

DATE: November 30, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 05-18260

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Notwithstanding her divorce, the costs of raising four children, her recent injuries suffered in a car accident, and repayment of two creditors, Applicant has not provided sufficient evidence to find in her favor under the financial guideline. In addition, she deliberately falsified her public trust questionnaire by not acknowledging she had debts over 180 days delinquent, and then not disclosing those debts. Clearance is denied.

STATEMENT OF CASE

On March 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that based on financial considerations and personal conduct, 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. On April 17, 2006, Applicant provided answers to all allegations. She did not believe she falsified the public trust questionnaire because she provided truthful answers in her interview/affidavit. She also requested a hearing.

The case was assigned to me on July 25, 2006. On September 12, 2006, DOHA issued a Notice of Hearing for October 4, 2006. At the hearing, the Government's six exhibits (GE 1 through GE 6) were admitted in evidence. Applicant testified. Her exhibits (AE A), AE B, and AE C, exhibits submitted following the hearing, have been admitted in evidence. AE A is a one-page exhibit indicating a record of payment with a handwritten notation reading a zero balance. AE B is another one-page document that, according to Applicant, shows the debt to the creditor identified in subparagraph 1.k. was paid. AE C contains 11 performance evaluations for the years 1995 to February 2006. The transcript was received on October 18, 2006. References to the transcript will appear as (Tr.) followed by the page number.

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. 8). 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," because the reference is irrelevant in the processing of automated information system cases (ADP). Applicant had no objection to the proposed amendment (Tr. 9). Pursuant to E3.1.17. of the Directive, the motion was granted. After further review and reflection of Executive Order 12968, ¶ C8.2.1. of DoD 5200.2-R, and ¶ E2.2. of Directive 520.6, I reverse my decision granting Department Counsel's motion. Even though the specific guidelines of the Regulation and those of the Directive are the same, the guidelines of the current Regulation shall continue to apply to all SORs dated before September 1, 2006, the effective date of the revised guidelines.

FINDINGS OF FACT

The SOR alleges financial debts under Guideline F and intentional falsifications/omissions under Guideline E. Applicant admitted all the factual allegations under paragraph 1. In response to subparagraph 2.a., Applicant neither admitted or denied the allegation. In her next sentence, she noted she tried to be as truthful as possible during the taking of her statement/affidavit in June 2005. Applicant is 41 years old and has been employed as a claims associate with a health maintenance facility since 1995. She seeks a position of public trust.

Financial considerations. The only credit problems Applicant claimed to have before 2002 was a student loan that was placed in a deferment status. She contended her financial problems in 2002 were caused by (1) a divorce, (2) maintaining a costly mortgage, (3) abusing three credit cards, (4) raising four children, (5) her oldest child's tuition, and (6) rehabilitating from a car accident causing personal injury. Applicant provided little information about her divorce and its specific impact on her other financial obligations. She purchased a house three years ago, and is currently having trouble maintaining the mortgage of approximately \$1,900.00 a month. The house is advertised for sale. She plans to use the proceeds from the sale to pay off the other listed debts.

In 2001 or 2002, Applicant began using three credit cards to purchase clothes for her children. However, the credit cards were canceled after she exhausted the allowable credit. The needs of her four children have always been her top priority.

Applicant's oldest child was accepted at an out-of-town college in August 2002. Even though her oldest child has some student loans that pay a substantial portion of the college costs, Applicant still has had to pay varying amounts of tuition during each of the four years of enrollment to make up a shortfall that is not covered by the student loans. This year Applicant had to pay \$1,500.00 by August 15, 2006, with another payment due on October 15, 2006. Applicant provided no documentation.

Applicant had a car accident approximately five weeks before the hearing. She has been on disability leave from her second job for five weeks, and her primary job (health maintenance facility) for a week. Applicant is due to return to her primary job on October 23, 2006. Applicant provided no documentation.

The SOR identifies 11 past due debts totaling approximately \$53,039.00. The first listed debt (subparagraph 1.a.) was reduced to a judgment in September 2001. The other debts are for small loans, credit cards, jewelry, a mobile home, a car, and car repair. Regarding subparagraph 1.a. of the SOR, Applicant borrowed \$300.00 from a check cashing agency, and recalled repaying the loan at \$58.00 a week when a dispute developed over the amount owed. Suit was filed by the check cashing agency. A judgment for \$215.00 was entered in September 2001. Applicant recalled she had been notified of the court date, she did it by one day. On several occasions, Applicant tried unsuccessfully to pay the judgment. Her last effort was about three years ago.

