

DATE: January 9, 2007

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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P Case No. 05-11276

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Ray T. Blank, Jr., Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's financial problems were caused by three periods of unemployment between 1999 and the fall of 2001. However, she has been employed continually for the last five years. Yet, she supplied no documented evidence supporting her claims of having paid any of the creditors/collection agencies since 2001. In April 2003 and August 2004, Applicant lied about her ongoing financial problems when she certified information in her two public trust questionnaires that she had neither a lien nor debts over 180 days delinquent. Her praiseworthy character evidence and unblemished credit record before 2000 is insufficient to satisfactorily rebut her financial problems since then. Her deliberate falsifications have independent significance under the criminal conduct guideline. Eligibility for a trustworthiness position is denied.

### **STATEMENT OF CASE**

On December 21, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that based on financial considerations (Guideline F), personal conduct (Guideline E), and criminal conduct (Guideline J), DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for Applicant to hold a sensitive position. On March 17, 2006, Applicant provided a response to the SOR, and requested a hearing.

The case was assigned to me on July 20, 2006. On September 12, 2006, DOHA issued a Notice of Hearing for October 3, 2006. At the hearing, the Government's seven exhibits (GE 1 through GE 7)<sup>(1)</sup> were admitted in evidence. Applicant testified. She proffered six exhibits (AE A through AE F). Following the hearing, Applicant furnished fourteen additional exhibits (AE G through AE K) that have been received in the record. The post-hearing exhibits include additional character statements, commendation statements, and financial documents, including credit reports. The transcript was received on October 18, 2006.

### **RULINGS ON PROCEDURE**

At the hearing, the government moved to amend the SOR by deleting the following from the introductory paragraph of the first page of the SOR: "paragraph 3-614, DoD Regulation 5200.2-R, and," because the reference is irrelevant in the processing of automated information system cases (ADP). Applicant had no objection to the proposed amendment. Pursuant to E3.1.17. of Directive 5220.6, the motion was granted (Tr. 6). I will follow the procedural rules of the Directive and the adjudicative guidelines of Regulation 5200.2-R.

### FINDINGS OF FACT

The SOR alleges financial considerations, personal conduct, and criminal conduct. Applicant admitted all the factual allegations except for subparagraphs 1.f., 1.l., 1.n., 1.p., 1.r., 1.s., 1.v., 1.w., 1.x., 1.y., 1.aa., 1.dd., 1.ffi., 1.gg, 2.a., 2.b., 2.c., and 2.d. Applicant is 50 years old and employed as a systems programmer for a defense contractor. She has been employed there since October 2001. She seeks assignment to a trustworthiness position.

**Financial Considerations.** The SOR identifies 31 debts totaling approximately \$123,600.00, and the corresponding creditors and/or collection agencies. The underlying debts became delinquent between August 1999 and August 2005. In her answer and at the hearing, Applicant blamed unemployment, and interest/penalty add-on charges, increasing the debt amounts to disproportionate levels, as the reasons she stopped paying the creditors. She claimed she had been making small payments to some of the creditors until 2001. She indicated she would retrieve her canceled checks in the post-hearing time provided (Tr. 35, 37) to prove she had paid some of the creditors. She claimed she was paying the 1.z. creditor about \$25.00 a month until 2004 when other financial problems developed and she stopped payments (GE 3). The only payment information she provided was a letter from a car loan service (unlisted creditor) in August 2006, indicating her account had been satisfied (AE K).

Applicant was unemployed for three months in 1999, for nine months between July 2000 and March 2001, and from August to October 2001. Because her unemployment compensation was only 25% of her income, she relied on credit cards to pay her bills. Her credit bureau reports show she was making scheduled payments on all her obligations on time before she encountered unemployment problems in 1999/2000 (AE D, AE E). She provided documentation (2 letters dated January 2001) appealing to the creditors in subparagraphs 1.a. and 1.b. to consolidate the accounts because of her unemployment.

