

DATE: March 29, 2007

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In re:

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SSN: -----

Applicant for ADP I/II/II Position

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ADP Case No. 06-15770

**REMAND DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Gina L. Marine, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant incurred 14 delinquent debts, an approximate total of \$24,771, raising trustworthiness concerns under financial considerations. Personal conduct concerns were raised due to Applicant's deliberate omission of her delinquent debts that were over 180 days old and a September 2004 drug arrest on her trustworthiness application. Although she entered into an agreement with a debt repayment agency in December 2006, it is too soon to conclude that she is on the path of financial rehabilitation. She failed to mitigate the trustworthiness concerns raised under financial considerations and personal conduct. Applicant's eligibility for a assignment to a sensitive position is denied.

**STATEMENT OF CASE**

On April 12, 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 August 22, 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, and Guideline E, Personal Conduct.

In a sworn statement dated August 31, 2006, Applicant responded to the SOR allegations and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's file of relevant material (FORM) on November 14, 2006. The FORM was mailed to Applicant on November 15, 2006, and received on November 27, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On January 8, 2007, Applicant submitted additional documents. The documents were not included in the case file. The case was assigned to me on January 30, 2007. I issued a decision on February 28, 2007. Applicant timely appealed my decision.

On March 16, 2007, I was informed that Department Counsel did not forward additional documents submitted by

Applicant on January 8, 2007, due to administrative oversight. On March 19, 2007, Department Counsel forwarded Applicant's January 8, 2007, submissions. The documents include Item 9, Applicant's Supplemental Response to Government's FORM, dated December 18, 2006 (2 pages); Item 10, Credit Solutions of America Limited Power of Attorney, signed by Applicant on December 18, 2006 (1 page); and Item 11, Letter from Applicant's Co-Worker, dated December 20, 2006 (2 pages). Department Counsel did not object to Items 9-11.

On March 21, 2007, Department Counsel filed a Motion for Expedited Remand with the Appeal Board. On March 23, 2007, Applicant filed a response to the government's motion indicating that she had no objection to the motion. The Appeal Board remanded the case on March 26, 2007. This decision incorporates Applicant's Response to Form submitted on January 8, 2007, which was forwarded to me on March 19, 2007.

### FINDINGS OF FACT

In her SOR response, Applicant admits to all the SOR allegations. 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 31 year old woman employed with a Department of Defense contractor who is seeking a position of public trust. She is married and has no children. <sup>(2)</sup>

On September 10, 2004, Applicant was arrested and charged with CDS: Import 5 - 45 Kilo Marijuana. <sup>(3)</sup> In her response to the FORM, dated December 18, 2006, she states that she was not charged with "any felony convictions." She received probation before judgment with six months unsupervised probation. <sup>(4)</sup> She did not explain the circumstances behind the offense and did not provide a copy of the court records verifying the disposition of the offense.

On April 12, 2005, Applicant completed a public trust position application (SF 85-P). <sup>(5)</sup> She re-signed the SF 85-P on July 19, 2005. She answered "No" in response to question "16. Your Police Record. In the last 7 years, have been arrested for, charged with, or convicted of any offense(s)? (Leave out traffic fines of less than \$150)." <sup>(6)</sup> She deliberately failed to list her September 10, 2004, arrest for CDS: Import 5 - 45 Kilo Marijuana.

Applicant also answered "No" in response to question "20. Your Financial Record - 180 Day Delinquencies" which reads: "Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government)." Her background investigation revealed 14 delinquent accounts with a total approximate balance of \$24,771. <sup>(7)</sup> Eight of the delinquent accounts (SOR ¶¶ 1.a - 1.h) were over 180 days delinquent when she completed her trustworthiness application. <sup>(8)</sup>

The delinquent accounts included a \$940 telephone account placed for collection in September 2000 (SOR ¶ 1.a); an \$806 account that was charged off in December 2001 (SOR ¶ 1.b); a \$351 delinquent cell phone account placed for collection in April 2002 (SOR ¶ 1.c); a \$9,687 judgment entered against Applicant in July 2003 (SOR ¶ 1.d); a \$93 account placed for collection in July 2003 (SOR ¶ 1.e); a \$475 medical account placed for collection in August 2003 (SOR ¶ 1.f); a \$1,186 judgment entered against Applicant in April 2004 (SOR ¶ 1.g); a \$1,600 account placed for collection in September 2004 (SOR ¶ 1.h); a \$75 account placed for collection in December 2004 (SOR ¶ 1.i); a \$75 account placed for collection in December 2004 (SOR ¶ 1.j); a \$239 account charged off in January 2005 (SOR ¶ 1.k); an \$8,872 account charged off in April 2005 (SOR ¶ 1.l); a \$242 satellite television account placed for collection in October 2005 (SOR ¶ 1.m) and a \$130 medical account placed for collection in March 2006 (SOR ¶ 1.n). <sup>(9)</sup>

