finds out whether he will be able to keep his job.

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 AP10.2.3.1. By memorandum dated 19 November 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 Regulations 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--Financial Considerations

An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3). Accepting that the debts alleged in ¶¶ 1.b and 1.f are the same, Applicant still has delinquent debts totaling more than \$33,000.

An applicant may mitigate financial considerations security concerns by establishing that the behavior was not recent (MC E2.A6.1.3.1); it was an isolated incident (MC E2.A6.1.3.2); the conditions that resulted in the behavior were largely beyond the applicant's control; (MC E2.A6.1.3.3); the applicant has received or is receiving counseling for the

problem and there are clear indications that the problem is being resolved or is under control (MC E2.A6.1.3.4); or the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (MC E2.A6.1.3.6).

In his Answer and at the hearing, Applicant asserted that the debts were not recent and that he has been current on his debts since shortly after he separated from his wife. He blames his wife for much of the financial difficulties because a substantial part of the debt is as a result of loans made to her sister. Although Applicant incurred the debts some time ago, they are still recent--he has neither paid any of them nor has active plans to do so. ISCR Case No. 01-3695, 2002 DOHA LEXIS 453 at *7 (App. Bd. Oct. 16, 2002) (holding administrative judge erred by holding Applicant's debts were not recent--Applicant's failure to pay these debts was a continuing course of conduct). I have considered that some of the debt resulted from conditions beyond his control--his wife "loaning" money to her sister and Applicant and his wife being unemployed after having a substantial income. Nevertheless, Applicant has not made substantial efforts to pay or contest these debts. *See* ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003) (holding that even if an applicant's financial difficulties initially arose due to circumstances beyond his control, the judge reasonably could consider whether Applicant acted in a reasonable manner when dealing with his financial difficulties).

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 an acceptable security risk." Regulation (app. 8) at 132. It involves "the careful weighing of a number of variables known as the "whole person concept." *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 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. *Id.*

Applicant is 34 years old. The delinquent debts, totaling more than \$33,000, appear to have been incurred in the past seven years. He knowingly incurred most of the debts trying to maintain a lifestyle that was no longer possible after his wife lost her \$120,000 job. Applicant claims some of those debts were caused by his wife providing funds to her sister without his permission. If so, he presented no evidence that he has done anything to try to contest the debts or recoup the money from his sister-in-law. He is unwilling to commit to settlement offers on those debts until he learns whether or not he will be able to keep his job. Under all the circumstances, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts. I find against him on all the allegations in the SOR, except for ¶ 1.f, which is the same debt as alleged in ¶ 1.b.

FORMAL FINDINGS

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

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

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is denied.

James A. Young

Administrative Judge

1. At the hearing, Applicant was unsure whether he was married in 1999 or 2000. Tr. 26-27.
2. Although not evident from Ex. A, it appears the licensed marriage and family therapist is also Applicant's stepfather. *Compare* Ex. A *with* Ex. 1 at 4.