

DATE: December 29, 2006

In re:

SSN: -----

Applicant for ADP I/II/II Position

ADP Case No. 06-16945

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In May 1998, Applicant filed for Chapter 7 bankruptcy after incurring too much credit card debt. Her debts were discharged in August 1998. She continues to have financial problems. She has five delinquent debts totaling approximately \$11,738. She is unable to pay her debts since her household expenses operate at a \$434 deficit each month. She failed to list her delinquent accounts on her trustworthiness application. She has failed to mitigate the trustworthiness concerns raised under financial considerations and personal conduct. Applicant's eligibility for a assignment to a sensitive position is denied.

STATEMENT OF CASE

On September 9, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). [\(1\)](#) On August 31, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.

In a sworn statement dated September 18, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on October 19, 2006. A notice of hearing was issued on November 3, 2006, scheduling the hearing for November 29, 2006. The hearing was conducted on that date. The government submitted Government Exhibits (Gov Ex) 1- 4 which were admitted into the record without objection. Applicant testified on her own behalf, and submitted eight exhibits which were marked as Applicant Exhibits (AE) A-H, and admitted without objection. The record was held open until December 13, 2006, to allow Applicant to submit further documents. A 30 page document was timely submitted, marked as AE I and admitted without objection. DOHA received the hearing transcript (Tr.) on December 8, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits to all the SOR allegations. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 32-year-old woman employed as a data management specialist for a Department of Defense contractor who is seeking a position of public trust. She has worked for her employer for three years. She has a high school diploma and some college credit.⁽²⁾ She is married and has a daughter, age 12, from a prior relationship, and two sons with her husband, ages four and one.⁽³⁾

On May 1, 1998, Applicant filed for Chapter 7 bankruptcy. She listed \$2,276 in total assets and \$5,399 in total liabilities. On August 25, 1998, her debts were discharged.⁽⁴⁾ At the time of her bankruptcy, she was a single mother. She was not receiving child support from her daughter's father. She got into too much credit card debt and thought her only option was to file for bankruptcy.⁽⁵⁾

In August 1999, Applicant bought a new car. She was unable to keep up with the payments and voluntarily returned the car in 2001. The car was resold and she owes approximately \$8,903. With late fees, the current balance is approximately \$9,625.⁽⁶⁾

On August 11, 2003, Applicant completed a Public Trust Position Application (SF 85-P).⁽⁷⁾ She re-signed the SF 85-P on September 9, 2004. She answered "No" in response to question 20. Your Financial Record - 180 Day Delinquencies which reads: "Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government.)." Her background investigation revealed five delinquent accounts with a total approximate balance of \$11,738.⁽⁸⁾ The accounts included a \$30 bounced check account placed for collection in November 2001 (SOR ¶ 1.b);⁽⁹⁾ an \$828 credit card account placed for collection in June 2002 (SOR ¶ 1.c);⁽¹⁰⁾ a \$9,564 account related to her automobile repossession placed for collection in September 2002 (SOR ¶ 1.d);⁽¹¹⁾ a \$1,154 student loan account charged off in September 2003 (SOR ¶ 1.e);⁽¹²⁾ and a \$162 account placed for collection in March 2006. (SOR ¶ 1.e).⁽¹³⁾

Applicant claims the debt alleged in SOR ¶ 1.d was sold to another student loan financial company. She makes sporadic payments on this account.⁽¹⁴⁾ Although she admitted to the debt alleged in SOR ¶ 1.e in her answer to the SOR, she now disputes the account after having learned the name of the original creditor. She claims she never had an account with this creditor.⁽¹⁵⁾

Applicant has not made any payments on her delinquent debts. On November 1, 2006, she consulted a consumer credit counseling agency.⁽¹⁶⁾ The credit counseling agency drew up a client action plan. Applicant and her husband are \$19,645 in debt. The cause of the debts are reduced income, excessive use of credit, no budget, lack of budgeting skills, and nonpayment.⁽¹⁷⁾ A proposed budget was drafted. Applicant and her husband's total household income is \$3,900 per month. Their total expenses are \$4,334 per month. They have a monthly deficit of \$434 per month. This does not take into account any payments made towards the delinquent debts.⁽¹⁸⁾

