

DATE: December 11, 2006

In re:

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SSN: -----

Applicant for Security Clearance

P Case No. 06-00672

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 have been mitigated through his documented efforts to repay or settle four of six listed debts, even though he waited until March 2006 to address the debts. Conversely, Applicant's deliberate omission of material information from his questionnaire, and his ongoing belief he did not deliberately omit material information has not been mitigated despite the favorable financial evidence, and positive character statements from his coworker (at the fire department) and father. Eligibility for assignment to a sensitive/trustworthiness position is denied.

STATEMENT OF CASE

On February 23, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that based on financial considerations, personal conduct, and criminal 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 July 28, 2006, Applicant submitted his answer to the SOR in which he acknowledged the debts under paragraph 1 except for 1.c. He denied the allegation under paragraph 2. He did not provide an answer to subparagraph 3.a. Because the issue of honesty is involved in paragraph 2 and 3, Applicant's answer to subparagraph 3.a. (and paragraph 3) shall be deemed a denial. His explanation for denying subparagraph 2.a. was, "I admit I answered No to the question; Are you now over 180 days delinquent on any loan of financial obligation? At the time of answering the question I had never pulled a credit report to find the status of any of my debts." *See*, answer to SOR. He also regretted not seeking advice when he was filling out the questionnaire.

The case was assigned to me on July 25, 2006. On September 12, 2006, DOHA issued a Notice of Hearing for October 2, 2006. At the hearing, the Government's six exhibits (GE 1 through GE 6) were admitted in evidence. Applicant and two witnesses testified. Applicant's three exhibits were admitted in evidence. The transcript was received on October 13, 2006. References to the transcript will appear as (Tr.) followed by the page number.

RULINGS ON PROCEDURE

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 ¶ E2.1. of Directive 5200.6, 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.

During the hearing, the government moved to amend the SOR by adding an allegation under the financial considerations guideline. The allegation reads, "1.f. You are indebted to Pinnacle Credit Services, in the approximate amount of \$12,861, for an account placed in collection by MNBA in about January 2006. As of October 2, 2006, the account has not been satisfied." Applicant objected to the Motion to Amend, essentially arguing surprise/lack of notice caused by the government making this motion after the hearing had commenced. Applicant was aware of the MNBA debt as early as September 2004 when he signed the questionnaire (GE 1). (Tr. 48) He knew he owed the debt even though the debt was not listed in the SOR. Pursuant to E3.1.17. of the Directive, his objection was overruled and the Motion was granted (Tr. 73).

FINDINGS OF FACT

The financial considerations guideline of the SOR alleges 6 past due debts totaling about \$24,984.00. Applicant is 37 years old and has been employed as a desktop analyst with a with a health maintenance facility since July 2001. He seeks a position of public trust.

Financial considerations. Applicant stated in his affidavit in February 2005 that his financial problems began after he was laid off from a job in February 2001. Though he reported in his affidavit (GE 2) that he was unemployed "from March of 2001 until May of 2001." (GE 2), Applicant testified he was also unemployed in February 2001 (Tr. 40).

In 1993, Applicant opened the credit card account identified in subparagraph 1.a. Although he was not really certain why the amount of the overdue account had become so large in 2001, he surmised that he may have transferred other credit account balances to the 1.a. account to take advantage of a lower interest rate. He recalled receiving notices and requests for payment from the 1.a. creditor and the other creditors in February 2001. ⁽¹⁾ He was only able to pay small amounts to some creditors but not to the 1.a. creditor who wanted the balance of the debt.

Applicant was unable to pay the larger overdue accounts until he became vested in his employer's retirement account. Upon vesting, Applicant withdrew sufficient sums of money to pay off 1.a, 1.b., 1.d., and 1.e. The 1.a. creditor filed suit before Applicant settled with them in the week before the hearing (Tr. 39).

The account identified in subparagraph 1.b. represents a past due debt for medical services provided to Applicant's son, who was two years old when he sustained injuries in a fall. The account in subparagraph 1.e. was for medical services his son may have received for asthma. Both debts were settled by Applicant during the week before the hearing. Subparagraph 1.c. describes a medical debt Applicant denies he owes. Applicant used his tax return to settle the debt identified in subparagraph 1.d.

The 1.f. account (credit card) was initially placed for collection in May 2001 (GE 3). ⁽²⁾ Applicant testified the collection account had not been reported since 2002 (Tr. 44). After referring to credit report (GE 6), he indicated he owed \$10,100.00 on the account, but had taken no action to resolve the debt (Tr. 45).

