

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. 06-16311

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHRISTOPHER GRAHAM**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 41-year-old employee of a federal contractor. She had six unpaid debts and she incorrectly answered one question which she did not understand on a public trust questionnaire. She went through a separation and divorce, she was unemployed for a period, her husband had accumulated debts in her name, and she was raising three young children. She has reduced her total indebtedness by 75% in the past two years. She answered the question as best she understood it. Using the "whole person" concept, she successfully mitigated the security concerns under Guideline F (financial considerations) and Guideline E.(personal conduct). Applicant's eligibility for assignment to a sensitive position is granted.

### **STATEMENT OF THE CASE**

On March 22, 2005, Applicant submitted a Public Trust Position Application (SF 85P). The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended and modified (the Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the Directive). On August 22, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleged facts under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of the Regulation. On September 14, 2006, Applicant responded to the allegations in the SOR, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on November 9, 2006. The FORM contained a request by the government to amend the opening paragraph of the SOR, by striking the language "*paragraph 3-614, Department of Defense Regulation 5200.2-R and paragraph 2.4.*" Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by December 9, 2006. In a three-page letter with six attached documents dated November 30, 2006, Applicant filed her response to the FORM. The government provided no legal basis for changing the guidelines, and I find there is none. The motion to amend the SOR is denied. The case was assigned to me on December 13, 2006.

### **FINDINGS OF FACT**

Applicant admitted all of the allegations contained in SOR subparagraph 1 and denied those contained in subparagraph 2. Her admissions are incorporated herein as findings of fact. I make the following additional findings of fact.

Applicant is a 41-year-old insurance specialist employed by a federal contractor.<sup>(1)</sup> She is divorced, has three children, has a bachelor's degree in social work, has no military service, and is seeking her first trustworthiness determination.<sup>(2)</sup>

As of July 17, 2006, Applicant had credit card debts of \$7,346, charged off in May 2003; \$7,811 charged off in November 2003; \$10,699 charged off in November 2003; and \$4,192 charged off in December 2003. There is a \$63 debt for cable television service placed for collection in January 2005. Finally, there was \$5,800 for an automobile, which was charged off in June 2005.<sup>(3)</sup>

Applicant incorrectly answered a question on a public trust questionnaire (SF 85P) executed by her on January 29, 2004, and reaffirmed on March 22, 2005. In response to "**Question 22 (b) Your financial delinquencies** Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government." She answered "No" and failed to disclose the first four delinquent accounts set out, above.

Applicant separated from her husband in December 2002 for domestic abuse reasons. Her divorce became final July 2, 2004. Her husband had established accounts in his name and in her name, and then used them for his business purposes. Shortly after her separation began, Applicant lost her job, and was not employed again until January 26, 2004. After the divorce, she had approximately \$120,000 of debt. She made attempts to settle debts, some with success, some not. Also, while the divorce was pending, a person renting space from her left leaving Applicant with the full rent to pay by herself. She hired a law firm to assist her in filing a chapter 128 petition, which is a state remedy that allows her to reduce the total amount that can be withheld from her paycheck to pay debts. She has reduced her debts to approximately \$30,000. Documents attached to her response to the FORM show her former husband's efforts to settle claims, the \$7,811 debt was paid in settlement for \$4,745, and the \$63 debt was paid.<sup>(4)</sup> She is working with the law firm to formalize settlement agreements with the remaining creditors.<sup>(5)</sup>

Applicant admitted that certain debts were outstanding. If a debt was settled, she did not consider it to be an outstanding debt. She was further confused because names of creditors changed as accounts were passed between and among collection agencies. It was difficult for her to determine what accounts were hers, what were her husband's, and what accounts had been settled. Applicant stated:

You state I lied by saying I have no outstanding debts/loans, etc., past due by 180 days. Perhaps I did not understand the question. I had already stated that the debts asked about were outstanding. If my other debts had already been settled by the law firm, I would not consider them to be outstanding yet. Again, I did not state when asked in the last interview that I did not have these debts, if not all of my debts were asked about, I believe there was no questions on them. With so many creditors changing names and been bought out I am still not sure which accounts are the same one in which ones are separate. If presented with a credit report today, I would have to have some of my own notes to try and determine which accounts are the same account. But I would not state these are not my accounts, most of which are during my marriage. I believe I answered truthfully as I understood of what was being asked of me.<sup>(6)</sup>

She did not deliberately falsify the answer to her SF 85P.<sup>(7)</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>(8)</sup> Applicants are eligible for an ADP I/II/III position "only upon a finding that it is clearly consistent with the national interest to do so."<sup>(9)</sup>

DoD Regulation 5200.2-R sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the trustworthiness of an applicant, the administrative

judge must also assess the adjudicative process factors: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future. [\(10\)](#) If an individual is denied eligibility for assignment to an ADP I/II/III position, it is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for granting eligibility.

