

DATE: March 20, 2007

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In re:

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SSN: -----

Applicant for Public Trust Position

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ADP Case No. 06-18052

**CISION OF ADMINISTRATIVE JUDGE**

**NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant incurred approximately \$10,500 delinquent debt, for which she has no payment plan in place. She has failed to mitigate the trustworthiness concerns raised under the guideline for financial considerations. She deliberately falsified her July 2005 public trust application by omitting relevant information concerning her finances. Applicant's eligibility for a trustworthiness position is denied.

**STATEMENT OF THE CASE**

On July 28, 2005, 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").<sup>(1)</sup> On September 22, 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, of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On October 26, 2006, Applicant submitted a notarized response to the SOR, and elected to have her case decided on the record in lieu of a hearing.<sup>(2)</sup> Department Counsel submitted the government's written case on December 15, 2006. Applicant received a complete file of relevant material (FORM) on December 20, 2006, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case.<sup>(3)</sup> Applicant did not submit any information or written response to the FORM by January 19, 2007. The case was assigned to me on February 22, 2007.

**FINDINGS OF FACT**

Applicant admitted all allegations in her SOR response under Guideline F.<sup>(4)</sup> She denied allegations 2a. and 2.b. under Guideline E. The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is an unmarried, 20-year-old woman employed as a patient care advocate in a position of public trust for a defense contractor. She has worked for her employer since May 2005. She graduated from high school in 2004.<sup>(5)</sup> She has no children.

Applicant owes two debts totaling approximately \$10,500. The debts are not in dispute.<sup>(6)</sup> She admitted that they were delinquent debts. One of the debts was a collection account for a telephone bill. Applicant admits she owes that amount, but blamed the telephone company for not shutting down the service after the bill reached \$1,000, but she did not discontinue use of the phone.<sup>(7)</sup> She could not pay the bill and does not have sufficient money to settle the bill. The second debt, in the amount of \$5,824, is a judgment entered by the court in May 2005. Applicant argues that the judgment is the result of a grudge by her former employer. Applicant rented an apartment from her and was sued for rent and security deposit. She explained that she left the rental home. She did not appear in court when she received notice of the hearing. She stated that her mother had a stroke a few weeks prior. She did not ask for another court date, but did not appear.

Applicant has not made any payments on the delinquent accounts. Applicant proclaimed she has a plan in place.<sup>(8)</sup> However, she provided no information concerning financial counseling or a specific plan to begin paying the debts. The debt is confirmed by her 2006 credit reports

Applicant provided no information concerning her work record. Also, the record does not have a financial statement showing her income and expenses.

On July 28, 2005, Applicant completed her public trust application form (SF 85P). In response to Question 22a. "In the last 7 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had legal judgment rendered against you for a debt", she answered "no." She did not list the judgment entered in 2005.

In response to question 22b. "Are you now over 180 days delinquent on a loan or financial obligation" Include loans or obligations funded or guaranteed by the Federal Government?" Applicant answered "no." Applicant did not disclose the phone bill collection account.

Applicant completed her application form approximately two months after the judgment was entered by the court. She stated in her answer to the SOR that she "thought the financial information was hers and no one had to know about it." She also denied deliberately falsifying the two questions stating she was confused and misunderstood the questions.

These conflicting explanations are not credible. She further explained that she did not want anyone to know about her finances, and did not believe the government needs to know anything. This is not consistent with misunderstanding the questions. She did not believe "it fit into the job." She reiterated that she just does not see how the phone bill or judgment has to do with getting her job. This indicates she knew about the debts and deliberately did not disclose them.

Applicant's debts and the judgment were very recent. I find that she was deliberate in answering no to the questions about her finances despite her denial that she did not think she lied about the questions or alternatively that she did not realize the government needed the information.

## 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>(9)</sup> 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. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a). The adjudicative guidelines at issue in this case are:

Guideline F - Financial Considerations - Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information or sensitive information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Guideline E - Personal Conduct - Conduct involving questionable judgment  
 lack of candor, dishonesty, or unwillingness to comply with rules and regulations  
 can raise questions about an individual's reliability, trustworthiness, and ability  
 to protect classified information. Of special interest is any failure to provide  
 truthful and candid answers during the security clearance process or any other  
 failure to cooperate with the security clearance process.  
 any other failure

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."<sup>(10)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(11)</sup> 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.<sup>(12)</sup>

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.<sup>(13)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>(14)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(15)</sup> Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>(16)</sup> 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 of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in this case.

