

DATE: December 7, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 06-08733

**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 long history of financial problems that dates to 1998 when her debts first began to fall into a delinquent status. By April 2006, she accumulated 39 debts totaling approximately \$28,000.00. Applicant has done nothing to address these debts. In addition, she deliberately tried to hide her debts from two public trust questionnaires in September 2002 and October 2004. Applicant's employment problems, her medical problems, her preliminary debt management plan documentation, and her job performance evidence are insufficient to overcome the adverse evidence under the financial and personal conduct guidelines. Eligibility for assignment to a sensitive position is denied.

**STATEMENT OF CASE**

On May 16, 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 July 28, 2006, Applicant acknowledged most of the debts under paragraph 1. Applicant denied all the allegations under paragraph 2. In response to 2.a., she said she was not aware of the judgment when she filled out the questionnaires. I find for Applicant under 2.a. as she may not have been aware of the judgment when she completed the questionnaire in September 2002. In response to 2.b., she stated, "I answered this question to the best of my knowledge calculating the 7 year time frame in question from 1997 to 2002." Her answer under 2.c. is the same as 2.a., and she noted 2.c. appeared to be the same as 2.a. Her answer under 2.d. is the same as 2.b. She requested a hearing.

The case was assigned to me on August 1, 2006. On September 12, 2006, DOHA issued a Notice of Hearing for October 2, 2006. At the hearing, the Government's six exhibits (GE 1 through GE 6) were admitted in evidence. Applicant testified. She placed two exhibits in the record. AE A <sup>(1)</sup> is enrollment and budget documentation for a debt counseling service. AE B is a one-page document from her manager describing her job performance based on two performance evaluations that comprise AE C. The transcript was received on October 13, 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 (ADP). 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 ¶ E2.2. 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 SORs dated before September 1, 2006, the effective date of the revised guidelines.

Next, the government moved to amend subparagraphs 2.a. and 2.c. of the SOR by changing the letter next to the number "22." from "b." to "a." Pursuant to E3.1.17. of the Directive, the Motion was granted (Tr. 9-10). Then, the government moved to amend subparagraph 2.d. by changing the date from "September 18, 2002" to "October 21, 2004." Pursuant to E3.1.17. of the Directive, to conform the SOR to the evidence presented, the Motion was granted.

### **FINDINGS OF FACT**

The financial considerations guideline of the SOR alleges 39 past due debts totaling about \$28,000.00. Applicant admitted all financial allegations except for 1.i. and 1.t. She denied all the personal conduct allegations under paragraph 2. Applicant is 28 years old and has been employed as a health care finder (claims associate) with a health maintenance facility since July 2002. She seeks a position of public trust.

**Financial considerations.** According to GE 2, Applicant attended a community college in the southeast from 1997 to 1999, working to achieve a degree in computer programming. In reviewing the credit agency reports (GE 5, GE 6), Applicant received approximately 11 credit cards from credit card, clothing, and furniture companies. The credit agency reports reflect payment of the credit cards for varying periods of time before the cards became delinquent after the payments stopped. Applicant admitted using the credit cards irresponsibly. When she received notices from the creditors, she ignored them (Tr. 34). Her financial problems were exacerbated by not remembering to defer her student loans rather than allowing them to continue to incur interest.

In January 2000, Applicant returned home to continue her education and save money. She enrolled in a local technical college. She had to quit school altogether because of the debt problems that were complicated by the birth of her daughter in January 2002. She knew she had debts when she started working for her current employer in July 2002.

Regarding the 2002 delinquent medical bills related to Applicant's baby, she thought she had two medical insurers during the period of birth and treatment. She did not know why the doctor and hospital bills were not submitted to the appropriate federal medical agency for reimbursement. When she discovered the bills had not been paid, she inquired with the medical providers, and was informed it was too late to submit the bills (Tr. 44). In 2005, Applicant had to take unexpected medical leave for six weeks. She claims the medical problem made it more difficult for her address anything more than her current debts.

While Applicant has not paid any of the listed debts in the SOR, she claimed she paid the student loan accounts to the federal and state agencies, and had the bank statements to verify the payments. No statements were produced.

Applicant does not believe she has a net monthly remainder of \$95.00 after her expenses are subtracted from her monthly income. *See*, GE 3. She has changed her daycare provider and saves more than \$200.00 a month. She should save more money now that she has another roommate (in addition to her brother) living with her. However, she purchased a used vehicle in September 2006 with payments of \$450.00 a month.

