

DATE: October 31, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 05-12037

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Though Applicant's indebtedness involves two delinquent accounts amounting to only \$10,100.00, she has done nothing to resolve either debt. The credit card account that became delinquent in 2000, was converted to a judgment in February 2002. Applicant has known since July 2003 that the government was concerned about her financial obligations. She has claimed consistently she has been unable to pay the listed debts. Yet, one month after making her claim of not being able to pay the listed debts in December 2005, she started making payments of \$488.00 a month on a car costing \$21,000.00. Given her recent decision to take on substantial new debt rather than address her past due debts, Applicant's favorable character evidence does not satisfy her ultimate burden of persuasion. Eligibility for assignment to ADP I/II/III Position is denied.

STATEMENT OF CASE

On February 9, 2006, 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 Applicant to hold a sensitive position. Applicant's undated response to the SOR was received on February 27, 2006. hearing.

The case was assigned to me on August 9, 2006. On August 14, 2006, DOHA issued a Notice of Hearing for August 30, 2006. At the hearing, the Government's seven exhibits (GE 1 through GE 7) were admitted in evidence. Applicant testified and her three exhibits (AE A through AE C) were admitted in evidence. After the hearing, Applicant submitted two additional exhibits that have been received in evidence as AE D (character statements) and AE E (performance evaluations from 2001 through January 2006). The transcript was received on September 18, 2006.

RULINGS ON PROCEDURE

At the hearing, Applicant knowingly waived the 15-day-rule in the Directive (E3.1.8.) requiring an applicant to be notified at least 15 days in advance of the time and place of the hearing (Tr. 5). Next, 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," (Tr. 9) because the reference is irrelevant in the processing of automated information system cases (ADP). Applicant had no objection to the proposed amendment (Tr. 11). Pursuant to E3.1.17. of the Directive, the motion was granted.

FINDINGS OF FACT

The SOR alleges financial indebtedness. Applicant admitted subparagraphs 1.b. through 1.d., but denied 1.a. After submitting her response to the SOR in February 2006, she reviewed her credit report and changed her denial of subparagraph 1.a. to an admission. She noted that the 1.a. debt and the 1.c. debt are the same debts (Tr. 26). Applicant is 28 years old and has been employed as a claims associate with a medical organization since 1998. She seeks eligibility for a trustworthiness position.

Applicant was attending college in 1997 and working part-time for her current employer. She decided to apply for a credit card (subparagraphs 1.a., 1.c.). She made a few payments on the card then stopped because she had no money. In her sworn statements, her answers to interrogatories, and her testimony since the debt became delinquent in 2000 and then a judgement (subparagraph 1.c.) in February 2002, she stated the same position of being unable to pay the listed debts.

Believing her disabled parents needed a car and would be able to make the installment payments, Applicant (age 23) and her sister cosigned⁽¹⁾ for the purchase car for their parents in 2001. Applicant's parents discovered they could not meet the car payment and the mortgage, and voluntarily returned the car (subparagraph 1.b.) to the dealer. She claimed she understood the legal significance of providing her signature as cosigner to the car purchase contract (Tr. 36). However, she really did not consider she could be held liable for the deficiency balance due on the car (Tr. 43) because she thought her parents would continue to make the car payments. She also thought that once the car is turned in (to the dealer), the loan is extinguished (GE 5). According to her answers to interrogatories of December 2005, she held a similar view about her parents' foreclosed house.

Applicant has repeatedly stated her inability to repay the listed debts. She has described her financial habits on several occasions since this trustworthiness investigation began in 2003. In her affidavit of October 2003, Applicant disclosed she relies on her mother when she runs out of money. She stated, "When I see I am going in the hole financially for the month, I cut back on my expenses. My mother gives me money to supplement my income. I hope to get some of my bills paid off by the end of 2004." (GE 3) At other times, when she needs money she applies for loans at lending companies (GE 6).⁽²⁾ In her affidavit of December 2004, Applicant noted she paid no rent or mortgage.

Applicant has a checking account and about \$2,700.00 in her retirement account (Tr. 47). She has never had financial counseling (Tr. 37). Though she is unable to repay either debt identified in the SOR, she opened a \$21,000.00 loan in January 2006 to finance a car she purchased (Tr. 38).

Applicant's minister wrote a character statement extolling her contributions to the church. According to the minister, Applicant is a role model with a promising future. Applicant's two friends of several years believe she is kind, trustworthy and dedicated. Applicant's mother accepted full responsibility for the house mortgage and the repossessed car. She claimed Applicant always handled financial affairs in a responsible manner. Applicant's performance evaluations reflect that she has met performance expectations for 2001 through January 2006 (AE E). In labeling her overall credit, Applicant stated in AE D, "I've worked very hard to get my credit like it is now after my parents destroyed it." She provided no further explanation of what she has done to improve her creditworthiness.

