

DATE: January 16, 2007

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 06-18948

## **DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's background investigation revealed a 1997 bankruptcy which was the result of too much credit card debt. She currently has ten delinquent debts incurred post-bankruptcy with a total approximate balance of \$13,679. Several periods of unemployment and her husband's terminal illness adversely affected her ability to pay her bills. Although she has paid one account and is making payments on another account, concerns remain since all other debts remain unresolved. She failed to mitigate the trustworthiness concerns raised under financial considerations. Applicant's eligibility for a assignment to a sensitive position is denied.

### **STATEMENT OF CASE**

On November 2, 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"). [\(1\)](#) 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.

In a sworn statement dated September 12, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to another administrative judge on October 17, 2006, and transferred to me on November 1, 2006. A notice of hearing was issued on November 13, 2006, scheduling the hearing for November 30, 2006. The hearing was conducted on that date. The government submitted Government Exhibits (Gov Ex) 1- 2 which were admitted into the record without objection. Applicant testified on her own behalf, and submitted 11 exhibits which were marked as Applicant Exhibits (AE) A-K, and admitted without objection. The record was held open until December 14, 2006. No documents were submitted. 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 37 year old woman employed as a claims analyst for a Department of Defense contractor who is seeking a position of public trust.<sup>(2)</sup> She has worked for her employer since April 2006.<sup>(3)</sup> She has some college.<sup>(4)</sup> Her husband passed away in May 2005. She has no children.<sup>(5)</sup>

In July 1997, Applicant filed for Chapter 7 bankruptcy as a result of being over-extended on credit card debt.<sup>(6)</sup> Her debts were discharged in November 1997.<sup>(7)</sup> Applicant met her husband at a prior place of employment. They married in September 2002.<sup>(8)</sup> In late 2003, her husband was diagnosed with stage IV lung cancer.<sup>(9)</sup> Due to his illness, he was unable to work since 2004. Applicant quit her job in October 2003 in order to take her husband to his chemotherapy and radiation appointments. She was unemployed between October 17, 2003, to March 2004. In March 2004, she found a part-time job which allowed her to work around her husband's medical appointment schedule.<sup>(10)</sup> Her husband passed away in May 2005.<sup>(11)</sup>

Applicant's trustworthiness application indicates two other periods of unemployment. She was unemployed from May 2000 to July 2000 and from July 2005 to November 2005.<sup>(12)</sup> In November 2005, Applicant became employed with a contractor of her current employer. Her current employer hired her as an employee in April 2006.<sup>(13)</sup>

On November 2, 2005, Applicant completed a Public Trust Position Application (SF 85-P).<sup>(14)</sup> Her background investigation revealed ten delinquent accounts with a total approximate balance of \$13,679.<sup>(15)</sup> The accounts included a \$1,095 credit card account placed for collection in December 2005 (SOR ¶ 1.b); a \$110 account placed for collection in March 2003 (SOR ¶ 1.c); a \$1,527 credit card account charged off in March 2002 (SOR ¶ 1.d); a \$1,832 credit card account charged off in March 2002 (SOR ¶ 1.e);<sup>(16)</sup> a \$1,219 credit card account charged off in June 2002 (SOR ¶ 1.f); a \$721 credit card account charged off in September 2002 (SOR ¶ 1.g); a \$262 phone account charged off in September 2003 (SOR ¶ 1.h); a \$694 tuition account charged off in May 2005 (SOR ¶ 1.i); a \$1,099 credit card account placed for collection in August 2002 (SOR ¶ 1.j); and a \$5,120 charged off account related to an automobile repossession in October 2003 (SOR ¶ 1.k).

Applicant has paid the \$110 debt alleged in SOR ¶ 1.c.<sup>(17)</sup> She entered into a repayment plan with the creditor regarding the \$1,095 debt alleged in SOR ¶ 1.b. She has made two payments so far.<sup>(18)</sup> She is attempting to enter into repayment agreements with her remaining creditors. On September 26, 2006, she sent each creditor a letter stating that she was interested in entering into an arrangement to resolve the debt.<sup>(19)</sup> She has not entered into any formal repayment arrangements with the remaining creditors.

