

DATE: March 19, 2007

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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. 06-15758

## **DECISION OF ADMINISTRATIVE JUDGE**

**ARTHUR E. MARSHALL, JR.**

### **APPEARANCES**

#### **FOR GOVERNMENT**

J. Theodore Hammer, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro se*

### **SYNOPSIS**

Applicant is a 51-year-old claims examiner working for a Defense contractor. Between 1996 and 1997, she had the first of several costly back surgeries, was diagnosed with a life-threatening antigen disorder, and received her first citation for driving while intoxicated. She quit drinking by 2005, after learning she had a terminal hepatic condition. She demonstrated that she has reduced her general debt to about \$1,000, and shown an approximate balance of \$35,000 is directly attributable to extensive medical costs not covered by her insurer. Applicant has shown that neither her finances, nor her past criminal conduct or alcohol consumption pose an unacceptable trustworthiness risk. Eligibility for an ADP I/II/III position is granted.

### **STATEMENT OF THE CASE**

On August 31, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary determination that she was not eligible for assignment to information systems positions designated ADP I/II/III. <sup>(1)</sup> The SOR alleges trustworthiness concerns under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline G (Alcohol Consumption). Specifically, it alleges that she has 22 debts amounting to approximately \$37,691. Additionally, it alleges she was thrice arrested for operating a vehicle while intoxicated in the 1990s and cited for unlawful waste disposal in 2004.

A notarized, but undated, Answer to the SOR was received by DOHA on October 23, 2006. In that answer, Applicant admitted all but four of the delinquent obligations cited, five of the six allegations concerning criminal conduct, and the sole allegation raised under alcohol consumption. She declined to request a hearing. Consequently, the Government submitted the file of relevant material (FORM), containing its argument and eight supporting items, on December 13, 2006. Applicant received the FORM on December 19, 2006, and failed to timely provide any response within the 30-day period provided. A two-page letter further explaining her medical problems and financial situation, dated February 4, 2007, was ultimately received, however, and it was included in the FORM without objection. The case was assigned to me on February 22, 2007.

## FINDINGS OF FACT

Applicant's admissions to allegations in the SOR are incorporated herein. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 51-year-old claims examiner who has worked for the same Defense contractor since February 2004. A divorcée, she has a 26-year-old son who was born four years after she received her Bachelor of Science Degree. She was previously investigated for, and received, a security clearance in 1994.

In 1996, two of Applicant's vertebrae were diagnosed as destroyed. An initial surgery, the first of four, was performed to keep the bones in place. The billing for each surgery amounted to approximately \$100,000. While most of her medical costs were covered by her health insurance, Applicant was responsible for co-payments and other costs.

During her recuperation from the first surgery, Applicant began to drink alcohol excessively. She received her first Operating a Vehicle While Intoxicated (OWI) conviction over Memorial Day weekend of 1996. In June 1997, she experienced internal bleeding and learned that she had a life-threatening antigen that was making her ill. She was informed that alcohol consumption would exacerbate the problem. She continued to drink, however, and was arrested for her second OWI on or about August 13, 1997. She pled no contest to a lesser offense and was sentenced. The following week, on August 22, 1997, she was again arrested for OWI. Once more, she pled to a lesser offense and was sentenced. Around July 7, 1998, she was arrested for Operating a Vehicle With a Suspended Driver's License. She pled no contest to a lesser offense and was sentenced. Her fourth and final arrest for OWI came on or about July 6, 1999. Again, she pled no contest to a lesser offense and was sentenced. No subsequent alcohol-related incidents occurred.

By January 2001, at least one of Applicant's medical accounts had been assigned for collection, and other accounts were similarly turned over for collection in the subsequent four years.<sup>(2)</sup> Meanwhile, her medical obligations grew. Between January 2001 and June 2006, she would accrue approximately \$35,300 in delinquent medical debt not covered by her medical insurer, and about \$2,300 in other debt. In the interim, she sought to address her finances by borrowing against or liquidating her 401K retirement income account.<sup>(3)</sup> With that money, she claimed she satisfied four accounts cited in the SOR: She proved she satisfied the account noted in allegation 1.a (\$1,281), reducing her balance on non-medical debts to about \$1,000.<sup>(4)</sup> Although stated that she also satisfied the debts cited as allegations 1.e (\$438), 1.f (\$400), and 1.j (\$30), she did not provide any evidence corroborating this assertion or showing she disputed their entries on her credit bureau report.

