

DATE: February 07, 2007

In re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 06-17185

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a highly regarded claims analyst for a defense contractor who accumulated a number of delinquent debts while involved in a strained relationship with a former fiancé, has since reaffirmed her debts (many of which are potentially barred by pertinent statutes of limitation), undertaken retraining efforts to supplement her income, and agreed to a debt consolidation program that is designed to repay her debts within four years time. Applicant is highly regarded by her friends and colleagues who admire her honesty and trustworthiness. Her efforts to supplement her income and repay her debts reflect important behavioral changes that make recurrent financial problems unlikely. Eligibility for an ADP I/II/III position is granted.

STATEMENT OF THE CASE

On August 30, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of Applicant eligibility for occupying an ADP I/II/III position, and recommended referral to an administrative judge to determine whether a trustworthiness determination clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on October 19, 2006, and requested a hearing. The case was assigned to me on November 22, 2006, and was scheduled for hearing on December 6, 2006. A hearing was convened on December 6, 2006, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's application for a trustworthiness determination. At hearing, the Government's case consisted of six exhibits. Applicant relied on two witnesses (including herself) and seven exhibits. The transcript (R.T.) was received on December 21, 2006.

PROCEDURAL ISSUES

At hearing, Department Counsel moved to amend the Statement of Reasons (SOR). This proposed amendment entailed changing the reference from Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. In support of its proposed amendment, Department Counsel relied on a memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) to Director, Defense Office of Hearings and Appeals (DOHA), dated November 19, 2004 that directs DOHA to utilize provisions of the Directive to resolve contractor cases involving trustworthiness determinations. The motion was granted. As construed, the procedural rules of the Directive will apply; while the substantive guidelines of the Regulation will continue to control. Although, in financial cases, there are no material differences in the treatment of financial considerations between the guidelines in the Directive and those in the Regulation.

Before the close of the hearing, Applicant asked for leave to keep the record open to afford her the opportunity to supplement the record with accreditation documentation of her online medical transcription school. There being no objection from the Government, and good cause being shown, Applicant was granted 14 days to supplement the record. The Government was, in turn, afforded seven days to respond. Applicant timely requested an additional 14 days to document her accreditation certification, as well as credit counseling assistance. This request for additional time was not objected to and was granted for good cause demonstrated. Applicant timely provided additional documentation covering her account of her ongoing efforts to repair her finances, her accreditation certification, and her credit counseling arrangements, to which the Government did not object. Applicant's post-hearing submissions are accepted as Applicant's exhibits H through K.

Applicant waived her procedural entitlement to 15 days advance notice of the hearing. She received the notice within 15 days of the hearing (R.T., at 16).

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: She is alleged to have incurred 21 delinquent debts altogether (mostly before 2000), which exceed \$23,000.00 in total.

For her response to the SOR, Applicant admitted each of her debt-related allegations, and provided explanations of the circumstances that contributed to her debt difficulties and her plans to resolve her debts through supplemental income from medical transcription employment after she completes her training.

FINDINGS OF FACT

Applicant is a 43-year-old claims associate of a defense contractor who seeks a trustworthiness determination. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Before moving to South Carolina Applicant held valued positions with the State of Florida for over 16 years. She became engaged in June 1997 to a man she knew little about financially. Over the course of the two plus years they maintained a joint household, he had difficulty holding jobs and was not able to contribute much to the financial obligations they incurred together (R.T., at 35). As a result, Applicant had to make up for her fiance's share of the expenses. Before breaking off their engagement in March 1999, she had maxed out many of her credit cards, obtained personal loans to pay their joint bills, and was struggling to pay what she could on their debts. By this time, she had accumulated delinquent debts (all in her name) exceeding \$23,000.00 (*see* exs. 2 through 6).