The credit counseling agency advised her that her option was to file bankruptcy or deal with the credit she has since her debt to income ratio was not good.⁽¹⁹⁾ The credit counselor advised her to send each creditor a small check for about \$25 to \$50 and write in the memo, "Upon cashing this check, you are agreeing to remove any and all info from my credit." If the creditor cashes the check then Applicant is to send a letter to the credit bureau to ask them to remove the accounts from her credit report.⁽²⁰⁾ Applicant claims that four of the five checks have been cashed and she is now disputing the debts with the credit reporting agencies.⁽²¹⁾

On May 31, 2005, Applicant was interviewed by a Special Agent of the Office of Personnel Management. She provided

a statement explaining her financial situation. She stated that she intended to contact her creditors and arrange to make payments on her delinquent accounts. ⁽²²⁾ She was unable to arrange payments due to the expenses of a new baby, born in September 2005. She was also involved in a car accident in February 2006, which resulted in \$6,000 damage to her car. ⁽²³⁾

In her answer to the SOR, Applicant indicated that she did not list her delinquent debts on her public trust position application because she thought she had already provided the information to the special agent who interviewed her in conjunction with her trustworthiness determination. ⁽²⁴⁾

At hearing, Applicant claimed that if she answered "No" in response to question 20 on her trustworthiness application, it was a mistake. She claims she entered several debts from her credit report into the computer when she first filled out the SF 85P but they did not show up on the application. ⁽²⁵⁾ She indicates that the trustworthiness application was signed two times. When she signed the application for a second time, she was in a rush to turn the application in so she may not have thoroughly reviewed her answers when she re-signed the SF 85P. ⁽²⁶⁾ She admits that she was aware that she had delinquent accounts since she and her husband were trying to buy a house but could not explain why the delinquent debts were not listed in response to question 20 of the trustworthiness application. ⁽²⁷⁾

Applicant's performance evaluations indicate that she consistently meets expectations. Her June 2004 performance evaluation indicates that she is willing to pitch in wherever needed. Her 2005 evaluation indicates that she remains a valuable asset to the team. ⁽²⁸⁾ She has received numerous awards for her duty performance. ⁽²⁹⁾

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." ⁽³⁰⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F - Financial Considerations - 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. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive 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 - Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions 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 security clearance." ⁽³¹⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. ⁽³²⁾ An administrative judge should consider the following factors: (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.⁽³³⁾

Initially, the Government 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.⁽³⁴⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽³⁵⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³⁶⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽³⁷⁾ 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 established a *prima facie* case for disqualification under Guideline F - Financial Considerations, and Guideline E - Personal Conduct.

Financial Considerations

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. In 1998, she first ran into financial difficulties by accumulating too much credit card debt which resulted in her 1998 Chapter 7 bankruptcy. She continues to have financial difficulties. Currently, she has five delinquent debts with an approximate total balance of \$11,738. Applicant and her husband have a negative monthly balance each month. They are unable to pay their current debts and are getting further into debt.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant's delinquent debts remain outstanding. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*) because she still carries a significant amount of delinquent debt.

FC MC E2.A6.1.3.3 (*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, in part. Applicant was involved in an automobile accident in February 2006 which caused \$6,000 in damage to one of the family cars. Although MC 3 applies, an applicant's actions towards resolving the debt should be considered as well. Applicant did not address her delinquent accounts until just prior to the hearing. As such, I give MC 3 less weight.

FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*) does not apply. Even though Applicant consulted a credit counseling agency in November 2006, the resolution of her financial situation is not going to be resolved in the near future. The family budget operates at a deficit of \$434 each month. She has no plan to resolve these debts. Although she took the advice of a credit counselor to send \$25 to each of her creditors as payment in full, I doubt that this method will prove successful in removing the delinquent accounts from her credit report. Her financial problems remain.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. In May 2005, Applicant indicated that she intended to contact her creditors to make arrangements for payment plans. At the close of the record, she had not entered into a formal repayment plan with any of her creditors. She did not consult a credit counselor until November 2006. She waited too late to attempt to resolve her accounts. It appears that even if she wanted to resolve her accounts, she is unable to do so at this time. I cannot conclude that she made a good-faith effort to resolve her debts.

Applicant has not mitigated the financial considerations trustworthiness concern. Guideline F is decided against Applicant.

Personal Conduct

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified and/or sensitive information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a trustworthiness concern. It is deliberate if it is done knowingly and willfully.

In this case, Applicant provided conflicting versions as to why she did not list her delinquent debts in response to question 20 on the public trust application. In her answer to the SOR, she claims that she did not think she needed to list it because she had discussed her debts with the investigator conducting her trustworthiness application. The investigator did not interview Applicant until May 2005. She signed her trustworthiness application on August 11, 2003, and on September 9, 2004.

At hearing, she testified that she provided information regarding several of her delinquent debts when she first filled out the application but somehow they were not transferred on the final form. The record was held open to allow her the opportunity to look through her work files to see if the list was in her files. After the hearing, she submitted an e-mail which reveals that she inquired about the matter but no documents were provided. She claims that when she re-signed the public trust application in September 2004, she was in a hurry and more than likely made a mistake when she answered "no" to question 20. She admits that she was aware of the financial delinquencies since she and her husband were trying to buy a house.

Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*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*) applies. Although Applicant claims that she did not deliberately falsify her trustworthiness application, she has provided too many conflicting and inconsistent statements for me to conclude that she did not deliberately fail to list her delinquent debts on her trustworthiness application. When she signed the application, she certified that her answers were "true, complete, and correct to best of her knowledge and belief and are made in good faith." She admits that she was aware of the delinquent debts but cannot provide an adequate explanation for their omission on her public trust application. I find her actions were deliberate.

I find that none of the mitigating conditions apply under personal conduct. Applicant has failed to mitigate the personal conduct concern. Guideline E is decided against Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. 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 have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. An applicant with a good or even exemplary work history may engage in conduct that has negative trustworthiness implications. It is premature to grant Applicant a trustworthiness position based on her deliberate failure to disclose her delinquent debts and her lack of action towards resolving her delinquent accounts. Based on the evidence in the record, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

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: 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all of the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.

2. Tr. at 6, 58; Gov Ex 1; AE I.

3. Tr. at 54.

4. Gov 1, question 19; Gov 2 at 1-2; Gov 3 at 1; Gov 4 at 2.

5. Tr. at 33-35.

6. Tr. at 40-41; Gov 2 at 2; AE A at 2.

7. Gov. Ex. 1.

8. Gov. Ex. 3, 4.

9. Gov 3 at 1; Gov 4 at 8; AE A at 3.

10. Gov 3 at 2; AE A at 2.

11. Gov 3 at 1, Gov 4 at 4; AE A at 2.

12. Gov 3 at 2; gov 4 at 7; AE A at 2.

13. Gov 3 at 1; AE A at 3.

14. Tr. at 42-44.

15. Tr. at 44; AE A at 3.

16. AE B.

17. *Id.* at 2.
18. *Id.* at 4-5.
19. Tr. at 22-23.
20. Tr. at 24.
21. Tr. at 24; AE C, D, E, F, G, H.
22. Gov Ex 2.
23. Tr. at 21, 52, 55-56.
24. Answer to SOR.
25. Tr. at 20.
26. Tr. at 20-21.
27. Tr. at 45-49.
28. AE I at 2-13.
29. AE I at 14-18, 20-30.
30. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
31. Directive, ¶ E2.2.1.
32. *Id.*
33. *Id.*
34. Directive, ¶ E3.1.14.
35. Directive, ¶ E3.1.15.
36. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
37. Directive, ¶ E2.2.2.