

DATE: December 29, 2006

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In re:

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SSN: -----

Applicant for ADP I/II/III Position

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ADP Case No. 06-15375

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 54 years old and works for a company that administers health benefits for the federal government. For the past 15 years she has experienced financial difficulties and accumulated a significant amount of delinquent debt. To-date she has not resolved any of it. She failed to mitigate the trustworthiness concerns raised by her financial problems. Her eligibility for assignment to a sensitive position is denied.

**STATEMENT OF THE CASE**

On July 15, 2005, Applicant submitted a public trust position questionnaire (SF-85P). The Defense Office of Hearings and Appeals (DOHA) declined to grant 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 August 25, 2006, detailing the basis for its decision-trustworthiness concerns under Guideline F (financial considerations) of the Directive.

In a sworn statement, dated September 18, 2006, Applicant responded to the SOR allegations and requested a hearing. On October 16, 2006, the case was assigned to me. A Notice of Hearing was issued on November 9, 2006, setting the case for hearing on November 29, 2006. At the hearing the Government introduced Government Exhibits (GX) 1-3 into evidence without objections. Applicant testified in her case-in-chief, called one witness and introduced Applicant Exhibits (AX) A-D into evidence without objections. DOHA received the hearing transcript (Tr.) on December 8, 2006.

**FINDINGS OF FACT**

Based on the entire record, including Applicant's admissions in her answer to the SOR and at the hearing, I make the following additional findings of fact:

Applicant is 54 years old. She has worked as a licensed professional nurse (LPN) in the healthcare industry since 1975. (Tr. 12) Since March 2005, she has worked as a claims examiner for a company that manages healthcare benefits for the

federal government. As a Claims Examiner III, she reviews health claims and investigates allegations of fraudulent billing. In July 2005, she submitted a public trust application. (GX 1)

Prior to this position, Applicant has worked in numerous positions related to healthcare, including nursing homes, state social service agencies, and staffing companies. In 1982, a medical cart ran over Applicant's foot, resulting in an injury that required numerous surgeries and subsequently triggered additional physical ailments. (Tr. 16) In July 2001, she filed a worker's compensation claim for an injury related to her knee. Over the years she has experienced periods of unemployment and was without medical insurance from approximately September 2001 until January 2004, during which time she accumulated a number of unpaid medical bills. (GX 1; Tr. 26)

Applicant admitted owing all debts listed in the SOR, totaling \$14,830, except ¶ 1.p for \$134, which is a utility bill that she paid. Of that total amount, \$1,724 consists of unpaid medical bills, \$142 is an unpaid utility bill, and \$12,830 represents unpaid credit card debt that she unwisely accrued while in a relationship, now terminated. (Tr. 15; 22) According to 2005 and 2006 credit reports, many of the delinquent debts date back to 2001. (GX 2 and 3) She admitted she has mismanaged her money for a number of years. Although she intends to resolve her financial obligations, she has not sought financial counseling or established a budget to assist her. (Tr. 29; 40) She recently wrote several creditors in an attempt to resolve the problem. (Tr. 33)

Currently, Applicant has a net monthly income of about \$1,785 and expenses that fall between \$1,100 and \$1,200. She does not have any credit cards and has limited savings. (Tr. 28-30) She would like to find a part-time home care patient to earn additional money. (Tr. 35)

Applicant continues to receive medical treatment for various problems, but is covered by health insurance through her current employer. (Tr. 32) Because her present position does not require her to perform floor nursing care, her physical conditions are improving. According to her performance reviews from March 2005 through July 2006, she meets company expectations. The reviews also document her use of sick time for her medical issues. (AX B-D)

Applicant enjoys her job and is aware of the importance of confidentiality. (Tr. 34) She emphatically stated she would never disclose sensitive information to unauthorized sources. (Tr. 39)

Applicant's former supervisor and current friend believes Applicant is trustworthy. One of Applicant's previous positions required her to prepare payroll for 200 people and gave her access to checks and money. She handled the financial aspects of the job honestly and responsibly. (Tr. 36-37)

## 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 AP102.3.1. By memorandum dated November 19, 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 Regulation 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. The adjudicative guideline at issue in this case is the following:

Guideline F - Financial Considerations - A trustworthiness concern may arise when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect 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.

## CONCLUSIONS

I considered all facts in evidence and the appropriate legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth in the SOR:

Based on Applicant's admissions and the evidence, the Government established a potential disqualification under Guideline F. Two disqualifying conditions apply: (1) Financial Consideration Disqualifying Condition (FC DC) 1: *A history of not meeting financial obligations*, and FC DC 3: *Inability or unwillingness to satisfy debts*. From 1982 to the present, Applicant accumulated a significant amount of debt that she has been unable or unwilling to manage or pay.

The Government having raised a trustworthiness concern, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I concluded Financial Consideration Mitigating Condition (FC MC) 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 to her medical debts. Applicant owes approximately \$1,724 for medical bills that accumulated while she was not covered by insurance, and can be considered a factor outside of her control. However, the \$12,830 owed to credit card companies arose as a result of unwise spending and mismanagement, and is not mitigated under this condition.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered two other FC MC and determined they cannot be established. While applicable law does not require an individual to be debt free, it is essential that one exhibit an effort to resolve delinquent obligations. ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006) To date, Applicant has not taken any documented steps toward resolving her financial problems, sufficient to activate the application of either FC MC 5: *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*, or FC MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.

In addition to the enumerated disqualifying and mitigating conditions, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Directive ¶ E.2.2. describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

I considered Applicant's credibility and demeanor while testifying, her long history of employment in the healthcare field, and her enthusiasm for her current position. I also considered the extent of the delinquent debt and her failure to take minimal steps to investigate or resolve some of the smaller debts, other than one, since learning of the Government's concern and the possible negative effect on her employment. While those financial problems may not create a high potential for pressure or duress, they do reflect a lack of judgment and lead me to conclude that there is a strong likelihood that they will continue, given her lack of motivation to address them to this point. According to DOHA's Appeal Board, "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000) After weighing all facts and evaluating the evidence in the context of the whole person, I conclude Applicant did not mitigate the security concerns raised by her financial considerations. According, the allegations contained in the SOR under Guideline F are decided against her, except ¶ 1.p, which is paid.

## 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 as follows:

Paragraph1: Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraphs 1.a-o: Against Applicant

Subparagraph 1.p: For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Her application for eligibility is denied.

Shari Dam

Administrative Judge