

DATE: July 31, 2006

In Re:

SSN: -----

Applicant for ADP Position

CR Case No. 05-00188

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

D. Micheal Lyles., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was informed in August 2003 that she owed most of the 11 creditors identified in the SOR. Between August 2003 and June 2006, she produced no evidence of repayment of any of the creditors or a plan to address the creditors. Lacking a good-faith effort to repay her debts voluntarily incurred, Applicant has failed to mitigate the adverse evidence under the financial considerations guideline. Conversely, the record shows that Applicant did not intend to omit material information from her trustworthiness application in January 2003. ADP Clearance is denied.

STATEMENT OF CASE

On September 26, 2005, DOHA issued a Statement of Reasons (SOR) to Applicant, stating that based on financial considerations, 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 the Applicant to hold a sensitive Information Systems Position (ADP). Applicant's incomplete response to the SOR (missing the third page of the SOR) was notarized on October 15, 2005. In her February 9, 2006, notarized response to the SOR, she used the same format she had in her first set of answers, but again did not provide a response to paragraph 2. She requested a decision be made on the record in lieu of a hearing.

A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the SOR) was sent to Applicant on May 22, 2006. Applicant received the FORM on May 23, 2006. Applicant's response to the FORM (same answer format as her two previous answers) was notarized on June 22, 2006. The response contains minor modifications of her incomplete answers that were notarized on October 15, 2005 and February 9, 2006. The case was assigned to me for decision on July 6, 2006.

FINDINGS OF FACT

There are 12 delinquent debts cited under the financial considerations guideline of the SOR. Applicant's admissions to 1.b., 1.c., [\(1\)](#) and 1.d. are incorporated by reference in the following factual findings. Applicant is 41 years old. She has

been employed as a computer technician since July 1995.

Financial Considerations. In her answer to the SOR, Applicant denied and/or was unaware of the 1.a. creditor. In her response to the FORM, she also denied the 1.a. creditor. However, based on her acknowledgment of the 1.a. account in her affidavit/statement dated August 26, 2003, I find she owes the past due account.

Applicant denied the \$300.00 past due debt (1.e.) owed to a credit education organization. Applicant's August 2003 credit bureau report (CBR, Item 8) reveals (1) the account was opened in November 1998, (2) the last activity on the account was March 1999, and (3) the account was at least 120 days past due. I find she owes the account.

Though Applicant claimed the delinquent medical account (1.f.) should have been paid by her insurance, she provided no corroborating documentation. The CBR (Item 7) dated July 2005, reflects the overdue debt has not been paid. Applicant expressed the same position regarding the 1.g. account, claiming the past due debt should have been paid by a college insurance policy for an injury her daughter sustained on the college campus in September 2001. Applicant also denied the debt listed in 1.h. and claimed the account should have been paid by her insurance. Item 7 shows the account was for medical services rendered in February 2003. As of July 2005, the account was still unpaid. Applicant also claimed insurance covered the account identified in 1.i. Item 7 shows the account is based on services rendered in November 2000 that have not been resolved as of July 2005. I find she owes the accounts identified in 1.f. through 1.i.

In her answer to 1.j. of the SOR, Applicant denied knowledge of this creditor. In her August 2003 affidavit/statement, she seemed to acknowledge the debt but disputed the amount of debt. Item 8 reveals that the account was sold to a collection agency by a national department store in March 2003. Applicant still owes the account.

Applicant denied 1.k. of the SOR claiming the account was closed. After comparing the information in both CBRs relating to 1.i. and 1.k., I find both listings are for the same account. Accordingly, 1.k. is found in Applicant's favor.

Applicant answered 1.l. of the SOR with two positions. She denied she owed the delinquent account. Alternatively, she stated the account was paid. In her affidavit/statement August 2003 (Item 6), she believed she had paid the bill two months before providing the statement. I find she owes the 1.l. account.

Applicant owes 11 creditors or collection agencies a total of \$14,332.00. The overdue debts became delinquent between 1999 and 2003. In her answers to the SOR and her response to the FORM, Applicant did not indicate whether she intended to repay her overdue bills. However, she explained in August 2003 (Item 7) that her car was repossessed because her husband's work-hours were first reduced, then eliminated when he was furloughed. She did not know how she was going to resolve the debt until she and her husband regained their financial footing.

Personal Conduct. On January 13, 2003, Applicant executed a Public Trust Position Application (SF-85P). In response to question 22.b., asking for information about loans or financial obligations over 180 days delinquent, Applicant answered "yes," but listed only the 1.a. debt of \$9,172.00. Items 7 and 8 reflect the debts listed in 1.b., 1.c., 1.d., 1.e., 1.g., 1.i., 1.j., 1.k., and 1.l. became delinquent more than 180 days before Applicant executed the (SF-85P) in January 2003. Applicant contends she did not know about the other debts being more than 180 days delinquent until she received the SOR. The lack of evidence of intent supports a finding in Applicant's favor under 2.a.

