

DATE: October 10, 2006

In Re:

SSN: -----

Applicant for a Security Clearance

P Case No. 06-07581

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has been experiencing significant financial problems for many years. She has done very little to address these problems. Determination of Trustworthiness is denied.

STATEMENT OF THE CASE

On April 9, 1993, the Composite Health Care System 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 which gave DOHA the responsibility to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2R, *Personnel Security Program*, dated January 1987.

On May 3, 2006, DOHA issued a Statement of Reasons (SOR) to applicant which detailed reasons why 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 Information Systems Position (ADP-I/II/III).

Applicant responded to the SOR on May 9, 2006 and requested a hearing. The case was assigned to the undersigned on July 28, 2006. A Notice of Hearing was issued on August 22, 2006, and the hearing was held on September 21, 2006. The transcript was received on September 29, 2006.

FINDINGS OF FACT

Applicant is a 43 year old employee of a health care company.

Applicant admits SOR allegations 1a through 1p. These allegations are therefore incorporated by reference as Findings of Fact.

With respect to SOR Allegation 1o, applicant testified that she recently worked out an agreement with the creditor which calls for her to make monthly payments to the creditor. Despite the agreement, and applicant's recent payments to the creditor pursuant to the agreement, the creditor just started garnishing applicant's wages. Applicant is not sure why the garnishment began, but she intends to contact the creditor to find out why (TR at 22-24). Other than this debt, applicant has not made any payments to any of the other creditors listed in the SOR.

Applicant began to fall behind on her debt payments shortly after her husband lost his job in 2000 and she became the sole provider for the household. At that point there was not much she could do to manage her indebtedness - she was "just living paycheck to paycheck" (TR at 16). In 2004, she underwent major surgery, which caused her to miss four to five months of work. The time she spent on disability compounded her financial problems.

In June 2006, applicant went to a credit counselor for help but was told she didn't have enough income for them to help her (Exhibit F). Applicant followed through with their suggestion, however, and enrolled in and completed a Personal Finance Management Course in July 2006 (Exhibit G). Her husband recently secured a full time job, and applicant intends to use the extra income to pay her past-due obligations.

Documentary evidence offered by applicant indicates she performs well at her job and is considered responsible and trustworthy by coworkers and customers (Exhibits B through E, H).

Applicant completed and executed Public Trust Position Applications (PTPA) in January 2003 and in September 2004. The questions were the same on both applications. In response to Question 20 which asked, "Are you now over 180 days delinquent on any loan or financial obligation?" applicant stated "no." Since at least five of the debts listed in SOR were delinquent and had been either placed for collection or charged off by March 2002, these "no" responses were obviously false. Although she knew at the time she completed the PTPAs that she was more than 180 days delinquent on one or more debts, applicant testified that she doesn't know why she answered "no" because she doesn't know what she was thinking at the time (TR at 33). She further testified that she would not intentionally lie to the Government (TR at 34). Given applicant's inability to provide a reasonable explanation for the false responses, and the fact she falsified two separate PTPAs, I conclude applicant's falsifications were intentional.

CONCLUSIONS

Applicant has been experiencing significant financial problems since at least 2000. Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) of the Financial Considerations guideline are applicable.

In view of how applicant's financial problems began, she qualifies for Mitigating Condition E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*).

Applicant appears to be a hardworking, valuable employee. However, as the evidence indicates, she is still indebted to all of the creditors listed in the SOR, and except for making an arrangement with a judgment creditor who has started to garnish her wages, she has taken no real action to address any of the past-due debts listed in the SOR. With over \$20,000.00 in past-due unsecured debt remaining, and no credible evidence that she will be in a position to significantly reduce this debt anytime soon, applicant cannot be deemed to be financially stable. Rather, she must be deemed to be financially overextended. As such, her situation fits squarely within the Financial Guideline Concern expressed in the Directive (E2.A6.1.1.1 - *An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.*) Based on this fact, I have no choice but to conclude it is not now clearly consistent with the national interest for applicant to have access to sensitive medical information.

With respect to Guideline E, applicant's falsifications of material facts on the PTPAs are extremely troubling. The Government relies heavily on the honesty and integrity of individuals seeking access to sensitive medical information. When such an individual intentionally falsifies material facts on a PTPA, it is extremely difficult to conclude that he or she nevertheless possesses the trustworthiness required of individuals with access to sensitive medical information. Applicant's intentional falsification requires application of Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or*

similar form used to conduct investigations, determine employment qualifications . . . determine security clearance eligibility or trustworthiness). No Mitigating Conditions apply. Based on the foregoing, Guideline E is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: 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 make or continue a determination of trustworthiness, suitability and eligibility for applicant to hold a sensitive Information Systems Position.

Joseph Testan

Administrative Judge