

DATE: December 27, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 06-01251

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial obligations involving seven debts totaling about \$16, 149.00. Over the years, either Applicant or one of her three children have had unanticipated, medical problems requiring medical treatment for different periods of time. The unexpected medical problems and Applicant's repayment of six of the seven creditors furnishes sufficient reasons to find in her favor under the financial guideline. Applicant's omission of the installment loan debt and the medical debt from her questionnaire was unintentional. Eligibility for assignment to a sensitive/trustworthiness position is granted.

STATEMENT OF CASE

On March 22, 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 21, 2006, Applicant submitted her answer to the SOR.

The case was assigned to me on July 25, 2006. On September 12, 2006, DOHA issued a Notice of Hearing for October 3, 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 five exhibits were admitted in evidence. Following the hearing, she submitted nine exhibits that have been admitted in evidence as AE F through AE J. Those exhibits include documented involvement of Applicant's grandmother in paying off the balance of a debt consolidation plan, and also payment of several of the creditors listed in the SOR. The transcript was received on October 18, 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 (ADP) cases. 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 ADP cases and the Directive shall apply to adjudicative procedures that are utilized in ADP cases.

FINDINGS OF FACT

The SOR alleges financial considerations under Guideline F, and personal conduct under Guideline E. Applicant admitted all factual allegations under paragraph 1 except for 1.d. She denied paragraph 2. Applicant is 33 years old, married with three children. She has been working for her current employer since June 2001, and has been promoted several times from her original position as a programmer analyst. She seeks eligibility to a sensitive/trustworthiness position.

The SOR identifies seven delinquent debts. Six of the seven accounts are for medical services rendered between 1999 and 2005. The largest bill is \$800.00 and the smallest \$70.00. The seventh past due debt is a balance of 14,084.00 that Applicant owes after resale of her car which was repossessed in January 2003.

As noted in her affidavit (GE 4), Applicant incurred the medical bill (\$800.00) in 1.a. for asthma treatment received in December 1999. She explained the company that performed the services was an independent contractor with the hospital where the treatment was received. She contacted the representative of the independent contractor and was told the bills had been "returned undeliverable." The same bill was sent to her former medical insurance company who denied the claim. She owes the debt because time to file the claim has expired.

At the hearing, Applicant indicated she had paid the 1.a. debt. The credit reports (GE 5, GE 6) show that the medical debt she actually testified about, and satisfied was 1.c. ⁽¹⁾ AE I reflects the 1.c. medical debt has been paid. Applicant was also notified on September 29, 2006 that the 1.c. account was resolved (AE I).

Applicant's indebtedness in 1.b. of the SOR resulted after her husband stopped making payments on a car he no longer wanted. At the time she signed for the car, she did not fully understand her liability under the contract. She now realizes she is responsible for the balance of \$14,084.00 owed on her car after resale. As a result of discussions with the collection agency, Applicant initially worked out a proposed settlement of approximately \$5633.00 (AE D) that she planned to pursue, particularly if she received dispensation from an unrelated car accident. Apparently, she opted for the alternative settlement plan that includes a down payment of \$1,000.00 by October 27, 2006, and 27 payments of \$200.00 a month (Tr. 83; AE G).

The past due debts listed in 1.c. through 1.g. are for medical services Applicant and her son received from three different hospitals. Applicant's budgeted plans to pay the medical bills were delayed when her husband took a pay cut from his job in May 2005.

The medical debt identified in 1.d. originated with Applicant receiving medical services in December 2004. GE 6 and AE E reflects the debt was paid.

The 1.e. debt (\$382.00) represents an account for medical services Applicant was furnished in December 2003. Applicant stated the debt was paid and she was waiting on the documentation for this debt and the debt in 1.f. (\$478.00) Documentation from AE F and AE J reflects the 1.e. account was paid on September 28, 2006. The 1.f. account was paid in full by October 12, 2006, the date Applicant was notified the creditor had received payment.

The medical account identified in 1.g. was for services provided in September 2003. AE E indicates the account was paid in April 2006.

Personal Conduct. In 2002, Applicant's husband tried to buy a car. He visited a dealer who told him to obtain a co-signature for his car loan, apparently because of a sub par credit rating. Applicant came to the dealership and was told to

sign the loan contract after her husband asked her to cosign for the car loan. Although she believed when she signed in co-signature capacity, she did not fully understand the legal significance of her signature to the contract. She did not remember being told she could be held liable for the loan. When she filled out the public trust questionnaire in August 2004, she did not consider the installment loan in 1.b. was her personal loan, and she was unaware of the past due medical debt in 1.a.

