

DATE: January 30, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-16122

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Following the break-up of a 16-year relationship with a man Applicant referred to as her "life partner," she moved to a different part of the country and began a new life. Before leaving, her "life partner" assured her he would pay their jointly accrued debt. That did not happen. When Applicant became aware of her indebtedness as a result of these proceedings, she made a good-faith effort to pay or resolve all her debts. Her honest belief she had no debt explains her denying she had any debt over 180 days delinquent on her Public Trust Position Application. Having mitigated financial considerations and personal conduct concerns, designation to hold a position of trust is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant eligibility for a public-trust position under the applicable Defense Department regulation and directive. ⁽¹⁾ On August 22, 2006, DOHA issued a statement of reasons (SOR) detailing the basis for its action. The SOR--which in essence is the administrative complaint--alleges concerns about Applicant's trustworthiness under Guideline F for financial considerations, and Guideline E for personal conduct.

Applicant answered the SOR on September 13, 2006, and requested a hearing before a DOHA administrative judge. On October 26, 2006, the case was assigned to me to conduct a hearing to determine whether it was clearly consistent with the interests of national security to assign Applicant to a sensitive position. On November 13, 2006, DOHA issued a notice of hearing scheduling a hearing for December 1, 2006.

On November 27, 2006, the government by written motion (GE 4) moved to amend the SOR by deleting the introductory paragraph in its entirety and replacing it with the following text:

A review of your eligibility for occupying Information Systems Position designated ADP I/II/III to support a contract with the Department of Defense (DoD) has been made pursuant to DoD Directive 5220.6, dated January 2, 1992. This

office recommends that your case be submitted to an Administrative Judge for a determination that you are not eligible for occupying such a position. This recommendation is based on the following reasons:

At the hearing, I granted the government's motion to amend without objection. At the hearing, three government exhibits (GE 1 - 3) were admitted without objection. The Applicant submitted a binder containing numerous documents that was collectively marked and admitted as Applicant Exhibit A (AE A) without objection. Applicant submitted three separate sets of post-hearing documents that were marked and admitted as AE B - D without objection. No witnesses testified on behalf of the government or Applicant. DOHA received the transcript on December 11, 2006.

FINDINGS OF FACT

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

Applicant is a 55-year-old service center manager of a Department of Defense contractor, and has been continuously employed with that contractor since July 2004. Before that, she had worked for a different contractor from November 2002 to July 2004 first as a customer service representative and later as a service center manager. GE 1. She has access to sensitive personal and medical information in her daily duties, which include making referrals to outside specialists and dealing with billing and insurance issues.

Applicant graduated from high school in June 1969, and since then has earned approximately 15 college credit hours. Tr. 20. Applicant was previously married from March 1973 to March 1979, and that marriage ended by divorce. She has no dependents.

The SOR alleges Applicant is in arrears on 10 debts. The table below presents details about the debts alleged in the SOR, their current status, and cites to relevant parts of the record.

Debt	Nature and Amount in SOR	Current Status	Status
Debt 1/SOR ¶ 1.a.	Medical bill collection account \$124.00.	Settled for lesser amount of \$74.64. Paid in full.	Response to SOR, Tr. 21-23, AE (1).
Debt 2/SOR ¶ 1.b.	Credit card collection account \$6,252.00.	Initiated good-faith effort to repay/resolve debt.	Response to SOR, Tr. 23-27, AE C(4), AE C(5).
Debt 3/SOR ¶ 1.c.	Credit card collection account \$6,154.00.	Settled for lesser amount of three \$1,025.70 payments. Current on payments.	Response to SOR, Tr. 27-30, AE A(1)(2A), AE B, AE D.
Debt 4/SOR ¶ 1.d.	Phone company collection account \$668.00.	Paid in full.	Response to SOR, Tr. 30-31, AE A(1)(3).
Debt 5/SOR ¶ 1.e.	Medical bill collection account \$156.00.	Paid in full.	Response to SOR, Tr. 31-33, AE A(1)(4).
Debt 6/SOR ¶ 1.f.	Medical bill collection account \$362.00.	Paid in full.	Response to SOR, Tr. 31-33, AE A(1)(4).
Debt 7/SOR ¶ 1.g.	Medical bill collection account \$692.00.	Paid in full.	Response to SOR, Tr. 31-33, AE A(1)(4).
Debt 8/SOR ¶	Phone company collection account	Paid in full.	Response to SOR, Tr. 33-39, AE A, AE C(2), AE C(3).

1.h.	\$234.00.		
Debt 9/SOR/¶ 1.i.	Phone company collection account \$234.00.	Disputed and account removed from credit reports. Duplicate of Debt 8.	Response to SOR, Tr. 33-39, GE2, AE A, AE C(2), AE C(3)
Debt 10/SOR ¶ 1.j.	Phone company collection account \$141.00.	Paid in full.	Response to SOR, Tr. 39-42, AE A(2)(5).