Applicant opened a credit card account with the creditor in subparagraph 1.b. in December 1999. The account (\$992.02) was transferred for collection in December 2002. Applicant has not attempted to pay this account.

Applicant opened a jewelry account (subparagraph 1.c.) in 2000. That account (\$571.99) was transferred for collection in February 2003. Financial problems have prevented Applicant from resolving this account.

In need of cash in April 1999, Applicant received a \$575.00 loan (subparagraph 1.d.) from a check cashing operation. For unexplained reasons, Applicant believes she only owes \$200.00 of the balance, and stated the creditor would not negotiate with her. She provided no supporting documentation.

The account (\$1,515.00) identified in subparagraph 1.e. was opened in October 2001 and became delinquent in September 2003. Applicant claimed in her answer to the SOR that she owed \$520.00, and would have the debt paid off by the first of May 2006. At the hearing, she testified she paid the creditor and would send the receipt showing proof (Tr. 34). AE A is a one-page document containing a ledger indicating the account history of subparagraph 1.e. The ledger (upper left-hand corner) discloses that a payment of \$539.14 was made on October 18, 2006, and the words "The Final Payment 0 balance"⁽¹⁾ is handwritten underneath the ledger. Though the ledger contains information that could be interpreted to mean the balance has not been completely repaid, I find for Applicant under subparagraph 1.e.

Applicant admits the account described in subparagraph 1.f. (\$6,098.00), but disputes the current amount because of the interest. Applicant purchased a car in August 2001.

Constant mechanical problems caused Applicant to return a car to the dealer; also, she could not sustain the payments. The car was repossessed and the account became delinquent in August 2003. The dealer resold the car, but advised Applicant a deficiency balance of \$12,108.21 (subparagraph 1.g.) was due. According to her affidavit in December 2004, Applicant declared she would not pay the balance because she no longer had possession of the car.

Applicant still owes \$2,842.00 on a credit card account (subparagraph 1.h.). Subparagraph 1.i. represents a delinquent mortgage (\$26,832.00) on her mobile home. In her response to the SOR, she explained that the mortgage became delinquent following a seven-month conflict she had in evicting a former tenant, and she could not catch up on her payments. No additional information was provided.

The overdue account (\$724.00) identified in 1.j. is for a credit card. Applicant provided documentation (AE B) under subparagraph 1.k. that shows in her opinion she paid off the student loan. Though there is proof the check for \$159.73 was formerly presented, there is no independent documentation showing the account was satisfied. Having weighed all the evidence on this allegation, I accept it as sufficient to support her testimony that the student loan was repaid.

The creditors in 1.a., 1.e. and 1.k. are the only creditors Applicant contacted to resolve the overdue debts. She still uses check cashing stores to borrow money to pay the bills and food. She has never had financial counseling

Personal Conduct. Applicant was asked why she responded "no" to question 22.b. of her public trust questionnaire in December 2004. She responded:

I did not know that I was answering that incorrectly when I answered "no" at the time. Because, to me, when it asks you 180 days delinquent, I didn't know I was 180 days delinquent. When something's charged off your credit report, I - I just classify it as a charge off. I'm not sure if it classifies as 180 days late or I would have answered "yes." (Tr. 24)

Later in her testimony, she indicated she did not believe the listed accounts (which were in a "charge off" status) required her to disclose those debts as being over 180 days delinquent (Tr. 26). Again, she claimed that she did not know when she filled out the questionnaire in August 2004 that she was over 180 days delinquent on her debts (Tr. 25) She recalled receiving notification from some of the creditors (between 2002 and August 2004) inquiring about payment, but she still did not believe she was she was delinquent on the 1.e. debt. or the other credit card debts (Tr. 41). Applicant's explanations for not answering question 22.b. correctly, and not furnishing the required financial information are ambiguous and inconsistent. After a careful review of her detailed recollection of the circumstances surrounding the judgment (subparagraph 1.a.) and then trying to negotiate a settlement and who to pay, I find she knew the debts were over 180 days delinquent, yet decided not to reveal the financial information.

Character evidence. In addition to the two bill payment exhibits, Applicant's performance evaluations for 1995 through February 2006 were received in evidence. The ratings show that Applicant has been meeting performance expectations while excelling in attendance. A positive comment made about Applicant in 2002 was her willingness to learn.

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.

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for ... assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability and trustworthiness are such that ... assigning the person to sensitive duties is clearly consistent with the interests of national security." The Regulation sets forth personnel security guidelines, disqualifying and mitigating conditions under each guideline. In determining whether the applicant qualifies a sensitive position under the trustworthiness standard, the applicant must be provided the due process procedures contained in DoD Directive 5220.6.

