

DATE: December 27, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 06-15765

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Melvin Howry, Esq., Department Counsel

FOR APPLICANT

Karl Briscoe, personal representative

SYNOPSIS

Applicant is a 32-year-old single mother of five who has lived on her own since she was 15. She has worked as a customer service representative for a federal contractor for approximately one year. Due to her circumstances she has accumulated delinquent debts. She sought financial counseling and set up a reasonable systematic repayment plan that she is following. Applicant successfully mitigated the trustworthiness concerns under Guideline F, financial considerations. It is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue 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 16, 2006 detailing the basis for its decision-concerns raised under Guideline F of the Regulation. Applicant answered the SOR in writing on September 6, 2006 and September 29, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on November 6, 2006. With the consent of the parties, I convened a hearing on December 5, 2006, to consider whether it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility to occupy an ADP I/II/III position. Official notice was taken of an exhibit to amend the SOR due to an administrative error. Applicant had been given prior notice of the amendment and did not object. The record was left open to allow Applicant an opportunity to submit additional material which she did in a timely manner. DOHA received the hearing transcript (Tr.) on December 13, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, 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 32-year-old single mother of five children. She has worked as a customer service representative for a federal contractor for about a year. She receives approximately \$50 child support, on an irregular basis, from her oldest child's father. In the past three months, he sent her \$210 each month. She does not receive any other child support for her other children.

When Applicant was 15 years old, her mother required her to stay home and take care of her brothers and sisters, rather than go to school. (1) Her mother was a drug addict. She has 11 half-brothers and half-sisters. Applicant quit school, moved out, and lived off of public assistance and occasional jobs. She obtained a drug and smoke-free apartment. Her mother used her name on certain accounts without Applicant's permission, and then did not pay the bills. Applicant had expenses of her own, including medical debts, that she did not pay. She filed for bankruptcy in 1999, and had her debts discharged. She began to accumulate debt again while trying to take care of her growing family. She decided she needed a fresh start. (2) She received her General Education Diploma and took out a student loan so she could go to nursing school and get a better job. In 1999, Applicant was involved in a costly child custody dispute which eventually cost her approximately \$21,000 in attorneys' fees and led her deeper in debt. (3) She was forced to quit school because she could not afford to pay for the attorney, work, and attend school. Her student loan became delinquent, but she eventually completely paid the \$9,000 loan. (4)

Applicant applied for a debt consolidation repayment program and received credit counseling. She signed the papers approximately one week prior to her hearing, because she had been on maternity leave and was not receiving full pay. (5) She has made one payment of \$491 toward the debt and has an automatic deduction set up to pay this amount monthly. (6) Through the program, she has been making payments toward the judgement listed in SOR ¶ 1.b. (7) The judgment included SOR ¶¶ 1.c-1.g, and they are all listed under the same named collection agency and are part of the consolidated repayment program. (8) She has already paid approximately \$1,200 toward the judgment through a garnishment. (9) She does not believe she has paid SOR ¶ 1.h. She does not know what the debt is for in 1.k and disputed it with the credit reporting company.

Applicant experienced medical problems in 2003, had major surgery, and accumulated debts associated with the medical bills. The debts associated with her medical bills are listed in SOR ¶¶ 1.i and 1.j. She has made arrangements through a consolidated repayment program to repay the two debts at a rate of \$23 a month. (10)

Applicant is now living with her fiancé, who is the father of her fifth child. They both are wage earners and able to meet their expenses. She has a solid repayment program that she is making payments toward. She is committed to resolving all of her debts. She has since resumed her employment at full pay after her maternity leave expired.

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 AP10.2.3.1. By memorandum dated 19 November 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 Regulations 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. Additionally, each trustworthiness determination must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. 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. Although the presence or absence of a particular condition or factor for or against a trustworthiness determination is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent debts. 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 information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline is set forth and discussed in the conclusions below.

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.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 1 (*A history of not meeting financial obligations*), and FC DC 3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant accumulated significant delinquent debts over the years that she has not paid.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 1 (*the behavior was not recent*), FC MC 2 (*it was an isolated incident*), FC C 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)*), FC MC 4 (*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*), and FC MC 6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant has delinquent debts that have not been paid, are still owed, and therefore recent debts. I find FC MC 1 does not apply. The number of debts negates the application of FC MC 2. Applicant left home at an early age due to unacceptable conditions. Her mother was on drugs and wanted her to care for her eleven half-brothers and sisters at the expense of going to school. Applicant eventually earned her GED and furthered her education. She was an immature teenaged single mother unfamiliar with being fiscally responsible. I find the situation Applicant found herself in was beyond her control. Although she made some bad choices, she did not choose to have a mother on drugs and be restricted from going to school so she could take care of children who were not her responsibility. I find FC MC 3 applies. Applicant acknowledges her immaturity at the time, but has since taken responsibility for repaying her debts. She participates in a debt consolidation repayment program to resolve her remaining debts. She repaid a large student loan. She and her fiancé are able to meet their expenses and she is able to systematically repay her delinquent debts. I find there are clear indications that the problem is being resolved, is under control, and she has initiated a good-faith effort to repay her creditors and resolve her debts. I also found Applicant credible in her desire to resolve all of her debts, not just through her words, but through the actions she has already taken. Therefore, FC MC 4 and 6 apply.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. 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 considered the whole person. I considered Applicant's upbringing and family life. I considered her attempts to make a better life for herself and her children. I also considered that she has set up a repayment plan and is making payments, and that she has a systematic plan to resolve her debts. I find Applicant has mitigated the trustworthiness concerns under Guideline F. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant eligibility for an ADP I/II/III position. Accordingly, Guideline F is decided for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.m. For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is granted.

Carol G. Ricciardello

Administrative Judge

1. Tr. 73-74.
2. Tr. 43.
3. AE C.
4. AE A, Tr. 25.
5. AE B, Tr. 87.
6. AE B, Tr. 91; AE D at 16.
7. Tr.55-59
8. AE D at 1-8.
9. Tr. 58.
10. AE D at 15.