

DATE: November 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 06-14713

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 52-year-old claims processor working for a Defense contractor. She admits to having six delinquent accounts and denies, without evidence or explanation, six other delinquencies. Although she cites to financial problems arising from her husband's disability, and the record reveals a five month period of unemployment, there is no indication that she has attempted to seek financial counseling or otherwise address these obligations. Applicant has failed to mitigate financial security concerns. Eligibility for an ADP I/II/III position is denied.

STATEMENT OF THE CASE

On August 11, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary determination that Applicant was not eligible for assignment to information systems positions designated ADP I/II/III. ⁽¹⁾ The SOR alleges security concerns under Guideline F (Financial Considerations). Specifically, it alleges that Applicant is delinquent on 12 accounts, amounting to approximately \$10,700.

A notarized, but undated, Answer to the SOR was timely received by DOHA. In that answer, Applicant admitted six of the financial allegations concerning accounts in default. She denied the remaining six allegations, but failed to submit any explanation or documentation supporting her denials. She also requested that a decision in this matter be made without a hearing. On September 26, 2006, the government submitted its FORM, containing its argument and seven supporting items. Applicant received the FORM on October 10, 2006, and timely submitted a response, dated October 25, 2006. The case was assigned to me on November 1, 2006.

FINDINGS OF FACT

Applicant's admissions to all the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 52-year-old claims processor working for a Defense contractor. She and her husband, now age 57, were married on July 5, 1980. They have two grown children. After six years of employment in the insurance industry, she took a three year break from work in 1981, shortly after the birth of her eldest child. She returned to work from 1984 to 1985, then worked for other employers in the same industry from 1991 to 1994 and 1998 to December 2004. She was unemployed between December 2004 and at least May 2005, when she completed a Questionnaire for Public Trust Positions (SF-86P). Applicant has a high school diploma and one year of college-level education.

The facts of record are scant and Applicant has offered little information in her answer to the SOR as background to the facts at issue. The SOR alleges that she has 12 delinquent accounts, the majority of which were placed in collection sometime between 2001 and 2004⁽²⁾; Applicant admits⁽³⁾ to six of the delinquent accounts alleged. In her undated Answer to the SOR, Applicant gave no explanation as to why she denied six of the alleged delinquencies and provided no evidence to support the inference that those accounts might be paid, current, settled, or incorrectly attributed to her. In response to the FORM, she similarly declined to submit any evidence as to the six denied accounts. Her sole argument is as follows:

"In my defense I would like to state that my financial past problems have occurred due to the fact that my husband became disabled 5 years ago causing me to be the only support of the household. With the cost of living and my wages I can barely sustain the bills I currently have, making it impossible for me to pay any past dues debts that have already been charged off. I would never jeopardize my job nor have I been accused of any wrong doing of any kind, therefore, I consider myself very responsible, extremely trustworthy and dedicated to my job, and my responsibilities. When there is only [one] pay check coming in, it's been very difficult to re-establish my credit which has been the outcome of my outstanding debts. I have considered bankruptcy but my attorney advised me against it for my assets are very minimal."

POLICIES

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained 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."⁽⁴⁾ Appendix 8 of the Regulation sets forth the personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"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."⁽⁵⁾ Each eligibility determination must be a fair, impartial, and commonplace decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation.⁽⁶⁾ An administrative judge should consider: (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 the 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.⁽⁷⁾

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.⁽⁸⁾ In security clearance cases, the Government initially 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.⁽⁹⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽¹⁰⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [her] security clearance."⁽¹¹⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹²⁾

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. DOHA determined that Applicant was not eligible for assignment to information systems positions designated ADP I/II/III based on her dozen delinquent accounts, representing an outstanding debt of approximately \$10,707. Applicant admitted responsibility for at least half of those debts, and failed to offer any evidence or explanation supporting her denial of responsibility for the remaining accounts. The government has thus presented a case for disqualification under Guideline F (Financial Considerations). Consequently, Financial Considerations Disqualifying Condition (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.

