

DATE: March 19, 2007

In re:

SSN: -----

Applicant for Public Trust Position

P Case No. 06-15073

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of delinquent financial indebtedness and her continuing inability to resolve it generates a trustworthiness concern, which she failed to mitigate. Eligibility to occupy a sensitive position is denied.

STATEMENT OF THE CASE

On November 3, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as revised; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as revised (Directive). The SOR detailed reasons why DOHA could not make a preliminary affirmative finding that it was clearly consistent with the interest of national security to grant or continue Applicant's eligibility for occupying a sensitive position in support of a contract with the Department of Defense, and recommended a referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked. Applicant answered the SOR, and requested a hearing.

The case was assigned to me on December 21, 2006. A notice of hearing was issued on January 12, 2007 scheduling the case for January 30, 2007. The hearing was held as scheduled. During the hearing, I received four government exhibits, four Applicant exhibits, and Applicant's testimony. DOHA received the transcript on February 15, 2007.

FINDINGS OF FACT

Applicant admitted the allegations listed under Paragraph 1 of the SOR, and denied the allegations listed under Paragraph 2. I have incorporated the admissions into the findings of fact, and make the following additional findings of fact.

Applicant is a 53-year-old divorced woman with four adult children, ranging in age from 25 to 32. She has worked as a mail clerk for a defense contractor for the past eight years.⁽¹⁾

Shortly after finishing high school in 1974, Applicant got married. For the next 15 years she was a homemaker focused on raising her family. In 1989, she and her husband divorced. Her ex-husband did not assist her in satisfying the debts that accrued during the marriage, and did not, for the most part, pay child support.

After the divorce, Applicant began working. Because of her limited skills and experience, her employment was limited to entry level, minimum wage jobs.⁽²⁾ Consequently, she gradually lost control of her finances.

Applicant's employment situation stabilized in 2000 when she began working for her current employer. Moreover, as her children reached adulthood, the burden of supporting them decreased correspondingly. At or about this time, however, her health began to deteriorate. Over the next six years, she incurred numerous medical bills relating to treatment for numerous ailments including chronic fatigue syndrome, fibromyalgia, depression, hypertension, and hyperthyroidism.⁽³⁾

By 2006, Applicant had incurred 25 delinquent debts in the approximate amount of \$27,000. Thirteen constituted medical bills collectively equal to approximately \$10,000 (subparagraphs 1.a., 1.b., 1.k., 1.l., 1.n. through 1.q., 1.s. through 1.v., and 1.y.). They also included six credit card companies (subparagraphs 1.d. through 1.h., and 1.x.), two utilities (subparagraphs 1.m. and 1.w.), a loan company (subparagraph 1.j.), a pest control company (1.i.), and a delinquent judgment owed to an individual (1.r.). Applicant admitted responsibility for the debt listed in subparagraph 1.c., but did not know its nature.

The judgment, as referenced in subparagraph 1.r, relates to an automobile that Applicant and her then-boyfriend purchased in the late 1990s. She agreed to "place the car in [her] name for insurance purposes,"⁽⁴⁾ and her boyfriend agreed to make the car payments. Subsequently, the former boyfriend defaulted on the car payments, and the holder of the car note obtained a judgment against her in 2002. The record contains no evidence regarding whether the car was repossessed.

Applicant accrued the delinquency to the pest control company, as referenced in subparagraph 1.i., under similar circumstances. Specifically, her roommate at the time promised to make payments toward a monthly account, if she opened it. She subsequently opened the account, and the roommate failed to make the payments.⁽⁵⁾

Applicant has made no payments toward the satisfaction of these debts. She considered filing for bankruptcy protection in late 2005, but could not afford to retain legal counsel.⁽⁶⁾ She met with a financial counselor in November 2006 to consider the possibility of paying her delinquencies through a debt consolidation company, but could not afford the initiation fee.⁽⁷⁾ Currently, she is on extended leave under the Family Medical Leave Act.⁽⁸⁾ She is not receiving any income.⁽⁹⁾

The 2002 judgment entered against Applicant regarding a delinquent car note was one of four judgments stemming from delinquent debts. She only disclosed one on her Questionnaire for Public Trust Positions (SF 85P) completed in 2004.