Character evidence. In response to the FORM, Applicant emphasized her work ethic, integrity, and honesty have helped her give a consistently good job performance. She has never acted in way to compromise her trustworthiness on the job. She is married with five children.

POLICIES

On April 9, 1993, the Composite Health Care 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 (MOA) which gave DOHA the responsibility to provide trustworthiness determinations for contractor personnel working on unclassified Information Systems Positions as defined in DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987. Under the MOA, the procedural provisions of the DoD Directive 5200.6 are applied by DOHA in processing trustworthiness cases. See ADP Case No. 30-1130

(January 4, 2001) at p. 2.

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making trustworthiness determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Financial Considerations (Guideline F)

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Personal Conduct (Guideline E)

Actions involving poor judgment or dishonesty may disqualify the person from security clearance access.

CONCLUSIONS

Financial Considerations (FC). An individual who is financially overextended is at risk of engaging in illegal acts to generate funds. Of the five disqualifying conditions (DC) listed in the FC guideline, 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. Applicant has a history of not paying her bills to 11 creditors, and, according to information she provided in August 2003, has no idea when she will be able to repay these financial obligations.

I have considered all the FC mitigating conditions (MC) and particularly FC MC E2.A6.1.3.1. (*the behavior was not recent*), FC MC E2.A6.1.3.2. (*it was an isolated incident*), FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*), 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 is under control*), and FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolved debts*). FC MC E2.A6.1.3.1. does not apply as Applicant has yet to take any documented action to settle or repay the debts. FC MC E2.A6.1.3.2. does not apply because there are 11 debts; some have been transferred for collection.

Given the unforeseen, reduced hours of work then subsequent layoff by Applicant's husband in 2003, FC MC E2.A6.1.3.3. provides mitigation. The level of mitigation generated by her husband's job problems diminishes with the passage of time, particularly where the applicant has not at least contacted the creditors to alert them of her financial dilemma, and/or taken some other action to resolve the past due debts.

FC MC E2.A6.1.3.4. is inapplicable. She presented no evidence that she received or is receiving financial counseling. FC MC E2.A6. 1.3.6. has no application to the circumstances as well. Applicant became aware of her indebtedness in August 2003. Yet, she has taken no action to resolve or even contact the creditors. Having weighed the entire record, Applicant's good job performance since 1995 and her husband's unanticipated employment problems do not mitigate the unaddressed, financial indebtedness.

Personal Conduct (PC). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, and dishonesty could indicate a person may not properly safeguard classified information. Applicant's failure to furnish all information about her debts over 180 days delinquent activates PC DC E2.A5. 1.2.2. (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness*). Though she correctly answered "Yes" to question 22.b. of the SF 85P, she did list all the debts listed under 2.a. of the SOR. Even though she listed only the auto debt, this debt (\$9,172.00) constitutes more than half her total delinquency. Given Applicant's follow-up affidavit/statement in detailing her knowledge of the other listed debts, the small amount of the other debts in contrast to the auto debt, and the absence of deliberate misconduct before or since August 2003, I find she did not deliberately omit the other debt information from her SF-85P. Accordingly, I find PC DC E2.A5.1.2.2. has not been proven.

In finding against Applicant under the FC guideline and for her under the PC guideline, I have considered the general

factors of the whole person concept. Having directed little attention to her delinquent debts since she provided her affidavit/statement in August 2003, Applicant's financial problems are likely to persist in the future.

FORMAL FINDINGS

Paragraph 1 (Financial Considerations, Guideline F): AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant.

Subparagraph 1.b. Against the Applicant.

Subparagraph 1.c. Against the Applicant.

Subparagraph 1.d. Against the Applicant.

Subparagraph 1.e. Against the Applicant.

Subparagraph 1.f. Against the Applicant.

Subparagraph 1.g. Against the Applicant.

Subparagraph 1.h. Against the Applicant.

Subparagraph 1.i. Against the Applicant.

Subparagraph 1.j. Against the Applicant.

Subparagraph 1k. For the Applicant.

Subparagraph 1.l. Against the Applicant.

Paragraph 2 (Personal Conduct, Guideline E): FOR THE APPLICANT.

Subparagraph 2.a. 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. ADP Clearance is denied.

Paul J. Mason

Administrative Judge

1. In her response 1.c. of the FORM, Applicant wrote "admit - reference billing statement & receipt attached." No information was attached to her response.