By the end of 2004 or early in 2005, Applicant was told she had internal bleeding. She was given 1 to 10 years to live and told that complete cessation of alcohol would be to her advantage. This news led her to completely give up alcohol and helped her to focus on living. She was put on medication to control her condition, but severe incidents continued to occur. She was hospitalized five times in 2005, each stay lasting five to six days. Regular blood tests became required in order to monitor her condition. Her electrolyte levels became erratic, demanding regular monitoring. Medication such as ammonia has to be administered in-patient to stabilize her condition. She has declined more aggressive and expensive treatments for her liver problem, including a transplant.

Other symptoms emerged. Applicant would see or hear things, have periods where she was unable to draw conclusions, and she would lose things like keys and money. On August 18, 2006, she fell ill at work and was sent home to rest. Later that day, she went to the hospital, an event she would not remember the following day. She was diagnosed as having hepatic encephalopathy, a serious complication of liver failure that can affect cognitive brain function.<sup>(5)</sup> Medication provides only limited relief, so she is unsure as to how much longer she will be able to functionally work.<sup>(6)</sup>

Applicant's medical billing records corroborate many of the problems noted above.<sup>(7)</sup> Between July and December 2006, she received medical care on a monthly, if not weekly, basis. During this time, most of her visits involved blood studies, administration of ammonia supplements, psychotherapy, and a metabolic study. She has not tested positive for alcohol or drugs. Since February 2006, she stated she has been paying about \$157 to \$300 per month toward her medical bills, and her co-payment for medications is approximately \$48 to \$100 per month.<sup>(8)</sup> As an off-set to her exorbitant medical bills, she keeps her non-medical expenses low and has an apartment for which she only pays \$435

per month. Due to the overwhelming amount of necessary medical care, however, she has little money left to pay past debts.<sup>(9)</sup> As a result, she is preparing for bankruptcy to address her debts, noting: "There is urgency in the matter as I don't know my life expectancy or when I will be sick. The Dr.'s have told me under 8 years but that is difficult to predict."<sup>(10)</sup> "I just want to work as long as my health holds up and take care of business before I die."<sup>(11)</sup>

During these latter health crises, in July 2004, Applicant was issued a citation pursuant to the City Code of Ordinances, Section 7.321.<sup>(12)</sup> It was for unlawfully depositing regulated human waste. Such matters are heard before that city's municipal court, which does not hear criminal cases.<sup>(13)</sup>

When she failed to pay the ticket by mid-December 2004, she was cited for civil contempt and an arrest warrant was issued. Applicant was unaware of the warrant prior to receiving the SOR.

## **POLICIES**

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in the Regulation. "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."<sup>(14)</sup> Appendix 8 of the Regulation sets forth the personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"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>(15)</sup> Each eligibility determination must be a fair, impartial, and commonplace decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation.<sup>(16)</sup> An administrative judge should consider: (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 the 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>(17)</sup>

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made.<sup>(18)</sup> In security clearance cases, the Government initially 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>(19)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>(20)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [her] security clearance."<sup>(21)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(22)</sup> 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 presented a case for disqualification under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline G (Alcohol Consumption). For clarity, I will discuss each separately.

### ***Financial Considerations***

The trustworthiness concern arising from financial difficulties is that an individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds. Similarly, those who are financially irresponsible also may be similarly irresponsible, unconcerned, or careless in their obligation to protect classified information. Therefore, in assessing the risk posed by an individual, it is appropriate to examine one's responsibility or irresponsibility in one aspect of life in order to gauge how a person may act in other aspects. In this case, Applicant's

admissions and the evidence provided in the FORM prove the majority of Guideline F allegations, and raise Financial Considerations Disqualifying Condition (FC DC) 1 (*a history of not meeting financial obligations*) and FC DC 3 (*inability or unwillingness to satisfy debts*). Consequently, the burden shifts to Applicant to prove mitigating conditions.

Applicant claims that the majority of her debt is medically related, and the creditors noted in her credit bureau reports support that claim. [\(23\)](#)

She notes that she had multiple back surgeries owing to crushed or otherwise destroyed vertebra, starting in 1996, which was followed by a bout of alcohol abuse and dependence. In 1997, and again in late 2003 or early 2004, she suffered from internal bleeding related to a life threatening antigen that requires regular monitoring. Finally, hepatic encephalopathy, a complication of liver failure, was diagnosed in 2006.

None of Applicant's medical conditions, complications, or treatments were foreseeable. Moreover, Applicant had no ability to avoid their onset. Given this combination of unforeseen maladies and the extensive medical attention each demanded, Financial Considerations 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.