Personal Conduct. On August 18, 2004, Applicant completed a public trust questionnaire. In response to question 22.b. (Are you now over 180 days on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government.), Applicant answered "no." Applicant's first explanation for the missing financial information was almost four months later on February 10, 2005, when he provided an affidavit addressing his knowledge of the overdue debts. Applicant stated, "I did not list the above accounts on my security questionnaire because I did not know about these accounts at the time." (GE 2)

Applicant's second chance to explain why he omitted information about his past due debts occurred when he answered the SOR in March 2006. As noted earlier in this section, he did not provide the necessary information because he believed the question referred to active as opposed to charged off accounts. He also noted that at the time he replied to the question, he did not have a credit report to know what the status of his debts were.

At the hearing, Applicant provided additional testimony explaining why he omitted the information. He stated:

I apologize. The - we were given a deadline of when this had to be filled out. The time from of, one, we had to - to fill it out. And you can tell, it's a pretty lengthy document and it asks for a pretty good bit of information. We - it was just - some information.

I had gone through it. I had probably done it to the best of my ability at the time, not thinking that this was going to be some form of - of - something would be brought up later. I guess I didn't think that it was as important as it was.

But I did not have any of the information as far as my debtors. I - I had never pulled a credit report. We were not, you know, you - we didn't have free credit reports to pull at the time. I guess it was just - the company - well, as it states in there, it wants to know if you have, you know, any outstanding debt over 180 days. I assumed that is was something to do with, you know, current accounts (Tr. 36-37).

At a later point in the cross-examination of Applicant, he was asked whether he knew he owed the 1.a. account when he completed the questionnaire. Applicant's response was, "I had - my idea on it was that it was charged off. Once I pretty much realized that I was not able to pay them, then it was an account that, from what they were telling me, that it was going to charge off." (Tr. 47) In agreeing he still owed the money to the 1.a creditor, Applicant recalled his experience as a bank employee where charged off accounts are placed in a category for accounting purposes (Tr. 48).

At a subsequent location in his testimony, Applicant testified about a problem he had in reading more or less into questions than what was being asked. He testified:

Yes sir. I - I believe I could have probably put a little bit more into - the answers. I hate to say that - I've actually got a - a small problem where when I read things, I kind of read not exactly what they're asking a lot of times. I do that. My wife gets onto me pretty good about it. But I think whenever I - whenever I reach that, I kind of more or less assumed what they were looking for were like home, house, and stuff like that, that I might be past due on - stuff that they were - that they were, you know, that I would be - that I'm actually paying on now. And that's a, you know... (Tr. 50-51)

Applicant's inconsistent and vague explanations for the omitted information support a

finding that he knew the 1.a. and 1.f. accounts were over 180 days delinquent, but did not furnish that information in response to 22.b of his questionnaire in August 2004.

Character Evidence. Applicant had never had financial counseling before he recently sought advice from a counselor at his current employer. The counselor told him to identify and consolidate his debts. Applicant also talked with an attorney who negotiated a settlement with the 1.a. creditor.

Applicant's coworker at the fire department for nine or 10 years, who has also worked with him in the emergency services unit, commented favorably on Applicant's practice of completing assignments on time and in a professional manner. Applicant is considered to be very trustworthy by his father. The father has loaned Applicant money occasionally, but has never paid any of Applicant's past due credit cards (Tr. 27).

On September 27, 2006, Applicant settled with the 1.a. creditor for \$5766.00 (AE B). On September 22, 2006, Applicant paid the past due accounts in 1.b. and 1.e. totaling \$630.21 (AE A). The overdue account to 1.d. was paid on March 10, 2006 (AE D).

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⁽³⁾ 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.

Criminal Conduct (Guideline J)

A history of criminal activity creates doubt about person's judgment.

CONCLUSIONS

Financial considerations (FC). An individual who is financially overextended places himself at risk of committing inappropriate or illegal acts to generate funds. Applicant owed six creditors or collection agencies \$24,984.00. One of the past due accounts is approximately five years old. FC disqualifying condition (DC) 1. (*a history of not meeting financial obligations*) applies. His inability to pay the six debts in the five-year time period since the first debt became delinquent meets the definition of FC DC 3. (*inability or unwillingness to satisfy debts*)

Because Applicant has accumulated six delinquent debts totaling almost \$25,000.00 since October 2001, FC MC 1. (*the behavior was not recent*) and FC MC 2. (*it was an isolated incident*) do not apply. Though Applicant receives some credit under FC MC 3. (*the conditions that resulted in the behavior were largely beyond the person's control*), his unemployment occurred over five years ago, the period of unemployment was short, and there has been no break in his employment or other unforeseen incidents since then.