Character Evidence. Applicant has been married to his husband for more than four years. Based on her responsible handling and care of their three children, her husband considers her reliable and trustworthy. Applicant's supervisor knew her two years before he became her supervisor. Her performance convinced him to promote her twice in the two year period. He was amazed how she keeps her job performance at a high level while finding the time to complete her masters degree in computer science.

In the last few weeks, Applicant has been convalescing from a very serious operation she had in September 2004. Her mother has been in town to take care of the children. Her mother believes Applicant is very devoted to her children.

Applicant was receiving financial counseling for a period of time until her grandmother advised her to stop because of the cost. Applicant has borrowed approximately \$1,400.00 from her grandmother to pay some of the listed and unlisted debts (AE F) ⁽²⁾ She is repaying the loan at \$100.00 a month.

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.

CONCLUSIONS

Financial considerations (FC). A debtor who is unable to pay her debts exposes herself to the risk of engaging in illegal acts to generate funds. Since 1999, Applicant has accumulated seven delinquent debts totaling \$16,149.00. The number of debts, the amount of indebtedness, and the period of time the debts have been delinquent make FC disqualifying condition (DC) 1. (*a history of no meeting financial obligations*) applicable. Applicant's inability to pay the listed debts places her case also within FC DC 3. (*inability or unwillingness to satisfy debts*)

I have considered all the 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*) are applicable. Some of the debts became delinquent within the last two years. Furthermore, the seven debts remain delinquent.

FC MC 3. (*the conditions that resulted in the behavior were largely beyond the person's control*) recognizes that most people do not deliberately put themselves into financial straits. Rather, a medical condition or an economic event arises suddenly to prevent them from paying bills in a timely fashion. Applicant indicated in her answers to interrogatories that her eldest son had medical problems including asthma. After adding those medical problems to the medical problems of her other children, as well as her own problems in December 2003, February 2004 and September 2006, Applicant receives considerable extenuation under FC MC 3.

Applicant receives some mitigation under 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*) as well due to her documented actions in resolving or settling her debts. She understands she must continue to rely on her budget for her delinquent and current financial obligations so that she can pay them off. While she is aware her loan from her grandmother represents another debt, she has put that debt in her budget and she is repaying the loan in the same budgetary and responsible fashion she paid off the earlier loan from her grandmother in 2003. She has a plan to pay off the installment loan. Though the plan has changed, the new plan will allow her to successfully make the payments in amounts that can reasonably be absorbed in her budget.

FC MC 6. (*the individual initiated a good-faith effort to repay overdue creditors otherwise resolve debts*) provides mitigation to Applicant's documented efforts to repay six of the seven listed debts, even though she waited until April 2006 to repay her obligations. I am certain she also understands that her willingness to abide by her budget will make her wiser in the financial decisions she makes in the future. On balance, her actions in resolving six of seven debts and negotiating a settlement with the largest creditor warrants a finding for Applicant under the FC factual allegations and the FC guideline.

Personal Conduct (PC). An individual seeking eligibility for access to a position of trust should demonstrate honesty during all phases of the security investigation. PC DC 2. (*the deliberate omission or falsification of relevant and material facts from a public trust questionnaire to determine employment qualifications or trustworthiness*) is the disqualifying condition that pertains to the circumstances of this case as there was an omission of relevant information from a questionnaire in August 2004 used by the government to determine trustworthiness. However, I do not believe Applicant deliberately tried to conceal the information about the medical bill (1.a.) because she had not received a bill. As for the installment loan (1.b.), Applicant was 28 years old in 2002 when she was asked by her husband to co-sign for the loan. With no evidence she had ever used her name in this capacity before, I do not find Applicant was completely aware that full liability would flow to her if her husband defaulted on the loan. I draw this conclusion even though she received delinquent notices and other types of communication from the creditor demanding payment. She has subsequently become aware she owes the installment loan and is trying to settle it when able.

Having found for Applicant under the FC and PC guidelines, I turn to the general factors of the whole person concept. Applicant is 33 years old and has become a model employee in her supervisor's opinion. Applicant's recent scholastic achievement should allow her to make an even greater contribution to her employer. Her trustworthiness and devotion to duty and family were highlighted by her witnesses. The documentation shows she is keenly aware of her debts, including her obligation to her grandmother, and has taken steps to repay them. The resolution of six of seven debts, plus her actions in addressing the car loan debt provides sufficient repose and confidence to conclude Applicant will pay what she owes while continuing to employ her budget to avoid a recurrence of financial problems in the future.

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.

Subparagraph 1g. For the Applicant.

Subparagraph 1.h. For 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 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. Applicant received medical services in June 2004. The record does not indicate the type of services rendered.
2. Believing that Applicant was paying too much interest in a debt consolidation plan in 2003, her grandmother loaned her approximately \$4,830.00 so she could be discharged from the plan. Applicant repaid her grandmother (AE F).
- 3.