

DATE: October 31, 2006

In Re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 06-01413

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1997 and November 2004, Applicant incurred \$19,970.00 in delinquent debts that have not been mitigated. Though her husband's periodic unemployment in 2002 and since June 2006 has contributed to her inability to pay debts, she had been carrying delinquent debt for several years before she married her husband in 2002. Applicant's history of financial problems, together with her inability or unwillingness to satisfy certain debts necessitates a finding against her under the financial considerations guideline. Eligibility for assignment to trustworthiness position denied..

STATEMENT OF CASE

On April 8, 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. On May 1, 2006, Applicant provided a response to the SOR and requested a hearing.

The case was assigned to me on July 25, 2006. On August 14, 2006, DOHA issued a Notice of Hearing for August 29, 2006. At the hearing, the Government's eight exhibits (GE 1 through GE 8) were admitted in evidence. Applicant testified. She proffered two exhibits: (1) a payment ledger (AE A) from a county magistrate's office listing case numbers which she said equated to fines she had paid in subparagraph 1.s. of the SOR; and (2) a deposit ledger (AE B) showing two \$20.00 deposits in a credit bureau/credit agency savings program. The two documents were identified for the record and returned to Applicant to allow her to make copies of both documents and furnish them by September 11, 2006. No exhibits were submitted. The transcript was received on September 13, 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. 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. Pursuant to E3.1.17. of the Directive, the motion was granted.

FINDINGS OF FACT

The SOR alleges financial considerations. Applicant admitted all factual allegations except for subparagraph 1.s. Her admissions shall be incorporated in the following factual findings. Applicant is 33 years old and has been employed as a claims associate III for a health facilities organization. She is married with two young children. She seeks a position of public trust.

In February 2004 (GE 3), Applicant explained to an investigator that several of the initial checks of the eight worthless checks (subparagraph 1.s.) she wrote in early 2002 were by accident, but the later checks were written deliberately because she had no food or cash. Also, her husband was out of work at the time. She claimed she made restitution for the checks by October 2003, ⁽¹⁾ but had to still pay approximately \$1,200.00 in fines. At the hearing, she sought to admit documentation supporting her contention all fines connected with the checks were paid (Tr. 20-22). Her exhibit was an original so she was given time following the hearing to copy the original and produce a copy through Department Counsel. No documents were submitted.

In March 2004, Applicant talked with an investigator about seven of the debts listed in the SOR. The largest debt among the seven is one for \$6,390.00 (1.f.) that is the balance she still owes on a car that was resold following repossession for nonpayment in April 2003. Applicant considered the debt resolved because the car was repossessed (GE 4). Applicant had not paid the balance on a telephone debt (subparagraph 1.a.) because she did not want to pay for another person's wrongful use of her phone (GE 4). At the hearing, Applicant testified she really forgot about the telephone debt until she was reminded during the interview in 2004 (Tr. 26).

Though Applicant stated in her March 2004 statement she intended to pay the debts when she was able, she has never taken any action to repay any of the identified debts in the SOR (Tr. 31, 34). At the hearing, she described an exhibit that purportedly proved she paid the fines for the worthless checks identified in subparagraph 1.s. But, Applicant did not furnish the document in evidence as she indicated she would. Though the government expressed no objection to the exhibit (Tr. 21), and I described the document in some detail (Tr. 22-24), I have little or no current recall of the contents of the document. Specifically, I am unable to find the document proves she paid the court fines. Applicant's failure to furnish the document dramatically diminishes (1) the credibility of her testimony concerning the contents of the document, (2) and the credibility of the document.

Applicant completed her trustworthiness questionnaire in August 2004. In response to question 22.b. of the question (requiring information about debts over 180 days delinquent), Applicant answered "no." However, over the space provided to enter information next to and underneath question 22.b., Applicant entered the words "Not Sure." Even though she stated she had no intention of deliberately omitting information from the questionnaire in August 2004 when she filled out the form, she had 12 debts over 180 days delinquent at the time. It is difficult to believe she forgot all those debts when she filled out the questionnaire. Though falsification (personal judgment guideline) is not one of the allegations of the SOR, her complete failure to enter any of the 12 debts under question 22.b. reduces the overall credibility of her statements regarding her attempts to resolve the other listed debts.

