

DATE: March 30, 2007

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In Re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 06-16663

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Braden M. Murphy, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 50-year-old employee of a defense contractor requesting eligibility for a position of public trust. She has delinquent debts she has not paid or addressed. She provides no explanation for not acting on the debts except to recently file a bankruptcy petition. She knew of the debts when completing her public trust position application but deliberately failed to list them. She has not met her burden to mitigate trustworthiness concerns for her finances and personal conduct. Eligibility is denied.

**STATEMENT OF THE CASE**

On August 31, 2006, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny an application for a position of public trust for Applicant. The action was taken under Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR on September 16, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Regulation.

Applicant answered the SOR in writing on September 28, 2006, admitting all of the allegations under both guidelines with explanation. She elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on February 2, 2007. Applicant received a complete file of relevant material (FORM) on February 14, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. She responded in an undated letter forwarding an initial bankruptcy petition filed by her attorney on March 8, 2007. On March 14, 2007, Department Counsel did not object to consideration of this response. The case was assigned to me on March 15, 2007.

**FINDINGS OF FACT**

Applicant is a 50-year-old employee of a defense contractor. As part of her employment requirements, she submitted a Questionnaire for a Public Trust Position on March 15, 2005.<sup>(1)</sup> Subsequent investigation and credit reports revealed Applicant has delinquent debts.

There are nine accounts with the same creditor placed for collection. Each account is for less than \$100, and the total owed for the nine accounts is \$567. In her response to the SOR, Applicant admits the debts and explains that the bank had mismanaged her account and she thought the accounts had cleared the bank and been paid. The first time she knew of the debts was when she received the SOR.<sup>(2)</sup> Applicant provided no information concerning inquires to or correspondence with the bank concerning why the accounts had not been paid.

There are three charged off or placed for collection accounts for credit cards or loans. The accounts are in the amount of \$3,707, \$3,058, and \$2,076. In her September 28, 2006, response to the SOR, Applicant admitted the debts with no explanation for their origin or any effort to satisfy them. She did note that she was in the process of filing for a Chapter 7 bankruptcy.<sup>(3)</sup> In her March 8, 2007, response to the FORM, Applicant did provide a bankruptcy petition filed by her attorney on March 8, 2007.<sup>(4)</sup>

Applicant answered "NO" to question 20 on her Public Trust Position Application which asks "Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government.)" Applicant had initially forgotten these debts because she had not heard from the creditors in over 4 years. However, Applicant admitted that a week before completing the application, she received a bill concerning these debts. She admitted deliberately providing a false answer to this question.<sup>(5)</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>(6)</sup> To be eligible to occupy an Information Systems Position designated ADP II/III, an applicant must meet the security guidelines contained in the Regulation. The standard that must be met 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>(7)</sup>

The Regulation sets out the adjudicative guidelines for making trustworthiness determinations. Appendix 8 of the Regulations sets forth adjudicative guidelines for determining trustworthiness, and lists the disqualifying conditions and mitigating conditions for each guideline. The adjudicative guidelines at issue in this case are:

**Guideline E: - Financial Considerations:** An eligibility concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations 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.

**Guideline E: - Personal Conduct:** An eligibility concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard sensitive information.

Conditions that could raise an eligibility concern and may be disqualifying, as well as those which would mitigate eligibility concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section 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 sensitive position. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. 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 applicant'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 of recurrence.<sup>(8)</sup>

DoD contractor personnel are afforded the rights to the procedures contained in the DoD Directive before any final unfavorable access determination may be made.<sup>(9)</sup> Initially, the Government must present evidence to establish facts in the SOR that may disqualify the Applicant from being eligible for access to sensitive information.<sup>(10)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(11)</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."<sup>(12)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."<sup>(13)</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>(14)</sup> Each clearance decision must be fair, impartial, commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation, Appendix 8. A person granted access to sensitive information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to sensitive information. The decision to deny an individual access to sensitive information is not necessarily a determination as to the loyalty of the applicant.<sup>(15)</sup> It is merely an indication that the applicant has not met the strict guidelines established for a position of public trust.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant's delinquent debts reported by credit reports and admitted by Applicant brings the matter within Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*), and E2.A6.1.2.3 (*an inability or unwillingness to satisfy debts*). Applicant provides no explanation how or why the debts were accumulated. I conclude the above disqualifying conditions have been established.

I considered Financial Consideration Mitigating Conditions E2.A6.1.3.1 (*The behavior was not recent*), and E2.A6.1.3.2 (*It was an isolated incident*). Applicant has not satisfied the debts and only recently filed a bankruptcy petition. There are nine debts to the same creditor, and three large debts to different creditors. The debts are not recent and not isolated, since they are long standing, not paid, and from various sources. The mitigating conditions do not apply.

I considered Financial Considerations Mitigating Condition E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant admitted to the debts. She only recently took some action to resolve them by filing the bankruptcy petition. Bankruptcy is a legal and permissible means of resolving debt. However, an applicant's actions in resolving debt by bankruptcy should be examined to determine how it affects her trustworthiness. Applicant's only explanation for some of her debt was the bank made mistakes with her account and she thought the debts were paid. She offers no information on the reasons the accounts were not paid or any contact between she and her bank. She offered no explanation for the remaining debts except she would file for bankruptcy. She stated in September 2006 that she would file the bankruptcy. She did not file the bankruptcy until March 2007, six months later. The record shows Applicant was irresponsible towards her finances by not inquiring of the status of her debts or not paying them. She belatedly filed a bankruptcy petition to help resolve the debts but many months after she said she would file. She did not explain the delay in filing. Her meager and belated efforts are not a good-faith attempt to resolve her debts.

I have considered the remaining financial consideration mitigating conditions. Applicant presented no information raising any other mitigating condition, so she has failed to carry her burden to establish mitigation for her debts. I conclude Applicant has not mitigated the security concerns for financial considerations.

Applicant's failure to list on her public trust application debts past due over 180 days brings the matter under Personal

Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from the personal security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness*). Applicant admitted she knew about the debts, but answered the financial question incorrectly. Since she knEw of the debt, her false answer was deliberate and misleading. I find Applicant deliberately failed to provide correct information in response to question 20 on the public trust position application.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for a position of public trust.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations 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

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue eligibility for assignment to sensitive duties for Applicant. Eligibility is denied.

Thomas M. Crean

Administrative Judge

1. Item 4.

2. Item 3.

3. *Id.*

4. *See*, Response to FORM.

5. Item 3.

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

7. Regulation ¶ C6.1.1.1.

8. Dod 5200.2-R, Appendix 8.

9. DoD 5200.2-R, ¶ C8.2.1.

10. Directive ¶ E3.1.14.

11. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

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

13. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

14. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

15. *See* Exec. Or. 10865 § 7.