

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. 06-15715

## **DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 57 years old and works for a company that administers health benefits for the federal government. Over the last 16 years, she experienced some financial difficulties and accumulated a significant amount of delinquent debt that she discharged through a Chapter 7 bankruptcy in 1991 and in 2001. Currently, she is managing her finances and resolving a few delinquent bills. She mitigated the trustworthiness concerns raised by her financial problems. Her eligibility for assignment to a sensitive position is granted.

### **STATEMENT OF THE CASE**

On May 10, 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 17, 2006, detailing the basis for its decision-trustworthiness concerns under Guideline F (financial considerations) of the Directive.

In a sworn statement, dated September 5, 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 28, 2006. At the hearing the Government introduced Government Exhibits (GX) 1-5 into evidence without objections. Applicant testified in her case and introduced Applicant Exhibits (AX) A-B into evidence without objections. The record was left open until December 15, 2006, to provide Applicant an opportunity to submit additional information, which she did. I marked those documents AX C and admitted them without an objection. DOHA received the hearing transcript (Tr.) on December 8, 2006.

### **PROCEDURAL MATTERS**

Prior to the commencement of the hearing, the Department Counsel filed a Motion to Amend the Statement of Reasons by striking the introductory paragraph on page one in its entirety and replacing it with the following:

1. Strike the introductory paragraph one on page one and replace it with the following:

"A review of your eligibility for occupying Information Systems Position designated ADP I/II/III to support a contract with the Department of Defense (DoD) has been made pursuant to DoD Directive 5220.6, dated January 2, 1992. This office recommends that your case be submitted to an Administrative Judge for a determination that you are not eligible for occupying such a position. This recommendation is based on the following reasons:"

2. Add subparagraph 1.h to state the following:

"You petitioned for Chapter 7 bankruptcy on or about October 30, 1991, in the United States Bankruptcy Court for the Western District of Wisconsin. Your debts were subsequently discharged on or about February 5, 1992."

Applicant did not object to the Motion and I granted it.

### 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 57 years old. For the past 20 years, she has worked as a provider analyst for a company that manages healthcare benefits. During the last five years, she has been assigned to handle claims for the federal government. She is divorced and has three grown children. (Tr. 14) In May 2005, she submitted a public trust questionnaire. (GX 1)

Applicant admitted that she petitioned for a Chapter 7 bankruptcy in October 1991 and in November 2001. She does not remember the amount of debt that was discharged in her first bankruptcy in 1992, but knows it consisted primarily of charge card bills that were the result of unwise spending. She was divorced at the time and supporting two children. (Tr. 22; GX 4) The second bankruptcy discharged debt related to utilities, medical bills, and personal loans, totaling approximately \$8,337. It also discharged \$20,155 owed on a car loan she co-signed with her daughter. (AX C at 6)

Applicant recently paid the two delinquent debts listed in SOR ¶ 1.d. for \$1,423 (GX 5) and ¶ f. for \$48 (Tr. 25; AX A). Since the end of October, she has paid approximately \$550 toward other bills, including the delinquent debt listed in the SOR ¶ 1.e. for \$386. (Tr. 18; 21) She intends to begin paying off the balance owed on the telephone bill noted in ¶ 1.c. for \$524, and for a cell phone bill alleged in ¶ 1.g. for \$451. (Tr. 21; 35)

In July 2006, Applicant inherited \$27,000 from her parents. After paying some outstanding bills, she has \$9,000 left. (Tr. 32) Applicant has a net monthly income of about \$1,700 and expenses for approximately the same amount. She has one credit card. She does not have any savings. (Tr. 28-31) At the present time, she believes she is managing her finances because she paid some of her debts and is slowly paying others. (Tr. 20) She is 'trying to keep up with [her] bills" and not fall behind. (Tr. 25) The inheritance provides her a small cushion. She anticipates an income tax refund in the future that will provide her with additional money to help pay any outstanding bills. (Tr. 33-34)

Applicant's Performance Review for the last reporting period, ending in July 2006, noted acceptable performance in some areas and needing improvement in others. Her supervisor commented on the difficulties Applicant was experiencing because of her father's January death and mother's impending death at the time. (AX at 8-10)

### 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 1991 to the present, Applicant accumulated a significant amount of debt that she has been unable or unwilling to manage or pay, and was discharged in two Chapter 7 bankruptcies, one filed in 1991 and another in 2001. More recently, some of her debts remain delinquent.

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 conclude 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. Some of Applicant's debt is attributable to medical bills that accumulated over the years and can be considered a factor outside of her control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered FC MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, and conclude it applies. After receiving an inheritance in July 2006, Applicant paid the \$1,423 debt listed in ¶ 1.d. and the \$48 bill listed in ¶ 1.f. More recently, she paid \$100 on the \$386 debt listed in ¶ 1.e., and intends to make monthly payments to the creditors of the debts listed in ¶ 1.c. for \$524 and ¶ 1.g. for \$451.00. Because the law does not require one to have paid every debt in full, her efforts to repay and resolve some of the debt over the last several months is sufficient mitigation under this condition. ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)

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 and her intention to continue managing her finances. I gave particular weight to the fact that she has worked for her present employer for 20 years performing the same job, which she now does for the federal government and requires ADP eligibility. Over the course of those years, there is no

evidence of criminal conduct, alcohol or drug related incidents, or disciplinary problems at work. While her financial background, containing a record of two bankruptcies that were 10 years apart, is of some concern as to her reliability, her otherwise unblemished 20-year employment history is noteworthy. Based on that history and the amount of debt outstanding, coupled with her recent efforts to resolve the debt and manage her finances on a limited income, I do not believe her financial problems will recur, nor do I view her as an individual who would be potentially susceptible to coercion. After weighing all facts and evaluating the evidence in the context of the whole person, I conclude Applicant mitigated the security concerns raised by financial considerations. Accordingly, the allegations contained in the amended SOR under Guideline F are decided for her.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the amended SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline F (Financial Considerations) FOR APPLICANT

Subparagraphs 1.a.-g. For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Her application for eligibility is granted.

Shari Dam

Administrative Judge