In 2000, Applicant met her current husband (H). He lived in South Carolina and worked as a fire fighter/paramedic, where he is still employed (R.T., at 35). He has continued to work in other part time jobs on his days off from the fire department. He has two children (ages 9 and 11) who live with his ex-wife in a nearby community. Since his children were young and in need of his close proximity for, Applicant and H decided it would be better for her to make the move to South Carolina (R.T., at 36). So, after their marriage in September 2000, Applicant resigned her position with the State of Florida and moved to South Carolina to be with her husband. After failing to find a full time position she settled on part time jobs that included telemarketing, hotel and resort reservations, and dispatching assignments (R.T., at 36).

Finally, in May 2001, she gained full time employment with her current employer.

Soon after she went to work for her current defense contractor, Applicant began experiencing nerve pain in her neck. When the pain did not subside, she was advised she needed a spinal fusion. She underwent the spinal fusion procedure in September 2003 (*see ex. F; R.T.*, at 39-40). Her recuperation time delayed her search for a second job and prevented her from paying on both her old debts and the medical debts associated with this 2003 surgery (*see exs. 3 through 6 and F; R.T.*, at 39-40).

With her current employer, Applicant has received periodic merit performance raises. They have not been enough, however, to match what she was making with the State of Florida. As a result, she has fallen further behind with her debts. H has not been able to help her much, even with the supplemental income he has earned from his part time jobs. For he has monthly support obligations with his children that exhausts all of his available resources (*R.T.*, at 68). Neither Applicant nor H have wanted to file for bankruptcy to cover their debts, and, as a result, her accumulated debts were not heretofore addressed.

To improve her finances, Applicant has been pursuing a second career in medical transcription. She received a certificate from a local technical college in December 2003, only to learn that the college was not an accredited medical transcription college (*R.T.*, at 41-43). After this set back she took a second job with a local retail store and quickly became a closing assistant manager (*R.T.*, at 43). With the income from this second job, she used the proceeds to pay her household expenses (which are higher in South Carolina than she typically incurred while living in Florida) and her medical bills (*R.T.*, at 43-44, 50-53). She held this job for about five months in 2004. With the combination of decreasing hours from her part time job and increased job demands from her principal employer, she gave up the second job in October 2004 (*R.T.*, at 44).

In need of additional employment to pay her bills, Applicant returned her focus to medical transcription. To meet her training requirements, she enrolled in an accredited partner in education school in February 2005 (*see exs. H through J; R.T.*, at 45, 58-59). She expects to complete her course curriculum in 2007 (*R.T.*, at 46). Once she completes this course, she expects to be able to obtain additional employment in medical transcription. With this added income source, and the anticipated reduction in H's child support for his daughter after she turns 18 in May 2007, Applicant will be in better position to pay her debts (*R.T.*, at 46-49, 53-56).

Since her hearing, Applicant has enrolled in a debt consolidation program (*see ex. K*). Under the agreement she executed in December 2006 with a law firm, she committed to electronic payment authorization from her checking or savings account to cover the monthly attorneys fees and agreed monthly payments to her listed creditors. Her agreed attorneys fees (to be appropriated monthly) are \$328.00 a month, and her scheduled monthly payments to her listed creditors total over \$500.00 (*ex. K*). To facilitate her meeting these monthly payment requirements, her husband has committed to working additional hours at his second job until she completes her medical transcription course and is able to begin supplementing her own income (*see ex. H*). Under this consolidation program, she expects to pay off all of her delinquent debts in four years' time.

Once Applicant completes her medical transcription course, she is hopeful of being able to negotiate a new consolidation agreement with Consumer Credit Counseling (CCC) that will enable her to repay her debts earlier than the four-year time table called for in her current consolidation agreement (*see ex. H*).