Applicant consulted a consumer credit counseling service on two occasions in 2002 for advice on her financial problems. (2) They informed her to pay off the smaller accounts (SOR, answer; Tr. 46). Applicant has had no other financial counseling.

In August 2004, Applicant provided an affidavit explaining the status of the debts and her plans to address them in 2004, 2005 and 2006. Attached to the affidavit is a personal financial statement (PFS) that reflects Applicant had a monthly remainder of \$818.00 when this statement was taken.

**Personal Conduct.** In her answer to the SOR, Applicant stated:

On October 1, 2001, when I was hired I was not 180 days past due on most of the accounts that are currently delinquent. When I completed the subsequent Public Trust Questionnaires I assumed that the information that I was providing was still based on my credit status at the time I was hired (I did not realize that this information should be based on the current status of these accounts). I assumed I was only correcting or clarifying information relative to when I was first hired (SOR answer).

At another location in her answer to the SOR, Applicant indicated she did not want to review her credit reports between 2001 and 2004. She stated:

From 2001 to 2004 I was reluctant to look at my credit reports. I knew that they contained negative information, and I was so disheartened by the fact that I had lost my near perfect credit rating. So I just kept paying on the accounts that were current and watching those balances decline. Then in 2004 I began working on rebuilding my credit rating. When I got copies of my credit reports there was so much duplicated and erroneous information in them. I have been working on cleaning up this information in the past year and a ½. Some of the accounts that are being questioned by the DOD are/were duplicated (SOR, answer).

On page 20 of GE 6 (questionnaire worksheet, signed by Applicant in September 2002), she indicated she had a tax lien filed against her, and that the lien was released.

In April 2003, Applicant executed a public trust questionnaire (SOR, 2.a.) in which she answered "no" to question 22.a. (in the last 7 years, have you, or a company over which you exercise 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 re-signed this questionnaire in January 2004.

In August 2004, Applicant executed a second public trust questionnaire where she answered "no" to question 22.a. (tax lien question) (SOR, 2.b.). My finding against Applicant under SOR 2.a. and 2.b. is based on the quoted information above taken from her answer, and the information in GE 6 reflecting she had a lien that was released.

In the same two questionnaires referenced above, Applicant deliberately answered "no" to question 22.b. (3) (Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government) Applicant's denials to both allegations are directly controverted by her statements in her answer indicating she knew she had delinquent debts. She even falsified the worksheet (GE 6) about the delinquent debts by denying she had any. (4)

**Character evidence.** A supervisor with three years of knowledge of Applicant's job performance considers her a team leader with impressive analytical tools. Her coworker for the past two years believes Applicant takes pride in her work, and has repeatedly demonstrated her problem solving capabilities. Applicant's coworker for 2003 and 2004 thought she was a team player. Another coworker commented positively on the respect Applicant receives in the workplace. Applicant's friend of 14 years believes Applicant is devoted to improve human relations in the community.

Applicant provided additional credit bureau reports and a letter of dispute dated June 2006, to one of the credit agencies requesting certain information be deleted from her credit report (AE K).

### **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. In a Memorandum to the Director of DOHA dated November 19, 2004, the Deputy Under Secretary of Defense (Counterintelligence indicated that pursuant to paragraph 2.4. of Directive 5220.6, DOHA shall utilize the provisions of Directive to resolve contractor cases forwarded to it by the Defense Security Service DSS) or the Office of Personnel Management (OPM) for trustworthiness positions, to include those involving ADP I, II, and III positions. and Security) indicated that 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)**

Conduct that demonstrates dishonesty or poor judgment may denote the applicant lacks the requisite qualifications for a

trustworthiness position.

### **Criminal Conduct (Guideline J)**

A history of criminal behavior creates doubt concerning a person's judgment, reliability and trustworthiness.