**Guideline F (Financial Considerations) The Concern:** *Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.* [\(17\)](#)

In this matter, the government provided substantial evidence that Applicant has delinquent debts with an approximate total balance of \$10,500. She admits they are still outstanding debts. She admits she cannot pay the bills. Her 2006 credit report confirms the debt. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶19(a), *(Inability or unwillingness to satisfy debts)* and FC DC ¶19 (c), *(a history of not meeting financial obligations)* apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. I considered the Financial Considerations Mitigating Condition (FC MC) AG ¶20 (a), *(The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment)* does not apply because she still carries a significant amount of delinquent debt.

Applicant mentioned her mother's stroke as a possible explanation for not attending her court hearing for the judgment, but provides no evidence or explanation concerning its effect on her finances. Applicant provided no evidence to support FC MC AG ¶20 (b), *(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) and the individual acted responsibly under the circumstance)*.

FC MC AG ¶20 (c) *(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. Applicant indicates that she has a plan in place but offered no details. A promise to pay in the future is not sufficient to mitigate the financial considerations concern. All of the debts remain outstanding. She has not taken steps to resolve these debts. Applicant's financial problems remain. It is unlikely they will be resolved in the near future. She has not received financial counseling.

FC MC ¶20(d) *(The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts)* is not applicable. Applicant has not shown that she established a record of steady payments or financial stability. She made no attempts to resolve the delinquent accounts. She admitted that she thought the phone company would stop her service when the bill reached \$1,000. She purposely ignored her creditors. I cannot conclude that she made a good-faith effort to resolve her debts despite her good intentions to do so in the future.

The issue before me is whether Applicant has presented sufficient evidence of extenuation, mitigating or changed circumstances to warrant a favorable trustworthiness determination. Her remaining unpaid debt constitutes a security risk. In the last few years, she has not made a concentrated effort to repay this debt. She has been employed with her current employer since 2005 raises questions about her willingness to accept responsibility for her conduct and her trustworthiness to hold a position. I find that Applicant's unwillingness to take responsibility and resolve her outstanding debt outweighs any positive factors in this case. She has not mitigated the government's concerns under Guideline F.

## **Guideline E Personal Conduct**

Personal Conduct Disqualifying Condition (PC DC) AG ¶16 (a) *(deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefit status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities)* raises a security concern.

In this case, Applicant denies deliberate falsification of the questions. However, her various explanations are consistent with Applicant not disclosing her financial situation. In late 2004, she was aware of the debts, describing how she thought the phone company would just cut off her service when the delinquent debt reached \$1,000. The questionnaire is dated July 2005. Her phone had been shut off due to the large, overdue, bill. She also explained that she maybe misunderstood the question, but then stated she did not think the government had any reason to know about the bills. I

find she is not credible and that she deliberately chose to conceal the financial information. She never made an effort to correct the omission.

I have considered the mitigating conditions and conclude that none apply in this case. The facts of the case, including her answer to the SOR, support the government's doubt about her good judgment and reliability. Thus Personal Conduct Mitigating Condition AG ¶ 17 (c) (*the offense is so minor, or so much time has passed, or behavior is so infrequent, or it happened under such unique circumstances that it is not likely to recur nor casts doubt on an applicant's judgment, trustworthiness, or reliability*) does not apply.

### **Whole Person**

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 available 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. Applicant's recent falsification prevents granting her a position of public trust. In addition, her lack of action toward resolving her delinquent accounts is not clearly consistent with the position of trust. Applicant's intention to ignore her creditors and vague intent to in the future despite her steady employment for two years indicate 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

Paragraph 2. Guideline E. AGAINST APPLICANT

Subparagraph 2. a: Against Applicant

Subparagraph 2.b: Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant's request for a determination of trustworthiness and eligibility for assignment to sensitive duties. Eligibility is denied.

Noreen A. Lynch

Administrative Judge

1. This action is taken under Executive Order 10865, dated February 20, 1960, as amended.
2. Applicant submitted an answer (one page) on October 6, 2006, but did not admit or deny allegations in the SOR. The government marked this first answer as Item 3.
3. The government submitted eight items in support of its contentions.
4. Item 5 (Applicant's Answer to SOR, dated October, 2006) at 1-3.
5. Item 6 (Application for Public Trust Positions (SF 85P), dated July 28, 2005) at 1-8.
6. Item 4, *supra* note 3, at 1-3.
7. *Id.* at 6.
8. *Id.* at 4-6.
9. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
10. Directive, ¶ E2.2.1.
11. *Id.*
12. *Id.*
13. Directive, ¶ E3.1.14.
14. Directive, ¶ E3.1.15.
15. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
16. Directive, ¶ E2.2.2.
17. AG ¶ 18.