In addition to the disqualifying and mitigating conditions of each security guideline, the general factors of the whole person concept⁽²⁾ should be applied in deciding whether it is clearly consistent with the national interest to grant an applicant eligibility for assignment to sensitive duties.

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)

This guideline addresses questionable judgment and/or dishonesty demonstrated during the course of the investigation.

CONCLUSIONS

Financial considerations (FC). An individual's financial matters become a legitimate governmental concern when she has trouble paying her debts. History provides examples demonstrating individuals who are financially overextended are at risk of engaging in illegal acts to generate funds. Applicant has a history of not paying debts within the purview of FC disqualifying condition (DC) 1. (*a history of not meeting financial obligations*) Between September 2001 and 2005, 11 debts became delinquent. The fact that Applicant has collected 11 debts over a six-year period reflects an inability to satisfy her debts within the definition of FC DC 3. (*inability or unwillingness to satisfy debts*). Her unwillingness to address her overdue debt is made evident by her statement in December 2004 not to pay the balance for the car (1.g.) that was resold after it was repossessed. Further, her inability to pay the judgment (1.a.) after the passage of more than five years defies commonsense.

There are five mitigating conditions (MC) under the FC guideline. Neither FC MC 1. (*the behavior was not recent*) nor FC MC 2. (*it was an isolated incident*) do not apply to the circumstances as several of Applicant's 11 debts became delinquent less than three years ago.

FC MC 3. (*the conditions that resulted in the behavior were largely beyond the person's control*) applies based on incidents that hampered Applicant's ability to pay her bills. The emotional and economic impact of divorce followed by the expense of maintaining shelter while raising four children, specifically college tuition for one of the children over the past four years, and sustaining physical injury from a car accident justifies significant extenuation under FC MC 3.

FC MC 4. (*the person has received or is receiving counseling for the problem and there are clear indications the problem is being resolved or is under control*) does not apply as Applicant has never had financial counseling, and there are no clear indications she is in a position to address the remaining overdue debts.

Applicant is credited with limited mitigation under FC MC 6 (*the individual made a good-faith effort to repay overdue creditors or otherwise resolve debts*) based on her efforts to repay two of the listed creditors. However, Applicant's commitment to pay the remaining creditors is seriously questioned because she did not pay the creditors in 1.e. and 1.k. until fourteen days after the hearing. All factual allegations except for subparagraphs 1.e. and 1.k. are found against Applicant. The FC guideline is found against her.

Personal Conduct (PC). Questionable judgment, dishonesty could indicate the person may not be a suitable candidate to safeguard classified information. Applicant's omission of material information from her public trust questionnaire in August 2004 falls within the ambit of PC DC 2. (*the deliberate omission of relevant and material facts from any personnel security questionnaire used to determine trustworthiness*) Though Applicant claimed she did not know she was over 180 days delinquent on the identified debts, the record evidence supports the opposite conclusion. From 2002 until August 2004 when she completed the questionnaire, she remembered receiving creditor notices in the mail about the overdue debt. The amount of detail Applicant was able to supply about her unsuccessful repayment of the loan (subparagraph 1.a.) that ended in a judgment against her almost three years before she filled out the questionnaire, provides compelling evidence Applicant knew she had these outstanding debts but decided not to disclose them on the questionnaire in August 2004.

There are three conditions potentially relevant for mitigating the deliberate omission of material information. PC MC 1. (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*) does not apply. The delinquent debts are independently substantiated by the credit bureau reports (CBR)s in GE 4, GE 5, and GE 6. PC MC 2. (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) nor PC MC 3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) are applicable to these circumstances due to Applicant's ongoing denial she deliberately omitted information about the delinquent debts.

Accordingly, Applicant's forthright identification and discussion of the debts shown her by the investigator in June 2005 does not meet the good-faith disclosure of material facts requirement of PC C 3. An individual seeking eligibility for a public trust position must be honest during all parts of the trustworthiness investigation. Subparagraph 2.a. and the PC guideline are found against Applicant. In reaching my decision under the FC and PC guidelines, I have evaluated this case under the general factors of the whole person concept. Applicant was 38 years old when she deliberately provided false information on the questionnaire. The only commonsense reason she provided false information on the public trust form is that she did not want the government to know about six year history of delinquent debts. Furthermore, her evidence in mitigation is insufficient to conclude her financial problems will not 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. For 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 1.k. For the Applicant.

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

Subparagraph 2.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. The "0" has a line running diagonally through it.
2. Those factors include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct;(5) the voluntariness of the participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, or duress; and (9) the likelihood of continuation or recurrence.