In her response to the SOR, Applicant admitted to all of the debts. <sup>(10)</sup> In her response to the File of Relevant Material, Applicant indicated that her husband was unemployed between October 1, 2005, to September 18, 2006. <sup>(11)</sup> On December 18, 2006, she entered into an agreement with a Credit Counseling Agency to consolidate her debt payments. She is to pay \$229 per month over a three to five year period to avoid bankruptcy. <sup>(12)</sup>

Applicant admits that she deliberately falsified her trustworthiness application by not listing her delinquent debts that were over 180 days old in response to question 20 and not listing her September 2004 arrest for importing 5 - 45 Kilos of marijuana in response to question 16. <sup>(13)</sup> No

further information was provided.

Applicant has worked for a Department of Defense Contractor for eight years. She has worked for her current employer since April 2005. <sup>(14)</sup> The operations supervisor of the provider call center wrote a favorable recommendation letter on Applicant's behalf. <sup>(15)</sup> He has known Applicant for the past seven years. They worked together at a previous defense contractor. While there, Applicant was the floor supervisor. Her co-worker states that she "was an integral employee who always exhibited a professional disposition. She always excelled in her performance, as she handled any tasks that were assigned to her with aplomb." <sup>(16)</sup> In her current position, he notes that Applicant always exceeds standards and is a loyal, honest, and very considerate individual. <sup>(17)</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>(18)</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 guidelines at issue in this case are:

**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.

**Guideline E - Personal Conduct** - Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are 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>(19)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. <sup>(20)</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>(21)</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>(22)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. <sup>(23)</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." (24) Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. (25) 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, and Guideline E - Personal Conduct.

### **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. Applicant has 14 delinquent debts with a total approximate balance of \$24,771. Many of these debts have been delinquent for several years.

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 debt.

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. Applicant's husband was unemployed for approximately a year between October 2005 and September 2006. However, the majority of the debts became delinquent between September 2000 and April 2005, prior to her husband's unemployment. She took no action to resolve any of the delinquent accounts until December 16, 2006, approximately one month after she was served the File of Relevant Material. Although FC MC E2.A6.1.3.3 applies, I give it little weight due to Applicant's delayed response in resolving her delinquent accounts.

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*) also does not apply. On December 16, 2006, Applicant signed an agreement with a credit company to assist her in resolving her delinquent accounts. There is no indication Applicant attended financial counseling in conjunction with this agreement. Her delinquent debts remain unresolved. It is premature to conclude her financial situation is likely to be resolved in the future.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. Applicant did not provide evidence to show that she took steps to repay her delinquent creditors or resolve her accounts until she was served the File of Relevant Material. In December 2006, she entered into an agreement with a credit company to pay \$229 per month over a period of three to five years to resolve her delinquent accounts. Her actions were last minute and at the close of the record, none of the debts were resolved. I cannot conclude that she made a good-faith effort to resolve her debts.

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

### **Personal Conduct**

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified and/or sensitive information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a trustworthiness concern. It is deliberate if it is done knowingly and willfully.

In this case, Applicant admits that she falsified material facts on a public trust application, dated April 12, 2005. She did not list a September 10, 2004, arrest for CDS: Import 5 - 45 Kilo Marijuana in response to question 16. She did not list

her delinquent debts that were over 180 days old in response to question 20. The debts in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.f, 1.g, and 1.h were over 180 days delinquent at the time she filled out her trustworthiness application. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material 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.

I find that none of the mitigating conditions apply under personal conduct. Applicant provided no evidence to explain her deliberate falsifications on her trustworthiness application. Guideline E 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 have considered Applicant's favorable work record, however, an applicant with a good or even exemplary work history may engage in conduct that has negative trustworthiness implications. Applicant's deliberate failure to disclose her delinquent accounts and her September 10, 2004, criminal arrest on her trustworthiness application raises concerns under personal conduct. Her delinquent accounts and her delayed action towards resolving her delinquent accounts raises concerns under financial considerations. 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

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: 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. Item 4.

3. Item 8.

4. Item 9.

5. Item 4.

6. *Id.*

7. Items 5 and 6.

8. *Id.*

9. Items 5 and 6.

10. Item 3.

11. Item 9.

12. Items 9 and 10.

13. Item 3.

14. Item 9.

15. Item 11.

16. *Id.*

17. *Id.*

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

19. Directive, ¶ E2.2.1.

20. *Id.*

21. *Id.*

22. Directive, ¶ E3.1.14.

23. Directive, ¶ E3.1.15.

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

25. Directive, ¶ E2.2.2.