

DATE: October 30, 2006

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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P Case No. 06-07421

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial problems as evidenced by more than \$16,000 in bad debt or collection accounts. She failed to present sufficient evidence to rebut, explain, extenuate, or mitigate the concern under Guideline F. Eligibility for assignment to public-trust position is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant eligibility for a public-trust position under the applicable Defense Department regulation and directive. [\(1\)](#) On May 15, 2006, DOHA issued a statement of reasons (SOR) detailing the basis for its action. The SOR--which in essence is the administrative complaint--alleges concerns about Applicant's trustworthiness under Guideline F for financial considerations. Applicant replied to the SOR on June 12, 2006. She indicated that she waived her right to a hearing. On June 29, 2006, department counsel submitted her written case consisting of all relevant and material information that could be adduced at a hearing. This so-called file of relevant material (FORM) was mailed to Applicant and it was received by her on July 19, 2006. Applicant did not submit any information or objections within the 30-day period after receiving the FORM. The case was assigned to me September 1, 2006.

**FINDINGS OF FACT**

Applicant's response to the SOR is mixed: she denies subparagraph 1.a; she neither admits nor denies subparagraphs 1.b and 1.d; she admits subparagraph 1.c; and she admits with explanation subparagraphs 1.e and 1.f. Her admissions and explanations are incorporated herein. In addition, I make the following findings of fact.

1. Applicant is a 42-year-old woman who married her current husband in May 2002. She is employed as an enrollment representative for a health-care company that provides services to the Defense Department. She has worked in this job since March 2003.

2. Applicant has a history of financial problems as evidenced by more than \$16,000 in delinquent debt. The SOR concerns six accounts that have been charged off as bad debt or placed for collection. It appears that the credit reports and other documentary information in the FORM establish the factual allegations in the SOR. None of the accounts have been paid, settled, or otherwise resolved by Applicant, although it appears she and her husband have a monthly net remainder of about \$888 after paying household expenses and debt.

3. Because she did not respond to the FORM, the available information in support of Applicant is limited. She did, however, set forth her position in her response to the SOR as follows:

I am writing you this letter for lack of better words; to defend myself against the implication that I am not a trustworthy person. I am a mother of 4 children, which I have been raising alone due to my dead beat husband. I was a young mother with no formal education, and was staying at home to raise my children. For circumstances that were beyond my control, I was left alone with my children and no real way to support them. I had to start over. I had made some bad choices with credit card companies which extended me credit and I got in over my head. Soon I was unable to even pay the minimum payment, due to the late charges and fees which were incurring at a rate faster than I charged the card. I stopped charging on the card and attempted contact with the companies in question. They did not want to work with me at all and soon I stopped trying. Needless to say we are here today and the debt is at least 5 to 6 years old and still reporting. I have since been able to hold down a full time job, now that my children are in school full time. I have also remarried a wonderful man, but whom also works very hard just to keep a roof over our heads and keep our bills current. I hope someday to satisfy this debt, but as of right now I am unable to. I hope this will provide satisfactory explanation of what my credit check has provided to you, and I hope you will see fit to allow me to remain employed with my current employer. I do treasure my job, and I feel very fortunate to have it. As of March 10, 2006, I have been employed with [the company] 3 years, I would like to stay employed and help my team to give great service to our beneficiaries. I thank you for your time.

4. There is no record evidence concerning the character and quality of Applicant's work performance.

### POLICIES

The adjudicative guidelines set out in the Regulation apply to ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable determination may be made.<sup>(2)</sup> Appendix 8 of the Regulation sets forth personnel security guidelines and the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline.

Under the Regulation, "the adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."<sup>(3)</sup> Each eligibility determination must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation. For example, an administrative judge should consider: (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 participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

### **BURDEN OF PROOF**

The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.<sup>(4)</sup> An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>(5)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable decision.<sup>(6)</sup>

### CONCLUSIONS

<sup>(7)</sup>

Under Guideline F, a concern typically exists for two different types of situations--significant unpaid debt and unexplained influence. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding sensitive information.

Here, based on the record evidence as a whole, a concern is raised under Guideline F. Applicant has a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts. What's notable here is Applicant's inaction during the last few years in addressing her delinquent debt.

I reviewed the MC under the guideline and conclude Applicant receives some credit in mitigation. It appears that the origin of her indebtedness can be traced to her failed first marriage when her husband left her with children. Alone in difficult circumstances, she no doubt did the best she could to provide for her family. These are circumstances largely beyond her control and explain how she ended up over her head in delinquent debt. The credit in mitigation is limited, however, due to her failure to take some action to address her delinquent debt during the last three years of her full-time employment and the last four years of her recent marriage. By any measure, her inaction does not constitute a good-faith effort to repay or otherwise resolve her delinquent debt. In addition, it appears that her history of failing to meet her financial obligations is ongoing and likely to continue. Considering the record evidence as a whole, I conclude Applicant failed to present sufficient evidence to rebut, explain, extenuate, or mitigate the concern under Guideline F. And she has not met her ultimate burden of persuasion to obtain a favorable decision.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

SOR Paragraph 1-Guideline F: Against Applicant

Subparagraphs a-f: Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for assignment to a public-trust position. Eligibility is denied.

Michael H. Leonard

Administrative Judge

1. Department of Defense Regulation 5200.2-R, dated January 1, 1987, as amended (Regulation), and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Regulation, Paragraph C8.2.1.
3. Regulation, Appendix 8 at 132.
4. Directive, Enclosure 3, Item E3.1.14.
5. Directive, Enclosure 3, Item E3.1.15.
6. Directive, Enclosure 3, Item E3.1.15.
7. Regulation, Appendix 8 at 144 (setting forth the disqualifying and mitigating conditions for Guideline F).