With the government's burden met, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. Here, the obligations at issue are multiple, and at least half, if not all, remain unaddressed. Therefore, neither Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.2 (*it was an isolated incident*) nor FC MC E2.A6.1.3.1 (*the behavior was not recent*) applies.

In this matter, Applicant chose to present no evidence and scant argument to explain either her situation or her contention that she has no obligation for half the debts cited. She cites, without any documentary support, to only one relevant fact: that her husband became disabled approximately five years ago, leaving her as the sole support for her household. Additionally, her SF-86P provides some mitigating information by noting that she was unemployed from December 2004 through at least May 2005. Despite her failure to elaborate on these facts, these two situations are sufficient to raise 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)*).

In her brevity, Applicant neglected to mention whether she has sought financial counseling to help her address these debts or to manage her household on only one wage-earner's income. This is unfortunate as financial counseling in her position is clearly warranted and might have proved persuasive given her current situation. Regardless, without a claim that she has received such counseling, 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 is under control*) cannot apply. [\(13\)](#)

Applicant's brief statement regarding her finances reflects a forthright and candid assessment of her fiscal dilemma. It only notes, however, one attempt to address these debts: she contemplated bankruptcy, a valid and legal process for satisfying one's obligations. On the advice of her attorney, however, she declined to pursue either Chapter 7 or Chapter 13 protection because her "assets are very minimal." In the absence of some good-faith effort to satisfy or resolve her debts, FC MC E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) cannot be raised.

I have considered both the record evidence and Applicant in light of the "whole person" concept. She is a mature woman with significant life and employment experience. There is no indication she is irresponsible or unreliable. Although her children are grown, she has been the sole wage-earner for her household since her husband became unable to work about five years ago. In the interim, from December 2004 through at least May 2005, she experienced a period of unemployment. Although these two factors speak in her favor with regard to how some of her debt may have become delinquent, her accounts started becoming delinquent in July 2000, prior to both of these events. More importantly, she failed to present evidence or explanation as to any attempts she has made to address her delinquent debts, seek counseling, or otherwise improve her finances.

Despite her candor, Applicant has provided little basis to overcome the security concerns her financial situation currently poses. Inasmuch as the burden is on Applicant to demonstrate that it is "clearly consistent with the national interest to grant or continue [her] security clearance," [\(14\)](#) and since "[a]ny doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security," [\(15\)](#)

it must be concluded that Applicant has failed to mitigate the financial considerations security concerns raised. Clearance 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 (Financial Considerations) 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

Subparagraph 1.i Against Applicant

Subparagraph 1.j Against Applicant

Subparagraph 1.k Against Applicant

Subparagraph 1.l 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's request for a determination of trustworthiness and eligibility for assignment to sensitive duties. Eligibility for positions designated ADP I/II/III is denied.

Arthur E. Marshall, Jr.

Administrative Judge

1. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The procedural rules set out in the Directive for security clearance cases are applied to ADP trustworthiness determinations. The adjudicative guidelines set out in Department of Defense Regulation 5200-2R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation), are used to make ADP trustworthiness determinations.

2. The debts cited went into collection or were charged off between July 2000 and June 2005.

3. Applicant wrote "I admit" in response to the accounts cited at 1.b and 1.c, and wrote "I accept" in response to 1.g, 1.j, 1.k, and 1.l. She wrote "I deny" with regard to the remaining accounts noted at 1.a, 1.d, 1.e, 1.f, 1.h, and 1.i.

4. Regulation ¶ C6.1.1.1.

5. Regulation Appendix 8.

6. *Id.*

7. *Id.*

8. Regulation ¶ C8.2.1.

9. Directive, ¶ E3.1.14.

10. Directive ¶ E3.1.15.

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

12. Directive ¶ E2.2.2.

13. Although Applicant does note that she consulted an attorney regarding bankruptcy, a process that could have helped her address these outstanding debts, there is no evidence or intimation that her legal counselor's duties extended to financial counseling.

14. ISCR Case No. 01-20700 at 3, *supra* note 11.

15. Directive ¶ E2.2.2.