

DATE: March 28, 2007

In re:

SSN: -----

Applicant for Public Trust Position

ADP Case No. 06-14174

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes the Internal Revenue Service approximately \$30,000 for federal tax years 2001, 2002, and 2003. She timely filed her taxes and has worked diligently with the IRS to develop a payment plan for several years. The IRS recently agreed to Applicant's monthly payment of \$500. Applicant has mitigated the trustworthiness concerns raised under financial considerations. Applicant's eligibility for a trustworthiness position is granted.

STATEMENT OF THE CASE

On August 4, 2004, 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").⁽¹⁾ On November 29, 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 of the revised Adjudicative Guidelines (AG) issued on November 29, 2006, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

The case was assigned to me on January 27, 2007. A notice of hearing was issued on February 21, 2007, scheduling the hearing for March 6, 2007. The hearing was conducted as scheduled. The Government submitted eight exhibits that were marked as Government Exhibits (GE) 1-8. Applicant submitted 13 exhibits (AE) A-M. The exhibits were admitted without objection. Applicant testified in her own behalf. At Applicant's request, I left the record open for additional documentation. She timely tendered a post hearing submission. Department counsel had no objection to the document which was marked as AE N and admitted into the record. DOHA received the hearing transcript (Tr.) on March 15, 2007.

FINDINGS OF FACT

Applicant admitted the allegation in her SOR response under Guideline F. [\(2\)](#) The admissions are incorporated as findings of fact. However, she denied ignoring her debt. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 53-year-old nurse employed as a case manager in a position of public trust for a defense contractor. She has worked for her current employer since 2004. She graduated from college in 1976. She is married and has three grown children. [\(3\)](#)

Applicant's husband, self employed in the insurance field with various agencies, worked on commission for many years, but was laid off in 2000. Thus, Applicant's income was the only consistent income. As a result of the accounting process used by her husband's employer, they would receive monetary advancements (commissions on policies), however, if the policy was later cancelled or closed for any reason, the money advanced was taken back by the insurance company. This created a problem with reported income for tax purposes. [\(4\)](#) Her husband worked at odd jobs after his lay off, but they were forced to file for chapter 7 bankruptcy in 2003. Since the 2004 discharged bankruptcy, Applicant has worked with a credit repair specialist to insure her credit reports reflected the true status of her accounts. [\(5\)](#)

Applicant and her husband supported their grown children from 1997 until 2002. One divorced daughter with two children lived with them. Their grandchild had numerous medical problems and Applicant paid many of the bills, thus adding to financial difficulties. Their son also lived with them. [\(6\)](#)

Applicant and her husband timely filed their income taxes for the years in question. They had a professional tax preparer complete the forms. However, they did not have the ability to pay the tax.

In fact, the tax assessed was higher than it should have been due to the initial high commissions given to Applicant's husband and then later retracted. However, the tax was still computed on the original amount of projected income. [\(7\)](#)

Applicant owes \$30,000 on federal taxes. The taxes are not in dispute. [\(8\)](#) She and her husband have been working closely with the IRS for several years. At first they negotiated on their own, but employed an attorney to expedite the process. [\(9\)](#) On several occasions, they submitted information and the IRS returned it with an advisement to send more or different information. They are in the final stages of an agreed upon payment plan. [\(10\)](#)

For the previous tax year, Applicant received an \$800 refund which was directly applied to the back taxes. Prior to that Applicant's case was considered a "hardship case" by the IRS. She wanted a payment plan from the IRS, or an offer and compromise. She asked for one each year, but the process was not smooth. They also received conflicting information from CPA's, an attorney and the IRS. [\(11\)](#)

In November 2006, Applicant's attorney wrote another letter to the IRS inquiring on the status of the payment plan. The IRS wanted more information. The plan formulated in 2006 was rejected by the IRS, and Applicant completed another financial package. In a February 2007 letter from the IRS, Applicant was advised the plan was under review. [\(12\)](#)

Applicant's attorney received an accepted agreement from the IRS for a \$500 monthly payment. Applicant received this notice just after the hearing and provided documentation to support the plan. Her husband also received another position. They will have the income necessary to make payments on the plan. [\(13\)](#)

Applicant's monthly net income is \$3,292. [\(14\)](#) Her husband earns approximately \$800 a month. After expenses, they have a net remainder of \$581. Their children are repaying loans to their parents. Applicant supplements her income with weekend work. [\(15\)](#)

When Applicant completed her public trust application in 2004, she was led to believe the trustworthiness process would not take long. However, her initial investigation did not begin until six to nine months after the start of her employment. A year later she was contacted and re-signed some documents and answered more questions. She provided [\(16\)](#)

complete information.

Applicant excels at her current position. She has been promoted twice.⁽¹⁷⁾ Her colleagues and supervisors applaud her dependability and responsibility.⁽¹⁸⁾ She is a certified case manager with many years of experience in the health field. Her employer, who is aware of the tax issue and prior bankruptcy, highly recommends her. The employer also believed the issue would not create any concerns or problems for Applicant.

