

DATE: December 29, 2006

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In re:

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SSN: -----

Applicant for ADP I/II/III Position

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P Case No. 06-02549

**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 over the last 11 years have been very serious. The record reflects that on repeated occasions, her efforts to pay her debts on a regular basis have been stymied by a variety of problems. Her child support problems for three children still plague her today. The father of her oldest child was imprisoned for three months for failure to pay child support, and still is more than \$5,000.00 in arrears. In 1999, her mother became ill and Applicant has had to provide considerable monetary support for her since then. Applicant had taken several good-faith steps to pay several of the listed creditors in early 2006 when her mother died in April 2006. By the totality of the evidence, Applicant mitigates the security concerns raised by the financial guideline. However, her deliberate omission of financial information from two public trust questionnaires has not been mitigated by her favorable character evidence. Eligibility for assignment to a sensitive/trustworthiness position is denied.

**STATEMENT OF CASE**

On May 18, 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. Applicant's answer was received by DOHA on June 12, 2006.

The case was assigned to me on August 10, 2006. On August 14, 2006, DOHA issued a Notice of Hearing for August 28, 2006. At the hearing, the Government's seven exhibits (GE 1 through GE 7) were admitted in evidence. Applicant testified. Applicant's 11 exhibits (AE A through AE K) were admitted in evidence. The transcript was received on September 12, 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 (Tr. 5). Applicant had no objection to the proposed amendment. Pursuant to E3.1.17. of the Directive, the Motion was granted (Tr. 7). 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 modify my decision granting Department Counsel's motion. Even though the specific guidelines of the Regulation (5200.2-R) and those of the Directive are the same, the guidelines of the current Regulation (5200.2-R) shall continue to apply to all SORs dated before September 1, 2006 (the effective date of the revised guidelines), while the Directive shall apply to adjudicative procedures.

### FINDINGS OF FACT

The SOR alleges financial considerations under Guideline F, and personal conduct under Guideline E. Applicant admitted all the factual allegations under paragraph 1 except for subparagraphs 1.d., 1.i., 1.m., and 1.o. She denied both allegations of paragraph 2, explaining that, "I didn't think anything on my credit report had to be specified, because if it was on my report, [then] I assumed it was taken as being more than six months delinquent already." Applicant is 33 years old and is employed as a benefit services representative for a United States government contractor (GE 1). She began working as an administrative assistant for this contractor in December 1997. She seeks assignment to a sensitive/trustworthiness position.

**Financial Considerations.** Applicant's financial problems emerged with the birth of her oldest child in 1995. The financial problems were exacerbated by her unemployment from the temporary agency between May and September 1997. She also gave birth to her second child in 1997, and her third child in 2000. Applicant recalled trips to the hospital in 2001 and since then to receive treatment for physical abuse from the father of one of the children. Knee surgery in the same year was another obstacle to Applicant improving her overall financial status.

Applicant began receiving court-ordered child support from her oldest daughter's father in September 2001. He paid for awhile but has not paid any support for sometime, and currently is in arrears in the amount of \$5450.20. In January 2006, Applicant recently applied for court-ordered support for her second oldest child. She has been hesitant to seek legal help for support from the other fathers because of her lack of success in receiving regular support for her oldest child, even with the intervention of the courts. [\(1\)](#)

The SOR reflects that Applicant owes 19 creditors approximately \$11,440.00. Applicant repaid the 1.d. creditor in November 2005. She registered a formal dispute against the creditor identified in 1.q. In June 2006, she provided repayment documentation for an unlisted creditor in the amount of \$60.00. In early 2006, Applicant was making small repayments to the 1.p. creditor, and had plans to recompense the other creditors when her mother died in April. Applicant had been paying for almost all her mother's daily living expenses for the seven year period before the mother's death in April 2006.

Though Applicant's mother had purchased burial insurance, she had not made a sufficient number of payments to qualify for coverage. So, Applicant withdrew about \$4,400.00 from her retirement account to cover the funeral expenses totaling about \$3,000.00. She indicated she used the remainder to pay other bills not listed in the SOR. No further information was provided.

In the last few years, Applicant sought counseling through her employee assistant counselor. During a meeting with the counselor, Applicant listed all her creditors on paper. Then, she itemized her income against her expenses, and concluded she did not have much remaining as indicated in her personal financial statement (PFS) in December 2004 (GE 3), and certainly not enough to create a budget.

**Personal Conduct.** Applicant was interviewed about the debts (GE 3, December 2004) and why she did not furnish the information in her questionnaires. Her explanation for the missing financial information was oversight.

Yet, at the hearing, Applicant knew at the time she completed the questionnaire in November 2002 and August 2004 that she had delinquent debts. She recalled receiving notices about the past due medical bills. Yet, she answered "no" to question 22.b. [\(2\)](#) on both occasions. At the hearing, Applicant reiterated her contention she did not deliberately omit information from the questionnaires. She stated:

As I said, my current bill - the things that I was keeping current - weren't delinquent. As I said, the things that were on my credit report and, of course, that's probably a mistake on my - I assumed that it would be known that it was more than 180 days old since it was [on my] credit report (Tr. 64).

When asked whether her mental processes were any different the second time when she answered question 22.b., Applicant replied that she made the same assumptions she had made the first time when she answered "no" to the question. Having weighed Applicant's explanation for omitting information from the same question in two questionnaires against her cognizance of the medical and credit card debts when she filled out both questionnaires, I find she deliberately omitted the information.