Applicant's provision of health insurance assured that a high percentage of each submitted medical claim would be directly paid by the insurer. The maintenance of that insurance policy and her payment of a non-medical judgment for \$1,281 demonstrate genuine efforts to address, not ignore, her largely medical debt. Moreover, her payment of the balances owed on her prescription medications demonstrates an attempt to curb the growth of her indebtedness to that area of her care. Taken together, Applicant has raised significant facts giving rise to FC MC 6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*)

### ***Criminal Conduct***

Criminal conduct raises a trustworthiness concern because a history or pattern of criminal activity creates doubt about one's judgment, reliability, and trustworthiness. Here, Applicant admits five of the allegations raised under this guideline. Based on the evidence submitted in the FORM, however, there is no basis to conclude that the municipal ordinance violation was a criminal offense. Further, regarding the related arrest warrant and contempt of court charge for failure to pay the resultant municipal fine, a warrant of which Applicant denies knowledge, the FORM does not contain any direct evidence supporting these allegations. Given her admission of the OWIs cited and the citation for driving on a suspended license, however, both Criminal Conduct Disqualifying Condition (CC DC) 1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC 2 (*a single serious crime or multiple lesser offenses*) apply. [\(24\)](#)

The driving related incidents at issue occurred between 1997 and 1999. Consequently, neither Applicant's OWIs nor her citation for driving on a suspended license are recent. Therefore, Criminal Conduct Mitigating Condition (CC MC) 1 (*the behavior was not recent*) applies.

Applicant's criminal conduct, all of which was alcohol-related or related to her past alcohol abuse, [\(25\)](#) was last exhibited in 1999. Applicant has since ceased all use of alcohol. For her to return to such abuse would have serious medical repercussions which are antithetical to her current health regimen and conduct. She quit using alcohol over two years ago and there is no evidence she has relapsed. Consequently, CC MC 5 (*there is clear evidence of successful rehabilitation*) applies to the alcohol-related criminal conduct. Similarly, with regard to Applicant's ability to comport her behavior with the prevailing rules of the road and general driving laws, she has not again been cited since her last offense. Therefore, CC MC 5 again applies.

### ***Alcohol Consumption***

The trustworthiness concern posed by alcohol consumption is that excessive consumption often leads to the exercise of questionable judgment, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. Here, Applicant admits she was arrested thrice for OWI. In all three situations, she pled

no contest to a lesser offense and was sentenced. Consequently, Alcohol Consumption Disqualifying Condition (AC DC) 1 (*alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*) applies.

The last alcohol-related incident occurred in July 1999. For grave medical reasons related to her liver function, Applicant had completely cut out the use of intoxicants by either late 2004 or early 2005. There is no indication of any alcohol-related incidents occurring since July 1999, nor is there any evidence she has consumed any amount of alcohol since eliminating its use. Consequently, Alcohol Consumption Mitigating Condition (AC MC) 2 (*the problem occurred a number of years ago and there is no indication of a recent problem*) applies.

Despite facts that show a course of alcoholic irresponsibility and self-destruction following Applicant's back injuries and through her initial diagnosis of an antigen problem, her outlook toward her future became cautiously optimistic and her main desire now is to see out the remainder of her life settling debts and continuing to work. As part of that shift in her outlook, she completely quit all alcohol use so as not to worsen her terminal medical condition. Given the potential hepatic repercussions should she again abuse alcohol, her commitment to stay alcohol-free is more than a moral imperative, it is also a medical necessity that she understands must be sustained. She has made whatever changes in her life needed to stay alcohol-free, and there is no evidence she has used alcohol since quitting its use a couple of years ago. Consequently, AC MC 3 (*positive changes in behavior supportive of sobriety*) also applies.

### ***"Whole Person" Considerations***

I have considered Applicant under the "whole person" concept. She is a mature, college-educated woman who raised a son to adulthood as a single mother before becoming besieged and beset with chronic, then terminal medical problems. Because of the severity of her medical problems and the extensive amount of medical care and supervision her condition has demanded, she acquired a significant amount of medical debt for which she could neither have preplanned nor funded through alternative means. To her credit, she responsibly maintained medical insurance, through which the majority of her medically accrued debt has been paid by her subscribed health insurer; as well, she did not give up medical insurance to increase her in-hand cash reserves or quit work in favor of edicaid. Moreover, she has made some progress over the years to make direct payments on her medical/prescription bills - albeit nominal - to supplement those payments made contractually on her behalf under her chosen health plan. Further, while the relatively quick fix of bankruptcy now seems inevitable, she had postponed a petition for such relief for an honorable reason: she feared entering into an agreement which might last beyond her medically projected lifetime. In short, this is not a woman who acquired delinquent debt through sloth, naiveté, or negligence; instead, it was acquired as a cruel consequence of an overwhelming and incessant amount of medical care received in a relatively compressed period of time.

