

DATE: December 28, 2006

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In re:

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SSN: -----

Applicant for ADP I/II/III Position

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P Case No. 06-14216

**DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's background investigation revealed eight delinquent debts with a total approximate balance of \$22,050. In 2005, she made a \$97,000 profit from the sale of her home. She made no attempts to resolve her delinquent accounts with this money although she expressed her intentions to do so during her background investigation. She failed to mitigate the trustworthiness concerns raised under financial considerations. Applicant's eligibility for a assignment to a sensitive position is denied.

**STATEMENT OF CASE**

On March 5, 2005, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").<sup>(1)</sup> On July 28, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations.

In a sworn statement dated September 19, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on October 20, 2006. A notice of hearing was issued on November 3, 2006, scheduling the hearing for November 28, 2006. The hearing was conducted on that date. The government submitted Government Exhibits (Gov Ex) 1- 3 which were admitted into the record without objection. Applicant testified on her own behalf, and submitted no exhibits. DOHA received the hearing transcript (Tr.) on December 8, 2006.

**FINDINGS OF FACT**

In her SOR response, Applicant admits to all the SOR allegations under Guideline F, but denies the overall concern. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 43 year old woman employed as a patient care advocate for a Department of Defense contractor who is seeking a position of public trust. She has worked for her employer since December 2003. She has a college degree.<sup>(2)</sup> She is single and lives with her significant other and their 14 year old daughter.<sup>(3)</sup>

In 2000, Applicant bought her first home. Her financial difficulties began after purchasing her home. She was unaware of the additional expenses of owning a home. Six months after purchasing the home, her property taxes rose resulting in increased house payments of \$150 each month. Around the same time, her significant other lost his job due to a disability which further complicated the household financial situation.<sup>(4)</sup> The company that she had worked for 13 years moved their location which resulted in her commuting two hours each day. She took early retirement and found a job which paid less than her prior income.<sup>(5)</sup> She admits that she put credit before anything else. She claims that she was never taught how to handle money.<sup>(6)</sup>

On March 5, 2005, Applicant submitted a Public Trust Application, SF 85P.<sup>(7)</sup> Her background investigation revealed eight delinquent accounts with a total approximate balance of \$22,050.<sup>(8)</sup> The accounts included a \$8,649 credit card account charged off in August 2000 (SOR ¶ 1.a); a \$4,865 account placed for collection in November 2002 (SOR ¶ 1.b); a \$4,377 credit card account charged off in November 2002 (SOR ¶ 1.c); a \$731 account placed for collection in June 2003 (SOR ¶ 1.d);<sup>(9)</sup> a \$2,523 debt charged off in October 2004 (SOR ¶ 1.e); a \$436 account placed for collection in arch 2005 (SOR ¶ 1.f); a \$390 medical account, placed for collection in September 2005 (SOR ¶ 1.g); and a \$79 account placed for collection in March 2006 (SOR ¶ 1.h).

In July 2005, Applicant was interviewed by an OPM investigator in conjunction with her background investigation. They discussed her financial situation. She indicated that she was in the process of selling her home. She intended to pay off her delinquent accounts with the profit from selling her home.<sup>(10)</sup> Sometime later in 2005, she sold her home and made a \$97,000 profit. She did not apply any of the money towards her delinquent debts. She uses the money to pay for additional living expenses. Approximately \$40,000 remains in a savings account.<sup>(11)</sup> Of the money spent, \$10,000 went towards dental work that Applicant needed.<sup>(12)</sup>

Applicant and her significant other lived apart for a brief period. He has since moved back in with she and their daughter. He is unable to work due to health reasons. He recently broke his ankle.<sup>(13)</sup>

Applicant consulted with a credit counselor on at least three occasions in the past but not recently. She never entered into any formal repayment plans because they advised her that she did not make enough money. At one point, they suggested bankruptcy but she chose not to file bankruptcy.<sup>(14)</sup> She claims that she has contacted her creditors to settle her accounts but they keep giving her conflicting information.<sup>(15)</sup> She hopes to pay these debts in the future.<sup>(16)</sup> The debt in SOR ¶ 1.a has been partially paid as a result of the company taking her income tax return.<sup>(17)</sup>