The SOR lists 19 debts totaling \$17,970.00. Among those debts are telephone, cable, credit card, and medical debts. The first telephone debt (subparagraph 1.a.) and the credit card debt (1.b.) became delinquent in January 1997 and August 1998, respectively. Six medical debts descended into delinquency in November 2004.

Applicant offered another document from her health facilities credit union which she stated was verification that she had established a credit recovery account. The account represents a partnership with her credit union and the credit agency to assist her in paying he delinquent debts (Tr. 23). Under the terms of the partnership, she pays \$20.00 into the account every pay period. ⁽²⁾ When the account total reaches a level sufficient to pay off one of the creditors, a cashier's check is drawn in Applicant's behalf to pay off the identified creditor. Then, Applicant submits a dispute form to the credit agency to inform them the debt has been paid, and they remove the adverse information from the report. The document

was labeled for admission. Applicant retained it so she could make and produce a copy through Department Counsel. No documents were produced. However, unlike the court fine payment ledger, I have enough recollection of this document and Applicant's testimony to find it constitutes credible evidence of Applicant's credit repair agreement.

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

There are two disqualifying conditions (DC) under the financial considerations (FC) guideline that apply to the circumstances of this case: (1) FC DC DE2.A6.1.2.1. (*a history of not meeting financial obligations*); and (2) FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*). Applicant is indebted to 19 creditors in the amount of \$17,970.00. Regarding the car repossession debt described in subparagraph 1.f., Applicant's subjective belief the debt was resolved after resale conveys an unwillingness by her to repay the deficiency. In addition, her decision not to pay the nine year old telephone debt (subparagraph 1.a.) because she claims someone else wrongfully used the service infers that Applicant is also unwilling to deal with this debt.

I have examined the mitigating conditions under the FC guideline and conclude only FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) applies. FC MC E2.1.3.1. (*the behavior was not recent*) does not apply as the debts are still outstanding. In addition, six out of the nineteen debts are less than two years old. FC MC E2.A6.1.3.2. (*it was an isolated incident*) applies when the debts are few in number or clustered in a brief period of time. The presence of 19 creditors with past due accounts up to nine years old militates against the application of this condition. FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply given the complete inaction by Applicant to address her indebtedness.

It is reasonable to conclude the unemployment of Applicant's husband in 2002 and since June 2006 contributed to her financial problems because she was saddled with all the household bills in addition to those bills associated with rearing two young children. However, Applicant incurred four delinquent debts even before her marriage in 2002. And, since she was officially informed of the debts in 2004, she has not even contacted the creditors/collection agencies to advise them of her ongoing, financial dilemma. On balance, the mitigation Applicant receives under FC MC E2.A6.1.3.3. is reduced substantially by her nine year history of not settling most of the debts in the SOR, and compounded by her unwillingness to repay two creditors identified in subparagraph 1.a. and 1.f. I find against Applicant under subparagraphs 1.a. through 1.s.

Having found against Applicant under the FC guideline, the circumstances of this case justify the same conclusion under the general factors of the whole person concept (E2.2.1.1. through E2.2.1.9.). The critical factors weighing against Applicant are E2.2.1.6. (*the presence or absence of rehabilitation and other behavioral changes*) and E2.2.1.9. (*the likelihood of continuation or recurrence*). Though Applicant is commended for beginning her credit repair agreement in August 2006, it is safe to assume the upcoming hearing hastened her efforts to begin the plan. Waiting more than two years after she was officially informed of the overdue debts seriously dilutes the favorable weight that can be given to her recent efforts to remedy her indebtedness. The absence of a sustained track record of payments under her credit repair agreement, and other evidence in rehabilitation, i.e. financial counseling, still indicates a disqualifying likelihood her current indebtedness will 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. Against 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. Against the Applicant.

Subparagraph 1.l. Against the Applicant.

Subparagraph 1.m. Against the Applicant.

Subparagraph 1.n. Against the Applicant.

Subparagraph 1.o. Against the Applicant.

Subparagraph 1.p. Against the Applicant.

Subparagraph 1.q. Against the Applicant.

Subparagraph 1.r. Against the Applicant.

Subparagraph 1.s. 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. At the hearing, she claimed she made good on the checks between August 2004 and January 2005 (Tr. 32).
2. She has made two payments since August 4, 2006 (Tr. 35).