

DATE: March 19, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 06-16850

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued approximately \$11,600 of delinquent financial indebtedness between 1999 and 2006. Although her adherence to a debt repayment plan through a Chapter 13 bankruptcy order since November 2006 constitutes a step in the right direction, it is too soon to conclude that the trustworthiness concern has been alleviated. Eligibility to occupy a sensitive position is denied.

STATEMENT OF THE CASE

On August 24, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Regulation 5200.2-R., *Personnel Security Program*, dated January 1987, as amended, (Regulation); and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended. (Directive).

The SOR detailed reasons under Guideline F (financial considerations) why DOHA could not make a preliminary affirmative finding that it was clearly consistent with the interest of national security to grant or continue Applicant's eligibility for occupying a sensitive position in support a contract with the Department of Defense, and recommended a referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked. Applicant answered the SOR on November 29, 2006, and requested a hearing.

The case was assigned to me on December 21, 2006. A notice of hearing was issued on January 12, 2007 scheduling the case for January 31, 2007. The hearing was held as scheduled. At the beginning of the hearing, Department Counsel moved to amend the SOR to delete any reference to the DoD Regulation 5200.2-R. After reserving judgment until after the close of the hearing, I considered it, and denied it.

During the hearing, I received five government exhibits, eight Applicant exhibits, and Applicant's testimony. DOHA received the transcript on February 15, 2007.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations. I have incorporated them into the findings of fact, and make the following additional findings.

Applicant is a 36-year-old married woman with two children, ages thirteen and three. Her ex-husband, whom she divorced in 1993, is the father of the oldest child.⁽¹⁾ He has provided minimal child support over the years. She has been married to her current husband since 2000. Since 1993, she has worked as a claims adjuster for a defense contractor.

Between 1999 and 2006, Applicant accrued fifteen delinquent debts in the approximate amount of \$11,600. All are currently outstanding. One is a utility bill (subparagraph 1.a.), eight are medical bills (subparagraphs 1.b. through 1.d., 1.j. through 1.n.), and eight are credit card bills (subparagraphs 1.e. through 1.h., 1.o. through 1.p.).⁽²⁾ Her financial delinquencies accrued primarily as the result of medical expenses she incurred relating to the six-week premature birth of her second child in 2003, and the lost income she incurred while on maternity leave during this period.⁽³⁾

Applicant met with an investigator in November 2005. When confronted with these delinquencies, she explained that she was unable to pay them.⁽⁴⁾ Eight months later, she was still unable to make any payments.⁽⁵⁾ In October 2006 she retained an attorney to file for Chapter 13 bankruptcy on her behalf. Under the bankruptcy plan, Applicant is to satisfy \$13,200 of delinquent debt, including all of the SOR delinquencies, through monthly \$220 payments deducted from her salary.⁽⁶⁾ The length of time allotted for Applicant to pay the debts through the bankruptcy schedule is inconclusive from the record. Currently, she has made three payments.⁽⁷⁾

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.⁽⁸⁾

Positions designated as ADP I and ADP II are classified as "sensitive positions."⁽⁹⁾ "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."⁽¹⁰⁾ Appendix 8 of the Regulation sets forth 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."⁽¹¹⁾ 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. An administrative judge should consider: 1) the nature 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 absence or presence 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.⁽¹²⁾

The following adjudicative guideline is raised:

Guideline F - Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Since the protection of national security (and sensitive information) is the paramount consideration, the final decision in each case must be reached by applying the standard that the determination of an applicant's eligibility for occupying an Information Systems Position is "clearly consistent with the national interest."⁽¹³⁾

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. ⁽¹⁴⁾ The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable trustworthiness determination. ⁽¹⁵⁾ These same burdens of proof apply to trustworthiness determinations for ADP positions.

CONCLUSIONS

Financial Considerations

Applicant has struggled with her finances since approximately 1999, accruing debts in excess of \$11,600. As recently as July 2006, she could not afford to make any payments toward their satisfaction. Financial Considerations Disqualifying Conditions (FC DC) 1 (*A history of not meeting financial obligations*), and FC DC 3 (*Inability or unwillingness to satisfy debts*) apply.

Although Applicant experienced financial difficulties prior to the birth of her second child in 2003, the associated medical expenses and time lost from work during that period, greatly exacerbated them. 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 filed for Chapter 13 bankruptcy protection in October 2006. Each month beginning in November 2006, she has been paying her creditors \$220 through a court-ordered debt repayment plan. FC MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

Whole-Person Concept

Applicant was aware that her financial delinquencies posed a trustworthiness concern as early as November 2005. She did not take any steps to resolve them until nearly 15 months later, when she retained an attorney to initiate her Chapter 13 bankruptcy filing. Her adherence to the Chapter 13 bankruptcy debt repayment plan for the past three months is commendable. However, it remains to be seen whether she can continue to adhere to it in light of her past statements that she could not make payments on her delinquencies while staying current on her routine, cost-of-living expenses. Balancing these lingering concerns in conjunction with the factors enunciated in the whole-person concept, I conclude Applicant has not mitigated the trustworthiness concern.

FORMAL FINDINGS

Paragraph 1., Guideline F: AGAINST THE APPLICANT

Subparagraphs 1.a. through 1.t.: Against Applicant

DECISION

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

Marc E. Curry

Administrative Judge

1. Tr. 28.
2. The SOR alleges 17 debts. Subparagraph 1.i is a duplicate of subparagraph 1.h., and subparagraph 1.s. is a duplicate of 1.e.

3. Tr. 22.
4. Exhibit 2, Letter from Applicant to DOHA Adjudicator, received July 17, 2006.
5. Exhibit 3, Applicant's Response to Interrogatories, dated July 14, 2006.
6. Exhibit A, Bankruptcy Records, downloaded from Internet on December 23, 2006.
7. Tr. 27.
8. Regulation ¶C8.2.1.
9. Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.
10. Regulation ¶ C6.1.1.1.
11. Appendix 8 at 132.
12. *Id.*
13. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
14. Directive ¶E3.1.14.
15. Directive ¶E3.1.15.