**Personal Conduct.** Applicant may not have been aware of her judgment in August 2002 when she filled out question 22.a. of her questionnaire (2.a.) in September 2002. Accordingly, I find for her under 2.a. However, that same explanation in response to the same question in the October 2004 questionnaire (2.c.) is not credible. I find against

Applicant under 2.c.

Regarding Applicant's "yes" answer but only the student loan information provided in response to question 22.b. (2.b.) in September 2002 and question 22.b. (2.d.) in October 2004, Applicant claimed she understood the question to apply to information in last 7 years. After denying she did not disclose the financial information because she was afraid of the consequences, she stated:

No - no, sir. The way I understood the question, that that's what made me answer the question in the - manner that I did. I understood the question to be within the last seven years. And just doing the math, I was probably - I just surrounded off that time frame from that frame in college, from 1996 to 2002 (Tr. 35).

Applicant did list the student loans, "because that was something that I was dealing with." (*Id.*) She also provided more testimony concerning why she answered question 22.b. in the way she did. She stated, "Again, I - I just grouped all that - that particular time frame, from my college - 1996 time from to 2002 - and I didn't go through my debts, you know, one by one, and - and note them that way." (Tr. 36) Applicant's explanations are not credible. The question requires information about debts over 180 days delinquent, regardless of whether the debts are being paid or not.

**Character Evidence.** AE A are the pre-enrollment papers that Applicant filled out with a counselor from the debt management program. The papers include a client action plan to repay \$5002.00 in debt to 15 creditors by September 2007. The agreement was signed on September 24, 2006. AE B is a one-page statement from Applicant's supervisor describing the contents of her performance evaluations in AE C. Applicant's job record for the last two years shows a satisfactory performance that sometimes surpasses expectations for 2005.

### 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>(2)</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 (Guideline E)**

This guideline addresses questionable judgment and/or dishonesty demonstrated during the course of the investigation.

### CONCLUSIONS

**Financial considerations (FC).** When an individual becomes financially overextended, she places herself at risk of engaging in illegal acts to generate funds. Applicant is financially overextended in that she owes 39 creditors

approximately \$28,000.00. The long record of mismanagement satisfies FC disqualifying condition (DC) 1. (*a history of not meeting financial obligations*) The length of her past due debt history also translates to an inability to pay her debts under FC DC 3. (*inability or unwillingness to satisfy debts*), as Applicant's debts began falling delinquent in February 1998, over eight years ago.

The fact that Applicant continued to accumulate delinquent debts from the late 1990s to October 2005 provides uncontroverted evidence of her fiscal irresponsibility for approximately seven years. Neither FC mitigating condition (MC) 1. (*the behavior was not recent*) nor FC MC 2. (*it was an isolated incident*) apply.

Applicant acknowledged her abuse of credit cards in college was the reason she had to give up her education. Also, the credit card problem was the reason she could not obtain the type of job she wanted to provide a better life for her child. However, Applicant cannot blame low-paying jobs exclusively for not addressing her delinquent debt when she initially created the situation requiring her to leave school and find employment. FC MC 1. (*The conditions that resulted in the behavior were largely beyond the person's control*) does not apply to her unemployment and under employment claim.

Applicant receives limited extenuation for giving birth in January 2002 during her time of under employment and unemployment. However, the extenuation is diminished by Applicant's failure to make behavioral and fiscal adjustments in her lifestyle.

Applicant's medical problems in 2002 and 2005 entitle her to limited extenuation under FC MC 3., because medical problems are never expected, particularly when they require hospitalization. However, Applicant was aware of the procedure necessary for her claims in 2002 to get paid. Yet, rather than refiling the claims or investigating why they were not being paid, she did nothing until it was too late to refile the claims. Applicant receives some extenuation for her unexpected medical problems and death in the family in 2005.

FC MC 4. (*the person has received or is receiving counseling for the problem and there are clear indications the problem is being resolved or is under control*) does not apply as Applicant has had no financial counseling and the preliminary steps she has taken to address 15 of the creditors does not provide enough of a track record to conclude her past due indebtedness is under control.