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.

CONCLUSIONS

Determining whether a person is eligible for assignment to a sensitive position is a predictive decision that requires a careful examination of all positive and negative information, past or present, that pertains to the person. Under the financial considerations (FC) guideline, Applicant's past due indebtedness is at issue. She has a delinquent credit card account (subparagraph 1.c) that became delinquent in 2000, and was converted to a judgment in February 2002. She has a second delinquent debt (subparagraph 1.b.) that represents a deficiency balance owed on a car she cosigned for in 2001. FC disqualifying condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*) applies. Applicant's repeated claims she is unable to pay the debts raise security concerns under FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*), especially when she was able to purchase a car in January 2006.

The FC guideline provides five mitigating conditions (MC) that may overcome the negative financial difficulties. FC MC E2.A6.1.3.1. (*the behavior was not recent*) may apply when the debts are not recent. The condition does not apply to these circumstances as the two debts are still unpaid and unresolved. FC MC E2.A6.1.2.3. (*it was an isolated incident*) is not a factor in this case due to Applicant's overall financial irresponsibility.

Applicant is entitled to limited mitigation under FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the individual's control*). Applicant was a teenager when she applied for the credit card. It is reasonable to conclude she was inexperienced with the financial consequences of not making payments on a credit card. However, the credit card debt is not extinguished by time, especially after the creditor received a judgment against her in February 2002. As with the credit card debt, Applicant did not have a clear understanding of what her signature meant when she cosigned for the car loan. However, the underlying debt cannot be excused because she mistakenly thought her parents were going to maintain the payments. In sum, Applicant receives limited mitigation under this condition because her naivete and/or lack of knowledge about credit cards and co-signatures do not eliminate her liability for the debts.

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*) does not apply as there is no indication of counseling or that Applicant's financial problems are under control. FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) refers to the repayment of creditors or otherwise satisfying debts in some other legal manner. When an applicant is unable to pay debts, regardless of the number or size, she should seek counseling to find the best way to extinguish the financial problems. Sometimes, this includes consideration of a Chapter 7 or 13 bankruptcy, depending on the scope of the debt. FC MC E2.A6.1.3.6. does not apply.

Having weighed and balanced all the favorable and unfavorable evidence, I find against Applicant under subparagraphs 1.b., 1.c., and 1.d. A review of the circumstances of this case warrants the same conclusion under whole person model found at E2.2. of the Directive. There are only two delinquent debts totaling \$10,100.00, and Applicant has made no effort to repay them. Though Applicant's age has been considered (1) at the time she became delinquent on the credit card, and (2) at the time she cosigned for her parents' car, those debts remain her financial responsibility. To date, she

hasn't addressed them in any tangible way.

When an individual's financial habits and practices are an issue, E2.2.1.6. (*the presence or absence of rehabilitation and other pertinent behavioral changes*) is potentially applicable when evidence shows the individual has taken responsible action to prevent a recurrence of debt problems in the future. There is no evidence in the record to support a conclusion Applicant has changed her practices. There is no evidence of financial counseling. Her credit reports, reflecting the opening and refinancing of several loan contracts with finance companies, demonstrates clear evidence of her ongoing budgetary problems in frugally managing her money. Until at least October 2003, her mother had been supplementing her income when she became financially strapped. Applicant's spending choices to date have not been prudent ones. For example, instead of taking out a \$21,000.00 loan to purchase a car, she could have demonstrated financial responsibility by taking steps to repay her past due debts.

Applicant's character evidence provides a positive picture of a respectable job performance by a person who is also admired in her community and her church. However, the favorable evidence is insufficient to conclude under the whole person model that she has successfully mitigated the security concerns related to her financial problems.

FORMAL FINDINGS

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

Subparagraph 1.a. For the Applicant.

Subparagraph 1.b. Against the Applicant.

Subparagraph 1.c. Against the Applicant.

Subparagraph 1.d. 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 ADP I/II/III position. Eligibility is denied.

Paul J. Mason

Administrative Judge

1. Before she cosigned for the car in 2001, Applicant cosigned for her parents's mortgage on their house they ultimately lost to foreclosure. Applicant believes she was cosigning to finance a loan to pay an addition for her parents' house. But, GE 6 shows the loan was a mortgage they defaulted on. See discussion of house and mortgage in GE 2.

2. According to GE 7, and because she needed the extra money (Tr. 46), Applicant applied for and/or refinanced loans on at least eight occasions between 2001 and 2003 (Tr. 45-48; GE 7).