

DATE: March 22, 2007

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In re:

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SSN: -----

Applicant for Public Trust Position

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ADP Case No. 06-15508

**ECISION OF ADMINISTRATIVE JUDGE**

**MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant accrued approximately \$18,000 of delinquent financial indebtedness between 1998 and 2006. Although she is in the process of getting these delinquencies discharged through the Chapter 7 bankruptcy process, it is too soon to conclude that the trustworthiness concern has been alleviated absent a demonstrated track record of financial reform. Eligibility to occupy a sensitive position is denied.

**STATEMENT OF THE CASE**

On October 11, 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 under Guideline F (financial considerations), 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. The SOR recommended a referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked. Applicant answered the SOR on November 8, 2006, and requested a hearing.

The case was assigned to me on December 21, 2006. A notice of hearing was issued on January 16, 2007 scheduling the case for January 31, 2007. The hearing was held as scheduled. During the hearing, I received four government exhibits, eleven Applicant exhibits, and Applicant's testimony.

**FINDINGS OF FACT**

Applicant admitted all of the allegations in the SOR. I have incorporated them into the findings of fact, and make the following additional findings of fact.

Applicant is a 33-year-old married woman with three children, ages 14, 12, and 10. She earned a high school diploma in 1991, and has worked for a defense contractor as a claims analyst since 1997. Her employer characterizes her as a "team player" and "an asset . . . to the company."<sup>(1)</sup>

Between 1998 and 2006, Applicant accrued nine delinquencies in the approximate amount of \$18,000. All of them remain outstanding. They include the amount owed for a bounced check (1.a.), two utility bills (1.b., and 1.j.), a credit card (1.c.), the deficiencies on two repossessed cars (1.e. and 1.f.), a delinquent car repair bill (1.h.), and a debt owed to a vacuum cleaner company (1.g.). Although Applicant admitted the debt listed in subparagraph 1.i., she does not know its nature.

Applicant accrued the debt listed in subparagraph 1.b. in approximately 2002. It constitutes an early cancellation fee incurred after ending a contract with a cell phone provider. Applicant originally disputed the fee, arguing that she ended the contract because of poor service. Currently, she acknowledges the delinquency.

The majority of Applicant's delinquencies relate to either delinquent car notes or delinquent car repair bills. In the late 1990's Applicant and her husband purchased a car. Shortly afterwards, it developed major maintenance problems. Subsequently, Applicant grew unable either to make the car note payments or pay for the repairs. In 2000, she arranged for it to be voluntarily repossessed. Subparagraph 1.h. is a delinquent repair bill on this vehicle, and subparagraph 1.f. is the deficiency remaining after the dealer resold it.

In 2001, Applicant and her husband purchased another car.<sup>(2)</sup> In mid-2003, her husband lost his job rendering them unable to make payments on the car note. Later that year, it was repossessed.

Applicant's husband has had a "very sporadic work history"<sup>(3)</sup> throughout their marriage. On average, he is unemployed approximately three months per year. Although his employment began to stabilize after he obtained a commercial driver's license in late 2003, he suffered injuries from a car accident in May 2006 that rendered him unable to work for seven months. His history of job insecurity exacerbated his wife's financial difficulties.

By August 2006, Applicant's monthly expenses, excluding any projected payments on her delinquencies, exceeded her monthly income by approximately \$400.<sup>(4)</sup> In early December 2006, Applicant met with an attorney to consider filing bankruptcy. After considering the different options he outlined, and saving money for a retainer, she hired him on January 23, 2007.<sup>(5)</sup> Applicant has opted to pursue a Chapter 7 bankruptcy. All of her delinquencies will be included in the bankruptcy, and she anticipates that they will be discharged by April 2007.<sup>(6)</sup> As part of the bankruptcy process, she will receive debt management counseling.

## 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, common sense decisions.

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (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 guideline is 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.

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." <sup>(7)</sup> 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 accrued approximately \$18,000 of delinquent financial indebtedness between 1998 and 2006 that she is unable to satisfy. Financial Considerations Disqualifying Conditions (FC DC) 1 (*Inability or unwillingness to satisfy debts*), FC DC 3 (*A history of not meeting financial obligations*), and FC DC 5 (*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.

Applicant is in the process of filing for Chapter 7 bankruptcy protection. She anticipates her debts will be discharged by April 2007. Financial Condition itigating Condition 4 (*The individual initiated a good-faith effort to repay overdue creditors or other wise resolve debts*) applies. None of the remaining mitigating conditions apply.

### **Whole-Person Concept**

Applicant's commitment to rehabilitating her finances demonstrated by preparing to file for Chapter 7 bankruptcy is commendable, but has minimal probative value given the length of time it took for her to address her delinquent debts, and the fact that they have yet to be discharged. Moreover, absent any counseling, it is impossible to conclude that the problem may not recur after the debts are discharged. Balancing these issues in the context of the whole-person concept, Applicant's financial problems continue to pose a trustworthiness concern. Eligibility is denied.

## FORMAL FINDINGS

Paragraph 1., Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: 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.

### **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. Exhibit B, Performance Review, dated January 17, 2007, at 4.
2. Exhibit 3, Credit Bureau Report, dated August 24, 2004, at 3.
3. Tr. 26.
4. Exhibit 2, Answer to Interrogatories, dated August 24, 2006, at 10.
5. Exhibit A, Attorney's Letter, ated January 23, 2007.
6. Tr. 32.
7. *See* Directive §§ 2.3, 2.5.3, 3.2, and 4.2.