Applicant's consultation with his employer's financial counselor and ultimate settlement of the 1.a. account entitles Applicant to mitigation under FC MC 4. (*the person has received or is receiving counseling for problem and there are clear indications the problem is being resolved or is under control*) Utilizing the advice from the financial counselor and other sources demonstrates that Applicant's financial problems are being resolved consistent with intent of FC MC 4.

Applicant's mitigating evidence overcomes the disqualifying evidence under FC DC 1. and FC DC 3. of the guideline. Even though he did not begin to pay off the listed creditors until March 2006, he has shown good judgment in paying off or settling with four of the six creditors since then. Applicant's steps in paying off his creditors entitle him to significant weight under FC MC 6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and justify an ultimate finding in his favor under the FC guideline. Subparagraph 1.c. is found for

Applicant because there is insufficient evidence linking him to the medical bill.

Personal Conduct (PC). An individual seeking eligibility for access to a position of trust should demonstrate honesty during all phases of the security investigation. The applicable disqualifying condition in the circumstances of this case is PC DC 2. (*the deliberate omission, concealment or falsification of relevant and material facts from any questionnaire to determine employment qualifications for trustworthiness*) All the elements of the condition have been satisfied. After weighing and balancing all Applicant's explanations for omitting the information from his questionnaire, I am unable to conclude he did not deliberately omit material financial information from question 22.b. First, Applicant's belief (answer to SOR) that question 22.b. applied only to active, delinquent accounts rather than all accounts over 180 days delinquent, completely discredits his earlier claim (affidavit in February 2005) that he was unaware of the delinquent debts altogether. In order for Applicant to subjectively differentiate the types of delinquent debts he had when he completed the questionnaire, he had to be thinking about the individual, delinquent debts when he completed the questionnaire.

Second, Applicant's alleged reading problem does not excuse his deliberate omission of relevant material from a questionnaire used by the government to determine employment/trustworthiness qualifications. There are no words in question 22.b. that infer or suggest the question refers only to active accounts or major cost purchases. To permit the narrow reading chosen by Applicant would render this stage of the trustworthiness investigation meaningless because an applicant would interpret the delinquent debt question in a way similar to the interpretation applied by Applicant in order to conceal material financial information about their past.

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. Neither 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 he deliberately omitted information about the delinquent debts. Subparagraph 2.a. and the PC guideline are found against Applicant.

Criminal conduct (CC). A history or pattern of criminal behavior creates doubt about a persons's judgment. Applicant's deliberate falsification of his overdue debts in his August 2004 questionnaire carries independent significance under 18 U.S.C. § 1001 within the scope of scope of CC DC 1. (*allegations of criminal conduct, regardless of whether the person was formally charged*) The pattern of criminal behavior is Applicant's continuing claim he did not deliberately conceal material information about his delinquent debts. The missing debt information is deemed material because it has the potential of directing a security investigation.

Applicant's ongoing refusal to acknowledge the deliberate omission negates the applicability of CC MC 1. (*the criminal activity was not recent*) and CC MC 2. (*the crime was an isolated incident*) Applicant's documented success in paying five of the six creditors, coupled with his favorable character evidence constitutes clear evidence of successful rehabilitation. However, the mitigating evidence does not satisfy Applicant's ultimate burden of persuasion under the CC guideline because he still declines to admit he falsified the public trust questionnaire. Subparagraph 3.a. and the CC guideline is found against Applicant. In reaching my decision under the specific guidelines, I have considered the record as a whole, and in light of the whole person model of the Regulation.

FORMAL FINDINGS

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

Subparagraph 1.a. For the Applicant.

Subparagraph 1.b. For the Applicant.

Subparagraph 1.c. For the Applicant.

Subparagraph 1.d. For the Applicant.

Subparagraph 1.e. For the Applicant.

Subparagraph 1.f. For the Applicant.

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

Subparagraph 2.a. 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 for assignment to a sensitive position is denied.

Paul J. Mason

Administrative Judge

1. For varying periods of time, the listed creditors did not contact him about payment (Tr. 47).
2. GE 3 reflects the debt was placed for collection in May 2001. GE 4 and GE 5 show the debt was "transferred, sold or charged off." GE 6 reflects the debt was transferred for collection to the collection agency in January 2006 (GE 6).
3. 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.