As the above chart reflects, Applicant has paid or otherwise resolved her debts. She submitted a monthly budget indicating she has a current net remainder of \$138.34 per month, which will increase to \$522.38 per month in June 2007. Applicant stated her financial difficulties arose following the termination of a 16-year relationship she had with her "life partner" from 1986 to 2002. She and her "life partner" owned a house together and co-mingled a number of their accounts. When her "life partner" terminated their relationship, Applicant incurred a costly move to another part of the country to be near her family. Before Applicant left, her "life partner" assured her that he would to pay the bills when she left.

Applicant credibly testified that when she answered Question 20 on the Public Trust Position Application, which asked whether she was over 180 days delinquent on any loan or financial obligation, that she honestly and correctly answered "No." As indicated above, Applicant believed her "life partner" was going to pay the bills when she left. That did not happen. She testified,

And I thought it (debt) was being taken care of. I didn't know anything was 180 days late. And in defense of myself, I've never really looked at too much of a credit report on myself. I know it's crazy not to, you know. I had a car, bought a car. They ran my credit. They had no problem giving me a car. I didn't think about ever pulling a credit report. I don't - I paid cash mostly all the time. Everything I currently have in my name has been paid on time every month. I've never been delinquent in my car payments. Tr. 43.

When Applicant attempted to contact her former "life partner" by telephone about these debts, his "new young" wife hung up on her. Tr. 69.

Work references and customer surveys confirm Applicant's value and dedication to her job. AE A (Letters).

POLICIES

The adjudicative guidelines set out in the Regulation apply to ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable determination may be made.⁽²⁾ Appendix 8 of the Regulation sets forth personnel security guidelines and the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline.

Under the Regulation, "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."⁽³⁾ Each eligibility determination must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation. For example, 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 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.

BURDEN OF PROOF

The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽⁴⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain,

extenuate, or mitigate facts that have been admitted or proven. (5) In addition, an applicant has the ultimate burden of persuasion to obtain a favorable decision. (6)

CONCLUSIONS

Guideline F-Financial Considerations

Under Guideline F, a concern typically exists for two different types of situations--significant unpaid debt and unexplained affluence. 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. E2.A6.1.1. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding sensitive information.

Here, based on the record evidence as a whole, a concern is raised under Guideline F. Under the Financial Considerations guideline E2.A6.1.2.1. DC (1) *a history of not meeting financial obligations*, and E2.A6.1.2.3. DC (3) *inability or unwillingness to satisfy debts*, are implicated.

I reviewed the Mitigating Conditions under the Guideline and conclude Applicant receives credit in mitigation. E2.A6.1.3.3. 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)* must be considered. The origin of her indebtedness can be traced to the fallout after a 16-year relationship ended with her "life partner." Before leaving the home she and her "life partner" owned and maintained together, and moving to a different part of the country to be near her family, she was assured the debts they accumulated would be paid. All her bills were sent to the home of her "life partner," and after she left, she had no reason to believe he was not living up to his word. Confirming this assertion, was her applying for and receiving an automobile loan without difficulty.

She was not aware of her indebtedness until she became an Applicant for a Trustworthiness Determination. Also applicable is E2.A6.1.3.6 MC (6), *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. After becoming aware of her indebtedness, Applicant either paid, resolved or attempted to resolve each and every debt. Unable to resolve Debt 2 by dealing directly with the creditor, she retained the services of a law firm. Her efforts regarding Debt 2 demonstrate good faith on her part.

Guideline E-Personal Conduct

Under Guideline E, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with the rules and regulations could indicate that the person may not properly safeguard classified information. E2.A5.1.1.

I have considered all of the personal conduct disqualifying conditions and conclude none apply. I find Applicant did not intentionally falsify her Public Trust Position Application because she believed she was providing honest information. She credibly explained she believed her 16-year "life partner" would pay their joint debts. It was evident from Applicant's demeanor this was a particularly painful event in her life. After moving to a different part of the country, she had little reason to communicate with her "life partner, and when she did, her attempts were thwarted by his new wife.

Applicant did not receive any bills from the creditors listed in the SOR. She did not become aware of them until this action. She applied for and received a loan for an automobile. While Applicant could reasonably have been expected to be more diligent about checking on the status of her debts, her judgment lapses are not enough to impute knowing and willful falsification under Guideline E.

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 the circumstances leading up to Applicant's indebtedness. I considered the good character evidence provided. In particular, I noted the good-faith efforts Applicant has made to pay or resolve her debts. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, I conclude for Applicant on Guidelines F and E.

FORMAL FINDINGS

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

Paragraph 1-Guideline F: For Applicant

Subparagraphs 1.a.-1.j.: For Applicant

Paragraph 2-Guideline E: For Applicant

Subparagraph 2.a.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for assignment to a public-trust position. Eligibility is granted.

Robert J. Tuider

Administrative Judge

1. Department of Defense (DoD) Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Regulation, Paragraph C8.2.1.
3. Regulation, Appendix 8 at 132.
4. Directive, Enclosure 3, Item E3.1.14.
5. Directive, Enclosure 3, Item E3.1.15.
6. Directive, Enclosure 3, Item E3.1.15.