## CONCLUSIONS

### **Guideline F--Financial Considerations**

The concern under Guideline F is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

The available information demonstrates Applicant has a history of not meeting her financial obligations. She has been delinquent in payments on six accounts. Financial Considerations Disqualifying Conditions (FC DC)1 (*A history of not meeting financial obligations*) and FC DC 3 (*Inability or unwillingness to satisfy debts*) are both applicable.

Various conditions can mitigate the trustworthiness concerns arising from financial difficulties. 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)*) is applicable in this case. Applicant's problems commenced when she separated from her husband due to abuse. She then went unemployed for a period. Two of the debts are paid and she is working with a law firm to protect her earnings and to formalize settlement agreement with the remaining creditors. Following the divorce, her debts amounted to \$120,000, and through her efforts, she has reduced the outstanding balance to \$30,000. FC MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts*) is applicable because Applicant has made a substantial effort over the past two years to resolve her debts. She is not required to have paid all of her debts, but to have made a good-faith effort toward resolving them. Working with her law firm and reducing her debts by 75% demonstrates her good-faith effort at resolving her indebtedness.

### **Guideline E--Personal Conduct**

The concern under Guideline E (Personal Conduct) is that conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard sensitive information." [\(11\)](#)

Personal Conduct Disqualifying Condition (PC DC) 2 (*The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) is the test to determine if Applicant has violated this guideline. The key word is "deliberate."

Applicant was confused about what were her debts and what were the debts of her former spouse, she had trouble reading a credit bureau report, and she believed that if she had reached a settlement with a creditor it was not "outstanding." Her beliefs and understanding may have been incorrect, but she answered the question to the best of her ability and understanding and did not deliberately try to deceive the government.

### **Whole Person Analysis**

The adjudicative process is an examination of a sufficient period of a person's life to make a determination whether or not a person is eligible for an ADP I/II/III position. All of the information contained in the case file about the person, past and present, favorable and unfavorable, must be considered in making a determination. In evaluating Applicant's case, in addition to the disqualifying and mitigating conditions, I also considered the "whole person" concept in

[\(12\)](#)

evaluating Applicant's risk and vulnerability in protecting our national interests. I considered her age (41), her education, her employment, and what might be the cause of her financial problems. Applicant made the decision to remove herself and her children from an abusive home. She made the decision she thought was in the best interests of her family. She should not be punished because it had an adverse impact on her finances. Her financial problems arose from a combination of circumstances. She was living on her own with three young children. She lost her job. A person sharing living quarters with her left adding additional financial burden to her. Since the divorce, she has reduced her overall indebtedness by 75%. She has worked with her law firm to pay or settle her remaining debts.

With regard to her personal conduct issues, I have no concerns about her reliability, judgment, and honesty. I believe she answered the questions on the SF 85P as she understood the questions. She may have misunderstood the question but she did not deliberately lie. The totality of the circumstances and her actions in light of the hardships she encountered lead me to conclude she is a person of character. This record raises no reasonable and persistent doubts about Applicant's ability to protect sensitive information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude Guideline F and Guideline E for Applicant. Applicant is qualified for a favorable eligibility determination.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: 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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: 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 Applicant's eligibility for assignment to an ADP I/II/III position. Eligibility is granted.

Christopher Graham

Administrative Judge

1. Item 4 (Public Trust Position Application (SF 85P), dated March 22, 2005) at 1-3.
2. *Id.* at 2-8.
3. Item 5 (Credit Bureau Report, dated July 17, 2006) at 1-3.
4. Applicant's Response to the FORM, letter dated November 30, 2006, at 1-3, and Attachments 1-6.
5. *Id.*

6. Applicant's Response to the FORM, *supra*, note 4, at 2-3.

7. *Id.*

8. <sup>0</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

9. <sup>0</sup>DoD Regulation 5200.2-R, ¶ CG.1.1.

10. Regulation, Appendix 8, at 132.

11. Regulation, Appendix 8.

12. *Id.*