Under these facts, and given her current health condition and prognosis, there is no indication that her debts present a risk that she might engage in illegal or unethical acts to generate funds. Moreover, I find there is nothing to suggest that her current inability to satisfy her medical balances reflects poor judgment, unreliability, untrustworthiness, carelessness, or a lack of concern. Similarly, with regard to those issues specifically arising under the guidelines for financial considerations, criminal conduct, and alcohol consumption, there is nothing to suggest that any of the consequences of her terminal illness, including her medical balances, would impact her present ability to protect classified information. Therefore, Applicant has mitigated financial considerations security concerns.

Applicant's last verifiable criminal conduct occurred in 1999. She then demonstrated sound judgment and an ability to reliably comport her conduct with regard to alcohol when she quit alcohol a couple of years ago for health reasons. Such facts mitigate security concerns arising from her past alcohol-related criminal conduct and alcohol consumption. Combined with the mitigating factors raised regarding her finances and an analysis of Applicant as a whole person, Applicant does not pose an unacceptable security risk based on any of the three trustworthiness guidelines raised. Consequently, I conclude that Applicant is entitled to a favorable eligibility determination.

### **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 (Financial Considerations) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Paragraph 2. Guideline J (Criminal Conduct) FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: For Applicant

Paragraph 3. Guideline G (Alcohol Consumption) FOR APPLICANT

Subparagraph 3.a: For Applicant

**DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for assignment to sensitive duties. Eligibility for positions designated ADP I/II/III is granted.

Arthur E. Marshall, Jr.

Administrative Judge

1. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The procedural rules set out in the Directive for security clearance cases are applied to ADP trustworthiness determinations. The adjudicative guidelines set out in DoD Regulation 5200-2R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation), are used to make ADP trustworthiness determinations.

2. Item 5 (Credit Bureau Report, dated July 28, 2005) at 7.
3. Applicant stated: "After I had received my 401K in May of 2004, I paid bills . . . ." She did not specify through what method she received those funds. *See* Item 4 (Answer to SOR, undated, but received on October 23, 2006) at 4.
4. Attachments, Response to the FORM, dated February 4, 2007 (Satisfaction of Judgment, dated June 21, 2004).
5. *See* [http://en.wikipedia.org/wiki/Hepatic\\_encephalopathy](http://en.wikipedia.org/wiki/Hepatic_encephalopathy) (available as of February 28, 2007).
6. Item 4, *supra*, at 4.
7. *See* Response to Form, *supra*, note 3.
8. *Compare* Item 4, *supra*, at 4, and Response to the FORM, *supra*, note 5.
9. Item 4, *supra*, at 4.
10. *Id.*
11. Response to the FORM, *supra*, note 5, at 2.
12. Item 8 (Record of City Violations, July 24, 2004) at 1.
13. Although Item 8, *supra*, note 12, references a "Crm Code: 55000," the document depicts the ticket type as "MUNI ORD," notes the applicable "Stat/Ord" as 7.321, and states it is regarding a city ordinance. The case was referred to the municipal court for hearing. Under [that state's] statutes (§800.02(1)), an action in municipal court for a violation of a municipal ordinance is a civil action, not criminal. The same is true for contempt orders and forfeitures arising from the municipal court. Further, [the city at issue's law] designates the municipal court as the neutral forum for hearing city ordinance cases, and it does not consider them to be criminal in nature; rather, cases involving health code violations, such as those raised under ordinance 7.321, are deemed forfeiture matters. *See, e.g.*, [Website of City at issue] regarding municipal court and jurisdiction, and that city's municipal code.
14. Regulation ¶ C6.1.1.1.
15. Regulation Appendix 8.
16. *Id.*
17. *Id.*
18. Regulation ¶ C8.2.1.
19. Directive, ¶ E3.1.14.
20. Directive ¶ E3.1.15.
21. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
22. Directive ¶ E2.2.2.
23. The first of the medical account delinquencies still noted in Applicant's credit bureau reports shows an assignment of the account as far back as January 2001.
24. Applicant admits, however, that she owed the related civil fine.
25. Applicant's driving on a suspended license came about because her license had been suspended after an OWI.