Applicant is highly regarded by friends and co-workers who know her. All of her character references characterized her as honest, ethical, trustworthy, and of very moral character (*see exs. A and B*). She is considered reliable and steadfast in her business and personal dealings. Applicant documents receiving numerous commendations and awards from her current employer and has been accorded excellent performance evaluations between 2003 and 2006 (*see exs. D and E*).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a trustworthiness concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a trustworthiness determination should be granted, continued or

denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's application for a trustworthiness determination may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for an ADP I/II/III position depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain an ADP I/II/III position. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually abused a trust relationship before it can deny or revoke a trustworthiness determination. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to adhere to principles of trust.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her trustworthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a highly regarded claims analyst for a defense contractor who accumulated a number of delinquent debts during periods of financial set backs attributable to a failed relationship with a former fiancé who could not contribute his fair share of the couple's household debts. Although most of her debts have long since been barred by applicable statutes of limitation, Applicant has continued to acknowledge her identified debts, has pursued additional training to help her supplement her present income, and has recently entered into a consolidated debt program to repay her debts over a period of several years.

Security concerns are raised under the financial considerations guideline of the Adjudicative Guidelines where the individual applicant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts, which heretofore she has not been in a position to address, warrant the application of two of the disqualifying conditions (DC) of the Adjudicative Guidelines for financial considerations: DC 1 (*a history of not meeting financial obligations*) and DC 3 (*inability or unwillingness to satisfy debts*).

Extenuating circumstances are associated with Applicant's lack of anticipated support from her fiancé during their two-year relationship between 1997 and 1999. MC 3 of the financial considerations guideline (*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 clearly applicable to Applicant's situation.

Because of the limited income available to Applicant since her separation from her husband in December 2003, she has not heretofore been in a position to address her old debts. Many of these debts have been charged off since 2000 and are

actually barred from collection by the pertinent statute of limitation in South Carolina for debts. *See* S.C. Code Ann. Sec. 15-3-530. While statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, they have never been equated with good-faith efforts to repay overdue creditors by the Appeal Board. *See* ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001). But instead of relying on potentially available statutes of limitation, Applicant reaffirmed her debts in writing and has committed to repaying them. Her efforts reflect considerable good faith. By virtue of her demonstrated repayment initiatives, MC 6 of the guidelines for financial considerations (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is also applicable. Her acceptance of debt counseling merits consideration of MC 4 (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) as well.

Holding a favorable trustworthiness determination involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access information covered by privacy rights is required precisely to inspire trust and confidence in the holder of the trustworthiness determination.

Applicant's acknowledging her debts incurred during extenuating circumstances and taking important steps to become certified for medical transcription employment to supplement her current income reflects responsibility and maturity. Her acceptance of counseling and a debt repayment plan shows commitment to rectifying her debt problems and establishing an improved financial foundation for her future. Applicant's efforts on the whole demonstrate permanent behavioral changes and create a low likelihood of recurrent debt problems once her listed debts are resolved.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the positive judgment and trustworthiness impressions Applicant has made on her friends and colleagues, and the commitments she has made to resolving her debt problems, Applicant mitigates trustworthiness concerns related to her debt. Favorable conclusions warrant with respect to the allegations covered by financial considerations guideline.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in the preamble of Appendix 8 of Regulation 5200.2-R.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions and guidelines listed above, this Administrative Judge makes the following formal findings:

FINANCIAL CONSIDERATIONS: FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: FOR APPLICANT

Sub-para. 1.i: FOR APPLICANT

Sub-para. 1.j: FOR APPLICANT

Sub-para. 1.k: FOR APPLICANT

Sub-para. 1.l: FOR APPLICANT

Sub-para. 1.m: FOR APPLICANT

Sub-para. 1.n: FOR APPLICANT

Sub-para. 1.o: FOR APPLICANT

Sub-para. 1.p: FOR APPLICANT

Sub-para. 1.q: FOR APPLICANT

Sub-para. 1.r: FOR APPLICANT

Sub-para. 1.s: FOR APPLICANT

Sub-para. 1.t: FOR APPLICANT

Sub-para. 1.u: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a public trust position. Eligibility for an ADP I/II/III position is granted.

Roger C. Wesley

Administrative Judge