

DATE: March 22, 2004

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 03-12735

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has several debts totaling over \$13,000.00 that have been past-due for years. The evidence establishes that there is little likelihood she will be able to satisfy these debts anytime soon. 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 September 30, 2003, 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-II/III).

Applicant responded to the SOR in writing on November 9, 2003, and requested a hearing. The case was assigned to the undersigned on January 15, 2004. A Notice of Hearing was issued on January 15, 2004, and the hearing was held on February 11, 2004. The transcript was received on March 1, 2004.

FINDINGS OF FACT

Applicant is a 35 year old Enrollment Representative.

SOR Allegation 1a: Applicant's car was repossessed by this creditor and resold in 1999. The creditor billed applicant for the difference between what she owed the creditor and what the creditor realized from the sale of the repossessed car.

After applicant made a payment to the creditor, she was notified of a lawsuit against the creditor brought on behalf of the "general public." Exhibit A establishes that as a result of the settlement reached by the parties to the lawsuit sometime in mid-2002, applicant was entitled to receive a refund of \$115.00, the creditor agreed to waive any deficiency judgment it had against applicant, and the creditor agreed to contact the three major credit reporting agencies and request them to eliminate reference to applicant's account. In view of Exhibit A, I find that applicant is no longer indebted to this creditor.

SOR Allegation 1b: Applicant is indebted to this creditor in the amount of at least \$10,364.00 as a result of her car being repossessed in 2001 (TR at 40; Exhibit 3)

SOR Allegation 1c: Applicant disputes this debt. She claims that it arose from a towing charge on a vehicle she had sold prior to the towing (TR at 42-45). Her testimony was credible and worthy of belief. Accordingly, I find that she was never indebted to this creditor.

SOR Allegation 1d: Applicant is indebted to this creditor in the amount of \$1,859.00. The account has been past-due since at least February 2001.

SOR Allegation 1e: This is most likely the same debt as the debt alleged in the preceding paragraph.

SOR Allegation 1f: Applicant is indebted to this creditor in the approximate amount of \$1,127.00 as a result of a delinquent credit card account she had with K-Mart. This debt has been past-due since at least September 2001.

With respect to her debts, applicant testified that in 2001, "everything just kind of fell apart" (TR at 28). Her overtime was cut, as were some type of disability and child support payments she was receiving. This loss of income, together with some "bad choices" she made, led to her inability to satisfy her debts (TR at 50-51, 69).

In January 2003, applicant met with a Government investigator. She told the investigator that after seeing all the debt she had, she planned on "going to see a credit counseling service as soon as [she] can" (Exhibit 2). In February 2003, shortly after meeting with the investigator, applicant found out she had cancer. When she contacted a credit counseling service several months later, they told her it was not in her best interests to tackle her debts until her medical condition stabilized. Applicant underwent two cancer surgeries in 2003. The second surgery, in September, required applicant to miss six weeks of work. When she returned to work in October 2003, the SOR was waiting for her. Applicant has not taken any action with respect to her debts since returning to work because after receiving the SOR, her employer informed her that they "would not guarantee that [she] would be employed any further from the day [she] got the [SOR]" (TR at 73-75). Applicant testified that she does not want to start a repayment plan that she can't finish.

Applicant executed a Public Trust Position Application (PTPA) on January 25, 2002 (Exhibit 1). In response to Question 20, ⁽¹⁾ which asked, "Are you now over 180 days delinquent on any loan or financial obligation?" applicant stated "yes," but in explanation, disclosed only the debt alleged in SOR Paragraph 1b. The Government alleges that she intentionally concealed the debts referenced in SOR Allegations 1a, 1c, 1d and 1e. As noted above, applicant was never indebted to the creditor referenced in SOR Allegation 1c. Therefore, to the extent this allegation references applicant's failure to disclose the alleged debt to this creditor, it is found for applicant.

With respect to applicant's failure to disclose her debts referenced in SOR Allegations 1a, 1d and 1e, applicant testified credibly that at the time she completed the PTPA, she "filled out the [PTPA] to the best of [her] knowledge at the time," and she thought the debt referenced in SOR Allegation 1b was the only debt she had that was more than 180 days delinquent (TR at 23-24, 77). Given this credible testimony, and the fact that applicant disclosed what was by far the largest debt she had, I find that applicant did not intend to mislead the Government about her financial situation when she completed the PTPA.

Applicant was convicted of Voluntary Manslaughter in 1987. She served two months in jail and three years on probation. Her record was expunged in July 1996 (Exhibit C). Applicant testified that the victim was her "abusive boyfriend" and that this was a "self-defense crime" (TR at 24, 29).

Applicant's pastor, who has known her for about two years, appeared at the hearing and testified that applicant is an

honest and trustworthy person (TR at 79-81).

Applicant's brother appeared at the hearing and testified that applicant is reliable and trustworthy (TR at 84).

POLICIES

DoD Regulation 5220.2R sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following conditions are applicable:

Financial Considerations

Disqualifying Conditions:

E2.A6.1.2.1: A history of not meeting financial obligations.

E2.A6.1.2.3: Inability or unwillingness to satisfy debts.

Mitigating Conditions:

None.

Personal Conduct

Disqualifying Conditions

None.

Mitigating Conditions

None.

Criminal Conduct

Disqualifying Conditions

E2.A10.1.2.2: A single serious crime.

Mitigating Conditions

E2.A10.1.3.1: The criminal behavior was not recent.

E2.A10.1.3.2: The crime was an isolated incident.

E2.A10.1.3.4: The factors leading to the violation are

not likely to recur.

E2.A10.1.3.6: There is clear evidence of successful rehabilitation.

CONCLUSIONS

With respect to Guideline F, the evidence establishes that applicant has several debts, totaling over \$13,000.00, that have been delinquent for years. Applicant's failure to satisfy her financial obligations reflects adversely on her judgment, reliability and trustworthiness, and suggests she cannot be relied upon to safeguard sensitive medical information.

Applicant testified that following her meeting with the Government investigator in January 2003, where she learned the full extent of her financial delinquencies, she intended to meet with a consumer credit counselor. However, soon after her January meeting, she learned she had cancer. As a result, and on the advice of a consumer credit counselor she contacted some months later, she decided to focus on her health problems instead of her financial problems. Fortunately for applicant, following two surgeries, she recovered and was able to return to work in October 2003.

It is clear that through no fault of her own, applicant was unable to address her financial delinquencies during most of 2003. Any reasonable person facing the same set of circumstances that applicant faced would have acted the same way as she did. However, even if her inaction from February through October 2003 is excused, the fact remains applicant completely ignored these delinquent debts in 2002, and took no real action to address these debts during the almost four months since she returned to work. This inaction, together with the fact that, based on the evidence in the record, there is little or no chance applicant will be in the position to resolve these past-due financial obligations anytime soon, precludes a favorable finding under Guideline F.

With respect to Guideline E, as noted in the Findings of Fact, applicant did not intend to conceal any information from the Government when she completed the PTPA. Accordingly, Guideline E is found for applicant.

With respect to Guideline J, applicant pleaded guilty to Voluntary Manslaughter after she caused the death of her boyfriend. The fact that applicant only served two months, and the fact that her record was expunged, supports her testimony that this was a "self defense" crime involving an "abusive boyfriend." In short, this was not a typical voluntary manslaughter case. Given this fact, and the passage of time since this isolated incident of criminal conduct occurred (over 15 years), Guideline J is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: FOR THE APPLICANT

PARAGRAPH 3: FOR 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

1. The SOR incorrectly identified this question as #28.