

DATE: October 30, 2006

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In Re:

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SSN:-----

Applicant for Security Clearance

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P Case No. 06-08515

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Ray T. Blank., Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's financial problems were encountered shortly after she lost two jobs in August 2001. The financial trouble continued because she could not find another job that paid as well as the ones she had. By the time she returned to work in January 2002, she claimed that though she wanted to repay the listed creditors, she was also aware she did not have the money to repay them. Applicant has done nothing for more than four years to resolve the past due debts. Her inaction demonstrates financial irresponsibility that has not been mitigated by her laudable character evidence. Applicant's eligibility for assignment to a sensitive position is denied.

### **STATEMENT OF CASE**

On May 25, 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 June 28, 2006, Applicant provided a response to the SOR and requested a hearing.

The case was assigned to me on July 20, 2006. On August 14, 2006, DOHA issued a Notice of Hearing for August 28, 2006. At the hearing, the Government's four exhibits (GE 1 through GE 4) were admitted in evidence. Applicant testified. Following the hearing, she submitted three exhibits (AE A through AE C) that have been admitted in evidence without objection. The transcript was received on September 12, 2006.

### **RULINGS ON PROCEDURE**

At the hearing, the Government moved to amend the SOR by deleting the following from the introductory paragraph 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 indicated she understood the motion (Tr. 6). Pursuant to E3.1.17. of DoD Directive 5220.6, I granted the motion.

## FINDINGS OF FACT

The SOR alleges financial considerations. Applicant acknowledged all debts and provided general explanations for those debts in her supplemental response. Applicant attributed her financial plight to losing two jobs at the same time. When she was rehired in January 2002, her earnings were dramatically less. Even though she desires to repay the debts, she does not have the money. She does not believe she would commit an illegal act to pay off these debts because her chief aim is to work and support her grandchild.

The SOR identifies five overdue debts. They are:

Creditor 1 (1.a.) is a collection agency that received this account (\$6,0171.00) in December 2001.

Creditor 2 (1.b.) is collection agency that received this account (\$6,207.00) from a credit card company in August 2002.

Creditor 3 (1.c.) is a collection agency that received this account (\$8,074.00) in September 2002.

Creditor 4 (1.c.) is a collection agency that received this account (\$2,543.00) from the original creditor (bank credit card) in September 2002.

Creditor 5 (1.e.) is a collection agency that received this account (\$12,444.00) from a bank in April 2003.

Creditor 6 (1.f.) is a collection agency that received this account (\$612.00) from a department store in July 2003.

(1.g.) Applicant's Personal Financial Statement (PFS) reflects a monthly net remainder of \$1.23 after payment of all monthly expenses. Applicant's net remainder has increased by \$120.00 now that she is not required to pay day care expenses (Tr. 24).

The total delinquent debt listed in the SOR is \$35,951.00. All of the debt was transferred for collection between December 2001 and July 2003. The original creditors are a loan company, a department store, and bank creditors.

As her four children became adults and reached varying levels of independence in the 1990s, the money Applicant had previously allocated for their child rearing necessities was used to purchase other items. Applicant accumulated more than her usual amount of debt because she used more credit cards for purchases (Tr. 18-19).

Applicant lost two jobs in the late summer of 2001. She had been employed for 17 years at an assembly plant that closed in August 2001 (Tr. 21). Her second job as a nurse's aid terminated after about 1 ½ years when her client passed away (*Id.*). In January 2002, she started working at a convenience store at lower wages, but could not work a second job because she had recently been awarded custody of her grandchild (Tr. 22).

Applicant owns her mobile home after her sister paid the balance due on the home. Applicant purchased a five-year-old car in 2005 with a \$3,300.00 loan from a friend.

Applicant has not attempted to contact or repay the listed creditors because she has not had the money (Tr. 24, 29). She considered bankruptcy three or four years ago but could not afford the money for pay for the petition. She has considered filing bankruptcy since then but has done nothing (Tr. 31).

Applicant's character evidence shows an average to above average job performance for the rating period of 2005 to 2006 (AE A) According to the performance review, she consistently exceeds her performance objectives, and sometimes exceeds her performance behaviors. In an undated character statement, her manager has found Applicant to be a diligent worker who takes pride in her work, and interfaces well with her coworkers. One of her coworkers complimented her cooperativeness with other coworkers.

Applicant's daughter who is also a coworker, explained in a statement dated September 14, 2006, that Applicant was hesitant at the hearing about explaining the reasons for the debts. According to her daughter, Applicant had good credit until the assembly plant closed in August 2001. Then, she started using the credit cards to help pay bills connected with

her sister's divorce. Her daughter indicated Applicant could not afford bankruptcy and could not take out a second mortgage on her mobile home because the bank will not lend money unless the mobile homeowner also owns the land the home rests on. Finally, Applicant's daughter believes Applicant is a hard-worker who would not break the law to pay her bills.

## 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. 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

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. This case involves five delinquent debts that are between three and five years old. The total amount of debt is almost \$36,000.00. The length of time the debts have been delinquent and the aggregate amount raise significant security concerns under financial considerations (FC) disqualifying condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*). Because there have been no efforts to resolve the debts in more than four years, FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*) also applies.

All the mitigating conditions (MC) of the FC guideline have been considered. Because the six debts remain unpaid and unresolved, FC MC E2.A6.1.3.1. (*the behavior was not recent*) does not apply. Applicant has failed to pay the overdue debts which became delinquent between December 2001 and July 2003. FC MC E2.A6.1.3.2. (*it was an isolated incident*) cannot be applied because six delinquent debts totaling almost \$36,000.00, is not isolated conduct, and is therefore outside the scope of the mitigating condition.

FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) applies in mitigation. Applicant's termination from two jobs in August 2001 was the primary cause for her financial problems. Over the next year, an inability to find a job paying the same wages exacerbated her financial difficulties. However, more than four years have passed since Applicant lost both jobs in August 2001. Notwithstanding the added responsibility of taking custody of her grandchild in 2002, Applicant could have pursued the bankruptcy option (complete discharge or debt consolidation) as soon as she determined she could not repay the debt. Applicant's inaction regarding her debts substantially reduces the mitigating weight she is entitled to under FC MC E2.A6.1.3.3.

FC MC E2.A6.1.3.4. (*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*) does not apply. There is no evidence Applicant has attended financial counseling. Her delinquent debts remain outstanding.

FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) acknowledges that a debtor may not be able to repay her debts. Bankruptcy is a financial tool that is available for those who cannot repay their debt. Though the bankruptcy process may not provide the same level of mitigation as a good-

faith repayment of debts individually or collectively, it still constitutes a fiscally responsible decision to resolve debts while allowing the debtor an opportunity for a fresh start with her financial affairs. Applicant has done neither. FC C E2.A6.1.3.6. cannot be applied to the circumstances of this case. Subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. are found against Applicant. Applicant has failed to mitigate the trustworthiness concern under the FC guideline.

In reaching my adverse finding under the FC guideline, I have also considered the general conditions of the whole person concept as set forth in the Directive in Section 6.3 and E2.2.3. Applicant's favorable job performance evidence provides very little insight on how she plans to pay her delinquent debt and avoid financial problems in the future. In view of Applicant's inaction in addressing her delinquent accounts for more than four years, her eligibility for assignment to a sensitive position is denied.

### **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.

### **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 for assignment to a sensitive Information Systems Position. Eligibility is trustworthiness position is denied.

Paul J. Mason

Administrative Judge