

KEYWORD: Financial

DIGEST: Applicant has been experiencing financial problems for many years. Determination of Trustworthiness is denied.

CASENO: 06-00375.h1

DATE: 05/23/2007

DATE: May 23, 2007

In Re:)	
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-----)	ADP Case No. 06-00375
SSN: -----)	
)	
Applicant for Trustworthiness Determination)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JOSEPH TESTAN**

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has been experiencing financial problems for many years. Determination of Trustworthiness is denied.

STATEMENT OF THE CASE

On April 9, 1993, the Composite Health Care System Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), entered into a Memorandum of Agreement which gave DOHA the responsibility to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2R, *Personnel Security Program*, dated January 1987.

On August 31, 2006, DOHA issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability, and eligibility for applicant to hold a sensitive Information Systems Position (ADP-I/II/III).

Applicant responded to the SOR in writing on October 2, 2006, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel (DC) submitted the Government's written case (FORM) on or about February 14, 2007. Applicant filed a response to the FORM on or about April 5, 2007. The case was assigned to me on April 25, 2007.

FINDINGS OF FACT

Applicant is 45 years of age.

SOR Allegation 1a: Applicant filed a Chapter 7 bankruptcy petition in December 1996. The petition listed \$94,895.07 in assets and \$71,272.51 in liabilities. Applicant received a Discharge from the bankruptcy court in April 1998.

SOR Allegations 1b and 1c: Applicant is indebted to Capital One Bank for two credit card accounts in the total amount of \$6,256.00. The accounts were charged off in September 2001.

SOR Allegation 1d: Applicant is indebted to Verizon in the approximate amount of \$1,363.00. The debt was charged off in 2002.

SOR Allegation 1e: Applicant is indebted to Pinnacle in the approximate amount of \$4,601.00. The debt was placed for collection in 2005.

In response to interrogatories sent to him in early 2006, applicant stated, with respect to each of the debts discussed above, that he had enrolled with Consumer Credit Counseling Service (CCCS) to work out a debt payment plan, and that his first meeting with CCCS was scheduled for April 11, 2006 (Exhibit 8).

In response to a second set of interrogatories sent to him a few months later, applicant stated, with respect to each of the debts discussed above, that he had a meeting with CCCS, and due to "information provided and the aging of these accounts," he was advised not to start a debt payment

plan. He further stated that he was seeking the services of an attorney to settle these accounts. A November 21, 2006 letter from an attorney indicates that applicant retained legal counsel to negotiate a resolution of his debts (Exhibit 13).

In his response to the SOR, applicant stated that the four aforementioned delinquent debts were the direct result of his loss of employment in 2001 and a divorce. In the FORM, DC noted that applicant did not indicate any break in employment since 1994 on his Public Trust Position Application (PTPA) (Exhibit 5). In his response to the FORM, applicant responded to DC's argument by stating he lost his full time employment in November 2001, and did not obtain another full time job until August 2002.

CONCLUSIONS

The evidence establishes that within a few years of receiving his Discharge from the bankruptcy court, applicant began experiencing additional financial problems. His failure to honor numerous financial obligations since receiving that Discharge in 1998 requires application of Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*).

Applicant stated that his post-bankruptcy financial difficulties were caused by a loss of employment and a divorce. Although his loss of employment in November 2001 and his divorce in April 2002 may have contributed to his current financial problems, these financial problems began prior to these two events, as evidenced by the fact his Capital One Bank debts were charged off in September 2001. Accordingly, Mitigating Condition E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control e.g., loss of employment . . . divorce*) does not apply.

Applicant met with CCCS about a year ago to discuss his debts. According to applicant, he was advised not to set up a payment plan because the debts were too old. Although applicant has every right to accept this advice and not honor his financial obligations, his acceptance of this advice does not reflect well on his judgment, reliability and trustworthiness. On or before November 21, 2006, he retained an attorney to help him negotiate settlements with his creditors. Although this appears to be a step in the right direction, this effort cannot be given much weight in light of the fact there is no credible evidence that the attorney has contacted, let alone negotiated settlements with, applicant's creditors during the past four and one-half months. Based on the foregoing, applicant does not qualify for Mitigating Condition 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 is under control*) or Mitigating Condition E2.A6.1.3.6 (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Given applicant's long history of financial problems, and his inability or unwillingness to take any meaningful action to address the four past-due debts alleged in the SOR, I have no choice but to conclude it is not clearly consistent with the national interest for applicant to have access to sensitive medical information.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability and eligibility for applicant to hold a sensitive Information Systems Position.

Joseph Testan
Administrative Judge