### **CONCLUSIONS**

**Financial Considerations (FC).** When an individual is financially overextended, she is at risk of engaging in illegal acts to generate funds. Between August 1999 and August 2005, Applicant accumulated 31 delinquent debts amounting to about \$123,600.00. Accumulating 31 debts without documented evidence of having paid any of the debts meets the definition of FC disqualifying condition (DC) 1. (*a history of not meeting financial obligations*) and FC DC 3. (*inability or unwillingness to satisfy debts*).

There are five mitigating conditions (MC) that may apply to the circumstances of this case: FC MC 1. (*the behavior was not recent*). FC MC 2. (*it was an isolated incident*). FC MC 3. (*the conditions that resulted in the behavior were largely beyond the person's control*). FC MC 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*). FC MC 6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). FC MC 1. is not applicable as the debts are still delinquent. She has numerous delinquent debts that are not isolated, rendering FC MC 2. inapplicable. During her three periods of unemployment, Applicant's unemployment compensation amounted to only 25% of her earnings. Applicant receives extenuation under FC MC 3. for the time period surrounding her three periods of unemployment. However, the extenuation due to unemployment is substantially reduced as Applicant has worked for her current employer without interruption since October 2001.

There is no evidence of financial counseling. Though Applicant claims she participated in two credit counseling sessions in 2002, and was told to continue paying the smaller debts, there is no documented evidence of the counseling or that she has satisfied or settled any of the SOR debts. Applicant has produced nothing to show her finances are under control and that she can manage them. FC MC 4. does not apply.

Applicant claimed in August 2004 she would pay off certain creditors by the end of the year or in 2005. She prepared a PFS indicating that every month she had about \$820.00 of discretionary income available for payment of her creditors. Yet, the record reflects no documented repayment or settlement of any debts. FC MC 6. does not apply. Subparagraphs 1f., 1.l., 1.n., 1.s., 1.x. are found in Applicant's favor as insufficient evidence has been adduced linking Applicant to the debt. Also, GE 5 and AE K show the debts are in an official, dispute status. Subparagraphs 1.p. and 1.y., list the names of the collection agencies for the original creditors identified in subparagraphs 1.bb. and 1.dd., are found for Applicant. The remaining allegations are found against Applicant. The FC guideline is found against Applicant.

**Personal Conduct (PC).** Applicant deliberately concealed relevant and material information from the government when she answered "no" to questions 22.a. and 22.b., then omitted her lien and debts from her public trust questionnaires in April 2003 and August 2004. There is no doubt after reading Applicant's explanations on the first two pages in her answer (quoted in the factual findings) that, because of her periods of unemployment, she knew she had the lien and delinquent debts when she executed both questionnaires. Secondly, had the questions required information about her debts and lien in 2000, then her negative answers to the delinquent debts question would have been probably correct. However, the questions are not phrased in a way that allows an applicant to subjectively select the meaning most advantageous to their financial situation. PC DC 2. (*the deliberate omission or falsification of relevant and material facts from any personnel security questionnaire used to determine trustworthiness*) applies.

The personal conduct concerns of the PC guideline may be mitigated under PC MC 1. (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness or reliability*). An individual's debts and other financial issues are always pertinent to judgment and trustworthiness. Deliberately holding back material information triggers security concerns about whether an applicant can be counted on to disclose truthful information. PC MC 1. does not apply. PC MC 2. (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) and PC MC 3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) do not apply. The falsification occurred less than three

years ago. Applicant's deliberate falsifications in September 2002 (when she completed her questionnaire worksheet), April 2003, and August 2004 form a pattern of dishonest misconduct that is not mitigated under PC MC 2. PC MC 3. requires disclosure of adverse information before confrontation. There is no evidence Applicant volunteered the debt information before being confronted with the delinquent debts during her interview/affidavit. PC MC 3. does not apply. Subparagraphs 2.a., 2.b., 2.c., and 2.d., are found against Applicant.