Applicant earns \$12.60 an hour, approximately \$26,000 per year.<sup>(18)</sup> In addition, she works a part-time job approximately 10 hours a week.<sup>(19)</sup> She pays \$950 a month in rent. She has a \$269 car payment and pays \$150 per month in car insurance. She has one open credit card account with a balance of \$400.<sup>(20)</sup> She does not have a budget.<sup>(21)</sup>

## 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."<sup>(22)</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines

contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F - Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, is set forth and discussed in the conclusions below.

"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."<sup>(23)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(24)</sup> 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.<sup>(25)</sup>

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.<sup>(26)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>(27)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(28)</sup> Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>(29)</sup> The same rules apply to trustworthiness determinations for access to sensitive positions.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations. Based on all the evidence, Financial Considerations Disqualifying Conditions (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 to Applicant's case. Since 2000, she had difficulty meeting her financial obligations. The expenses of a new home and the added burden of her significant other losing his job further complicated her finances. Ultimately, she had to sell her home in 2005 since she could not afford it. Although she made a \$97,000 profit from the sale, she applied none of it towards her delinquent accounts. At this point, she was capable of paying her delinquent debts but did not do so which indicates an unwillingness to satisfy her debts.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant's delinquent debts remain outstanding. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*) because she still carries a significant amount of delinquent debts and has no plan for resolving her debts.

FC MC E2.A6.1.3.3 (*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)*) applies, in part, with respect to Applicant's significant other's job loss due to disability. Although this circumstance explains the cause of the debt, I do not give this mitigating condition a lot of weight due to Applicant's lack of action towards resolving the debts after she had the money to pay the debts when she sold her home.

FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications*

*that the problem is being resolved or under control*) does not apply. Applicant consulted a credit counseling service on several occasions in the past but never followed through with a plan to resolve her debts. Since the sale of her home, she had the means to settle her accounts but has chosen not to resolve her accounts. All of her delinquent accounts remain unresolved.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. In July 2005, Applicant told the investigator who interviewed her in conjunction with her background investigation that she intended to resolve all of her delinquent accounts once she sold her home. She did not follow through with her intentions. Even though, she made a significant profit from the sale of her home, she used the money on other things. Approximately \$40,000 remains in a savings account. She is capable of resolving her accounts with this money but states that she needs this money to supplement her living expenses. I find that this is not an adequate explanation justifying her lack of action towards resolving her delinquent accounts. She has not made a good faith efforts towards resolving her delinquent accounts.

Applicant has not mitigated the financial considerations trustworthiness concern. Guideline F is decided against Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthiness determination process is the fair-minded, common sense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. I cannot grant Applicant a trustworthiness position based on her lack of action towards resolving her delinquent accounts even though she has the means to do so. Based on the evidence in the record, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

### **DECISION**

In light of all of the evidence presented in this case, it is not clearly consistent with the national interest to grant

Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.

2. Tr. at 5, 35; Gov Ex 1.

3. Tr. at 29, 37.

4. Tr. at 21-22.

5. Tr. at 21-22.

6. Tr. at 20.

7. Gov Ex 1.

8. Gov. Ex. 2, 3.

9. Tr. at 22-23; Gov Ex 5 at 2.

10. Tr. at 42.

11. Tr. at 26-27.

12. Tr. at 31.

13. Tr. at 37-38.

14. Tr. at 33.

15. Tr. at 32-33.

16. Tr. at 34.

17. Tr. at 52.

18. Tr. at 35, 50.

19. Tr. at 28, 36.

20. Tr. at 27.

21. Tr. at 46.

22. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

23. Directive, ¶ E2.2.1.

24. *Id.*

25. *Id.*

26. Directive, ¶ E3.1.14.

27. Directive, ¶ E3.1.15.

28. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

29. Directive, ¶ E2.2.2.