The \$5,120 debt in SOR ¶ 1.k is the amount owed after Applicant and her husband returned an automobile because they were unable to make payments. About a year after they purchased the car, her husband became ill and they both lost their jobs. They tried to renegotiate payments or trade in the car for a car with lower payments but the car dealership was unwilling to work with them. The car was repossessed in 2004.<sup>(20)</sup> Applicant intends to pay off all of the debts eventually.<sup>(21)</sup>

Applicant's annual income is \$20,000. She pays \$500 per month in rent including utilities. She has a car payment of \$192.40 per month. She pays \$100 per month for car insurance. She pays \$80 per month towards two student loan accounts. She pays \$35 per month for a cell phone account.<sup>(22)</sup> After expenses, she has approximately \$100 to \$200 per month to apply towards her debts. She indicates that her car payments will soon increase. Her car is financed in her mother's name. Her mother is moving to another state and she needs to get the car financed in her name before her mother moves this summer.<sup>(23)</sup>

Applicant has never attended financial counseling.<sup>(24)</sup> She currently has three open credit card accounts. Each account

has a \$500 limit. She uses the credit cards for her gas and food expenses. She pays the balance off each month.<sup>(25)</sup> She is current on her state and federal taxes.<sup>(26)</sup> There are no medical expenses left over from her husband's illness since he was covered by Medicaid.<sup>(27)</sup>

## 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>(28)</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. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

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.

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, is 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>(29)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(30)</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>(31)</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>(32)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>(33)</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>(34)</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>(35)</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 - 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. Applicant first encountered financial difficulty around 1997. She filed for Chapter 7 bankruptcy in 1997 as a result of too much credit card debt. After several years of financial stability, she began to incur delinquent debts in 2002.

Currently, she has ten delinquent debts with an approximate total balance of \$13,679.

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. Her husband's terminal illness contributed to Applicant's inability to pay her debts. Both she and her husband were unable to work full-time since he learned of his illness in late 2003. She was unemployed from October 2003 to March 2004. She had two other periods of unemployment between May 2000 to July 2000 and between July 27, 2005, to November 1, 2005. Although MC 3 applies which explains the cause of the debt, an applicant's actions towards resolving the debt should be considered as well.

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. Applicant has not attended any financial counseling. She has paid one debt but all other delinquent accounts remain outstanding. She did not attempt to resolve her delinquent accounts until September 26, 2006. Given the limited amount of income that she has left over each month, it is unlikely that her financial situation will be resolved in the near future. Of particular concern is the fact that Applicant has three open credit card accounts. Her first bankruptcy occurred as a result of being over extended on credit cards. She has five delinquent credit card accounts alleged in the SOR. Given her past history of not paying her credit card accounts, I cannot conclude that she will pay off the balances each month and be able to make payments towards her other unresolved accounts.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. While I acknowledge that Applicant has many issues to deal with over the past few years, she did not take any action towards resolving her delinquent accounts until September 26, 2006. She should be commended for starting to resolve these accounts. However, I cannot conclude that she has made a good faith effort to resolve her accounts since she did not start to attempt to resolve her accounts until after she was issued the SOR on August 31, 2006.

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

Although her evidence of rehabilitation is insufficient at this time, this decision should not be construed as a determination that Applicant cannot or will not attain a state of true reform and rehabilitation necessary to justify the award of a trustworthiness position. Should Applicant be afforded an opportunity to reapply for a trustworthiness position in the future and if she were to arrange a satisfactory repayment plan with her creditors and timely pay her debts, she may well demonstrate persuasive evidence of trustworthiness. The trustworthiness concern under financial considerations outweighs the mitigating circumstances in Applicant's case.

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. It is premature to grant Applicant a trustworthiness position based on the fact that most of her delinquent accounts remain unresolved. With her current income, it is unlikely she will be able to resolve her delinquent accounts in the near future. 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

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: 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; Gov Ex 1.
3. Tr. at 37.
4. Tr. at 7; Gov Ex 1.
5. Tr. at 35, 38.
6. Tr. at 26.
7. Gov 2 at 1.
8. Tr. at 42.
9. Tr. at 34.

10. Tr. at 36; Gov Ex 1 at question 6.
11. Tr. at 35.
12. Gov Ex 1 at question 6.
13. Tr. at 37.
14. Gov. Ex. 1.
15. Gov. Ex. 2.
16. Tr. at 22-23; Gov Ex 5 at 2.
17. Tr. at 27; AE B.
18. Tr. at 26-27; AE C.
19. Tr. at 17; AE D - AE K.
20. Tr. at 33-35.
21. *Id.*
22. Tr. at 38.
23. Tr. at 39.
24. Tr. at 43-44.
25. Tr. at 40.
26. Tr. at 43.
27. *Id.*
28. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
29. Directive, ¶ E2.2.1.
30. *Id.*
31. *Id.*
32. Directive, ¶ E3.1.14.
33. Directive, ¶ E3.1.15.
34. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
35. Directive, ¶ E2.2.2.