**Criminal Conduct (CC).** When Applicant deliberately omitted material information about her lien and debts on her April 2003 and August 2004 questionnaires, then certified (with her signature) the information in the questionnaires were true and correct, she committed criminal conduct in violation of 18 United States Code (U.S.C.) § 1001. This behavior falls within CC DC 1. (*allegations or admission of criminal conduct, regardless of whether the person was charged*).<sup>(5)</sup> Applicant's deliberate falsifications is considered too recent to satisfy CC MC 1. (*the criminal behavior was not recent*). CC MC 2. (*the crime was an isolated incident*) is not applicable as Applicant's falsifications of two public trust questionnaires constitutes a pattern of criminal behavior. The only other relevant condition is CC MC 6. (*there is clear evidence of successful rehabilitation*) Applicant's favorable credit history before 2000/2001, her work history since October 2001, the letters of recognition, and salary increases weigh in her favor. But, her deliberate omissions in April 2003 and August 2004, and her continuing belief the omissions were unintentional have not been mitigated by her character evidence. Adverse findings are warranted under 3.a., 3.b., 3.c., 3.d., and the CC guideline.

Even though I find against Applicant under the FC, PC and CC guidelines, a commonsense assessment of the evidence under the whole person model must be made. Intentionally furnishing false information during the trustworthiness investigation is always serious because the dishonest conduct casts a negative impact on Applicant's judgment. She was at least 47 or 48 years old when she omitted the relevant information in 2003. Applicant has presented impressive evidence of her job performance and her positive impact in the community. However, the character evidence does not overcome her continuing belief she did not intentionally withhold material information from the government in 2003 and 2004. Her current position regarding the falsifications and the lack of action in repaying any of the listed debts foreshadow a future with continuing financial problems.

### **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. For 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 1.k. Against the Applicant.

Subparagraph 1.l. For the Applicant.

Subparagraph 1.m. Against the Applicant.

Subparagraph 1.n. For the Applicant.

Subparagraph 1.o. Against the Applicant.

Subparagraph 1.p. For the Applicant.

Subparagraph 1.q. Against the Applicant.

Subparagraph 1.r. Against the Applicant.

Subparagraph 1.s. For the Applicant.

Subparagraph 1.t. Against the Applicant.

Subparagraph 1.u. Against the Applicant.

Subparagraph 1.v. Against the Applicant.

Subparagraph 1.w. Against the Applicant.

Subparagraph 1.x. For the Applicant.

Subparagraph 1.y. For the Applicant.

Subparagraph 1.z. Against the Applicant.

Subparagraph 1.aa. Against the Applicant.

Subparagraph 1.bb. Against the Applicant.

Subparagraph 1.cc. Against the Applicant.

Subparagraph 1.dd. Against the Applicant.

Subparagraph 1.ee. Against the Applicant.

Subparagraph 1.ff. Against the Applicant.

Subparagraph 1.gg. Against the Applicant.

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

Subparagraph 2.a. Against the Applicant.

Subparagraph 2.b. Against the Applicant.

Subparagraph 2.c. Against the Applicant.

Subparagraph 2.d. Against the Applicant.

Paragraph 3 (Criminal Conduct, Guideline J): AGAINST THE APPLICANT.

Subparagraph 3.a. 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 grant Applicant eligibility for assignment to a sensitive Information Systems Position. Eligibility to a trustworthiness position is denied.

Paul J. Mason

Administrative Judge

1. GE 7 is Applicant's answer to the SOR, and is located behind the SOR in the orange folder of the court file.
2. She indicated she had verification of the counseling (Tr. 49) but none was provided.
3. These allegations are set forth in subparagraphs 2.c. and 2.d. of the SOR.
4. Though I cannot base an adverse security clearance decision on conduct not alleged in the SOR, the false debt information provided in GE 6 carries a negative impact on Applicant's overall credibility.
5. Applicant's omissions in her worksheet in September 2002 do not have the same legal implications because there is no certification section in (GE 6).