The SF 85P also required Applicant to disclose all of her debts that were greater than 180 days overdue.⁽¹⁰⁾ She did not disclose any of them. At the hearing, she explained that she thought that she only needed to list any overdue accounts that had been closed at the time she completed the questionnaire.⁽¹¹⁾

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to ADP trustworthiness determinations. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information or eligibility for occupying a sensitive position (disqualifying conditions), and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information or eligibility for occupying a sensitive position (mitigating conditions).

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair decisions.

In making a decision, the administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, including, (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are raised:

Guideline F - Financial Considerations: 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.

Guideline E - Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Since the protection of national security (and sensitive information) is the paramount consideration, the final decision in each case must be reached by applying the standard that the determination of an applicant's eligibility for occupying an Information Systems Position is "clearly consistent with the national interest." ⁽¹²⁾ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable trustworthiness determination.

CONCLUSIONS

Financial Considerations

Applicant has been struggling with her finances for the past 15 years. Currently, she has approximately \$27,000 of delinquent debt. Financial Considerations Disqualifying Conditions (FC DC) a: *Inability or unwillingness to satisfy debts*, FC DC c: *A history of not meeting financial obligations*, and FC DC e: *Consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt to income ratio, and/or other financial analysis*, apply.

The beginning of Applicant's financial problems coincided with the divorce from her husband in 1989. The problems continued as she struggled to find steady income sufficient enough to support her four children. When her employment situation stabilized in 2000, her health began deteriorating, leading to extensive lost time from work, and multiple medical bills. Financial Considerations Mitigating Condition (FC MC) b: *The conditions that resulted in the financial problem 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.

None of the remaining mitigating conditions apply. The recurrent and ongoing nature of her financial problems eliminates FC MC 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*, from consideration. Although she met with a representative from a credit counseling agency in November 2006, she was unable to retain its services, eliminating FC MC c: *The person has received or is receiving counseling for the problem*

and/or there are clear indications that the problem is being resolved or is under control, and FC MC d: The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts, from consideration.

Personal Conduct

Applicant's omissions from the Standard Form SF 85 P in August 2004 raise the issue of whether Personal Conduct Disqualifying Condition (PC DC) a: *Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, applies. After observing Applicant's demeanor at the hearing, and evaluating her testimony, I conclude that her omissions were irresponsible and careless, but not intentional. PC DC a does not apply.

Whole-Person Concept

Applicant's financial delinquencies were caused by an extraordinary series of personal misfortunes. Currently, her indebtedness is being perpetuated not by financial irresponsibility, but by an inability to support herself. Her health concerns exacerbate this problem both by generating unmanageable treatment expenses, and hindering her ability to earn more money.

Although the causes of Applicant's financial indebtedness are emotionally compelling, they are not dispositive. Absent any progress toward the satisfaction of her debts, or any evidence of rehabilitation, these financial problems are likely to continue indefinitely. So long as they continue unabated, the potential for pressure, coercion, or duress remains unacceptably high. Eligibility is denied.

FORMAL FINDINGS

Formal findings 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 THE APPLICANT

Subparagraph 1.a. - 1.y.: Against Applicant

Paragraph 2., Guideline E: FOR THE APPLICANT

Subparagraph 2.a. - 2.b.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for occupying a sensitive position. Eligibility is denied.

Marc E. Curry

Administrative Judge

1. Tr. 35.
2. Government Exhibit 1, Questionnaire for Public Trust Positions, dated August 18, 2004, at 3.
3. Exhibit A, Physician's Letter, dated December 5, 2006.
4. Tr. 27.
5. Tr. 21.

6. Response to Interrogatories, dated August 22, 2006, at 2.

7. Tr. 37.

8. 29 U.S.C.A § 2601 *et. seq.*

9. Tr. 40.

10. Exhibit 1, SF 85P, dated August 18, 2004, at 7.

11. Tr. 50.

12. *See* Directive §§ 2.3, 2.5.3, 3.2, and 4.2.