Finally, Applicant does not fulfill FC MC 6. (*the individual initiated a good-faith effort to repay overdue debts or otherwise resolve debts*) FC MC 6. rewards behavior that demonstrates a bona fide attempt to repay old debts. Applicant has not attempted to repay any of her debts. While she claimed she had documentation to verify she had paid some of her student loans, the absence of a cancelled check or a bank statement establishes no evidence to support her claim. Accordingly, Applicant's limited evidence under FC MC 3. And FC MC 4. falls far short of mitigating the disqualifying evidence under the financial guideline. Except for 1.t., all factual allegations under paragraph 1 are found against Applicant. Based on the credit agency reports appearing in AE 5 and AE 6, Subparagraph 1.t. appears to be a duplicate entry of 1.n. Subparagraph 1.i. is found against Applicant because she did not take any official action through the credit agencies to dispute the debt.

**Personal Conduct (PC).** Conduct showing questionable judgment could indicate the person may not properly safeguard classified information. Applicant's material falsifications of her public trust questionnaire in September 2002 and October 2004 constitutes inappropriate conduct under PC DC 2. (*the deliberate omission or falsification of relevant and material factors from any personnel security questionnaire or any form used to determine employment qualifications or trustworthiness*) Subparagraph 2.a. is found in Applicant's favor because in the short passage of time, she may not have been aware of the judgment (August 2002) when she completed the questionnaire (September 2002). Regarding subparagraphs 2.b. and 2.d., her seven-year claim is not a reasonable explanation for concealing her debt. The only limitation in question 22.b. is that the debt must be over 180 days old., and she knew at the time she completed both questionnaires she had debts over 180 days delinquent.

There are three conditions potentially relevant for mitigating the deliberate omission of material information. PC MC 1. (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*) does not apply. The delinquent debts are independently substantiated by the credit bureau reports (CBRs) in GE 5 and GE 6. Neither PC MC 2. (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) nor PC MC 3. (*the individual made prompt, good-faith efforts to correct the*

*falsification before being confronted with the facts*) are applicable to these circumstances due to Applicant's ongoing denial she deliberately omitted information about the delinquent debts. Subparagraphs 2.b. and 2.d. are found against Applicant. Subparagraph 2.c. is found against her as the judgment (subparagraph 1.n.) was entered in August 2002, and she deliberately omitted the information from her questionnaire in October 2004. Having weighed and balanced all the evidence, I find against Applicant under the PC guideline.

The whole person concept of the regulation requires that all available information about the person should be considered in reaching a decision. Applicant's favorable character evidence provides insufficient evidence to establish how she intends to repay her past due debt. Her change of daycare centers and addition of a new roommate in 2006 could be interpreted as positive evidence by Applicant to reduce her spending. However, Applicant's purchase of a used car in September 2006 suggests Applicant has learned very little over the years about responsibly handling her finances. Her extensive financial problems and deliberate falsifications of two public trust questionnaires support a denial of her application for eligibility to a trustworthiness position.

### **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.

Subparagraph 1.t. For the Applicant.

Subparagraph 1.u. Against the Applicant.

Subparagraph 1.v. Against the Applicant.

Subparagraph 1.w. Against the Applicant.

Subparagraph 1.x. Against the Applicant.

Subparagraph 1.y. Against the Applicant.

Subparagraph 1.z. Against the Applicant.

Subparagraph 1.aa. Against the Applicant.

Subparagraph 1.bb. Against the Applicant.

Subparagraph 1.cc. Against the Applicant.

Subparagraph 1.dd. Against the Applicant.

Subparagraph 1.ee. Against the Applicant.

Subparagraph 1.ff. Against the Applicant.

Subparagraph 1.gg. Against the Applicant.

Subparagraph 1.hh. Against the Applicant.

Subparagraph 1.ii. Against the Applicant.

Subparagraph 1.jj. Against the Applicant.

Subparagraph 1.kk. Against the Applicant.

Subparagraph 1.ll. Against the Applicant.

Subparagraph 1.mm. Against the Applicant.

Subparagraph 1nn. Against the Applicant.

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

Subparagraph 2.a. For the Applicant.

Subparagraph 2.b. Against the Applicant.

Subparagraph 2.c. Against the Applicant.

Subparagraph 2.d. 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. AE A and AE B were originally marked as AE 1 and AE 2 by mistake. Following custom and practice at DOHA, the government exhibits are marked by number and Applicant's exhibits are marked by letter.
2. Those factors include: (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 the participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, or duress; and (9) the likelihood of continuation or recurrence.