**Character Evidence.** Several coworkers have observed Applicant's strong work ethic and consider her to be very knowledgeable on health policies. One coworker believes Applicant is the authoritative source for employment issues and coverage. Two other coworkers who are also close friends believe Applicant is trustworthy because she can always be entrusted to complete tasks.

Applicant received good performance evaluations for 2004, 2005 and 2006. Between 2000 and the November 2004, she received 10 notations of recognition for her knowledge of health insurance issues and her congeniality in handling client requests. In 2002, she received a certificate for her contributions to the mission of the facility.

### 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<sup>(3)</sup> 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**

Poor judgment and dishonesty during the trustworthiness investigation raises security concerns under the personal conduct guideline.

### CONCLUSIONS

**Financial Considerations (FC).** When a person is unable to pay her debts, she risks engaging in inappropriate or illegal acts to generate funds. Applicant owes 19 creditors or collection agencies \$11,440.00. Some of the debts have been in collection since 2000. FC disqualifying condition (DC) 1. (*a history of not meeting financial obligations*) and FC DC 3. (*inability or unwillingness to satisfy debts*) apply.

Neither FC mitigating condition (MC) 1. (*the behavior was not recent*) nor FC MC 2. (*it was an isolated occurrence*) are applicable in this case. FC MC 1. does not apply because Applicant still owes 17 past due debts. Four of the past due debts became delinquent less than three years ago.

Based on Applicant's complete repayment of only one (1.d.) out of 19 debts, and her payment of a portion of her debt to 1.p., Applicant receives limited credit under FC mitigating condition (MC) 6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) Though Applicant spoke to an employee assistance counselor for guidance on completing a budget, the consultation appears to have been too short to qualify for significant 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*)

Applicant receives considerable extenuation under FC MC 3. (*the conditions that resulted in the behavior were largely beyond the person's control*) For approximately 11 years, she has had a problem receiving child support from the fathers of her three children. Applicant received a child support order on behalf of her oldest daughter in September 2001. Even though the father served a three-month sentence for violating the order, he is still more than \$5,000.00 in arrears at the present time. While she has mixed feelings about filing a child support petition against the other two fathers, she has filed against one and has immediate plans to file against the third father.

Applicant's persistent child-support struggle was compounded by her mother's illness in 1999. For the past seven years, Applicant has had to pay essentially all her mother's expenses that were not covered by federal insurance. In early 2006, Applicant had intentions of paying off the remaining creditors as she had been doing with the 1.p. creditor. Then her mother died. Applicant was dispirited to learn that insufficient premiums had been paid on the policy to activate burial insurance for her mother's funeral expenses. Unfortunately, she had to withdraw \$4,400.00 from her retirement fund to pay for her mother's funeral. Though Applicant receives only limited mitigation under FC MC 6., the persistent child support problems, leading to sporadic abuse of Applicant by her oldest child's father, and the loss of her mother in April 2006 have significantly hampered her good-faith attempts to resolve her delinquent debts. All factual findings under the FC guideline are found for Applicant. Subparagraphs 1.d. 1.i., 1.m, and 1.o. are found for Applicant because not enough evidence has been presented linking Applicant to the debts. My ultimate finding is for Applicant under the FC guideline.

**Personal Conduct (PC).** Security concerns arise when the record discloses an applicant has demonstrated dishonesty during the trustworthiness investigation. Applicant omitted material information about her overdue debts when she answered "no" to question 22.b. of her public trust questionnaire in November 2002. The fact that she was aware she had delinquent debts undercuts her oversight claim (GE 3) and the "assumption" explanation she provided in her answer to the SOR, and at the hearing. If, as she claims, she did not list the past due debts because of inadvertence, then she was not aware of the debts when she answered question 22.b. of both questionnaires. However, Applicant testified she knew she had the delinquent debts when she filled out the questionnaires.

Applicant's belief the listing of the debt in the credit reports negated the need to provide the information in the questionnaires is not a commonsense or reasonable interpretation of question 22.b. Applicant was aware of the past due debts but did not list them. Even assuming there was some merit to Applicant's claim, she should have still answered "yes" to whether she had debts over 180 days delinquent. The government has established a case of dishonesty under FC DC 2. (*the deliberate omission or falsification of relevant and material facts from a questionnaire to determine trustworthiness*)

I have carefully evaluated the first three mitigating conditions under the FC guideline. FC MC 1. (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*) is not relevant as a person's financial history is always pertinent in making a predictive decision about her trustworthiness. FC MC 2. (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) is inapplicable because the most recent falsification occurred in August 2004. FC MC 3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) does not mitigate due to Applicant's continuing claim she did not deliberately omit information from her security form.

Applicant's character statements and job performance evaluations constitute strong evidence weighing in her favor, but it falls short of overcoming Applicant's pattern of dishonest conduct. Her lack of forthrightness during important stages

of the trustworthiness investigation warrants a finding against her under the PC guideline and the whole person concept.

### **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.

Subparagraph 1.i. For the Applicant.

Subparagraph 1.j. For the Applicant.

Subparagraph 1.k. For the Applicant.

Subparagraph 1.l. For the Applicant.

Subparagraph 1.m. For the Applicant.

Subparagraph 1.n. For the Applicant.

Subparagraph 1.o. For the Applicant.

Subparagraph 1.p. For the Applicant.

Subparagraph 1.q. For the Applicant.

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

Subparagraph 2.a. Against the Applicant.

Subparagraph 2.b. 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. The father spent approximately three months in jail for not paying child support.

2. The question requires information about whether the applicant is over 180 days delinquent on any loan or financial obligation.

3.