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."⁽¹⁹⁾ 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. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

"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."⁽²⁰⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²¹⁾ 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.⁽²²⁾

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.⁽²³⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽²⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁵⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽²⁶⁾ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all facts in evidence and legal standards. The government has established a *prima facie* case for disqualification under Guideline F of the revised Adjudicative Guidelines (AG).

Guideline F (Financial Considerations) The Concern: *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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.*⁽²⁷⁾

In this matter, the Government provided substantial evidence that Applicant owes the IRS approximately \$30,000 for

tax years 2001 to 2003. While filing in a timely manner, they were not able to pay the tax due. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶19(a), (*Inability or unwillingness to satisfy debts*) and FC DC ¶19 (c), (*a history of not meeting financial obligations*) apply.

With the Government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. I considered the Financial Considerations Mitigating Condition (FC MC) AG ¶20 (a), (*The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) and concluded it does not apply because she still carries a significant amount of delinquent debt.

Applicant explained that her husband's income was often advanced commission. Due to the accounting method, reported earned income was often later reduced if the insurance policy failed for any reason. Her husband had to pay back any advanced money to his employer, but for tax purposes the income was not reduced. The income tax forms were filed by tax professionals for years 2001 to 2003. Initially, Applicant and her husband contacted the IRS on their own to ask for offer and compromise or a payment plan. Later, in 2003, they hired an attorney to expedite the matter. They completed required financial packages and are now waiting the acceptance of a payment plan. Recent documentation supports Applicant's continued efforts to resolve the manner. They must now wait for the IRS to respond. Thus, FC MC AG ¶20 (b), (*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) and the individual acted responsibly under the circumstance*) applies.

FC MC AG ¶20 (c) (*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*) also applies. Applicant has a positive net remainder that will be used to make a monthly payment. She expects to use her nursing background to supplement income with weekend work. Her husband still earns some income, and their children are beginning to repay them for the financial aid they received from their parents over the years. Her husband expects a new position with a higher rate of pay so that income will be available for the payment plan.

FC MC ¶20(d) (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is applicable. Applicant has continued to work with the IRS since the initial time. They offered to pay, and at some point they were considered a hardship case. The payment offer in 2006 was rejected through no fault of Applicant. Their attorney is negotiating and they await a response from the IRS. Shortly after the hearing, Applicant submitted documentation from the IRS which shows they agreed to accept a \$500 monthly payment plan for the taxes.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense 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 of the evidence and the "whole person" in evaluating Applicant's trustworthiness. Applicant has never ignored her tax issue. She and her husband did not try to evade federal tax. They have made consistent efforts to develop a payment plan and resolve this issue with the IRS. Since their bankruptcy, they have been meeting their financial obligations. Some events were beyond their control. Applicant has an exemplary work history. Her employer is aware of her financial issue. She has cooperated with her trustworthiness application process for almost two years. Her diligence and honesty overcome the Government's case. There is no evidence to support a case that Applicant may engage in conduct that has negative trustworthiness implications. Applicant has mitigated the trustworthiness concerns based on her continued action toward resolving her taxes. Applicant never ignored the situation. She and her husband hired an attorney to pursue the matter in a more aggressive manner. Her steady employment indicates it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Hence, Applicant

mitigated the security concern raised. Eligibility is granted.

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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: FOR APPLICANT

Subparagraph 1.a: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant's request for a determination of trustworthiness and eligibility for assignment to sensitive duties. Eligibility is granted.

Noreen A. Lynch

Administrative Judge

1. This action is taken under Executive Order 10865, dated February 20, 1960, as amended.
2. Applicant's Answer to SOR, dated December 22, 2006, at 1 (included in file).
3. GE 1 (Application for Public Trust Positions (SF 85P), dated August 4, 2004) at 1-21.
4. GE 2 (Affidavit and Attachments, dated November 14, 2004) at 1-21; Tr. 24-25.
5. Tr. 26.
6. *Id.*
7. GE 4 (Interrogatory Responses, dated October 4, 2006) at 1-3; GE 5 (Letter from Applicant, dated October 10, 2006) at 1; Tr.61-62.
8. GE 6 (Correspondence from Attorney, dated October 3, 2006) at 1-3.
9. *Id.*; Tr. 39.
10. GE 5(Letter from Applicant, dated October 10, 2006) at 1.
11. Tr. 41-44.
12. AE I (Letter from Attorney, dated December 20, 2006); AE J (Letter from Attorney, dated November 28, 2006); AE K (Letter to Attorney, dated December 5, 2006); AE L (Letter from Attorney, dated February 7, 2007); AE M (IRS Memorandum, dated February 6, 2007).
13. AE N (Post hearing submission - Pay Plan from IRS, dated March 7, 2007).
14. This amount was based on the Personal Financial Statement provided before the Applicant's husband obtained a new position.
15. Tr. 56.

16. Tr. 27.

17. AE E (Annual Evaluation, dated 2005); AE G (Salary Increase Notification, dated January 2007).

18. AE A, B, C, and D (Character letters submitted).

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

20. Directive, ¶ E2.2.1.

21. *Id.*

22. *Id.*

23. Directive, ¶ E3.1.14.

24. Directive, ¶ E3.1.15.

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

26. Directive, ¶ E2.2.2.

27. AG ¶ 18.