

DATE: January 31, 2007

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 06-10056

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Ray T. Blank Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Due to an inability to pay her existing debts, Applicant obtained a Chapter 7 bankruptcy discharge in 1997. Thereafter, Applicant again incurred delinquent debts, which she has, for the most part, been unable to pay. Eligibility is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) reviewed Applicant's eligibility to occupy an information systems position designated as an ADP I, II, or III position to support a contract with the Defense Department. As a result of the review, the agency recommended Applicant's case be submitted to an administrative judge for a determination whether Applicant is eligible to occupy such a position. Acting under Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive), DOHA issued a statement of reasons (SOR) on August 30, 2006, detailing the basis for its action--concerns raised under Guideline F for Financial Considerations and Guideline E for Personal Conduct (falsification). Applicant answered the SOR in writing on October 18, 2006, and requested a hearing.

The case was assigned to me on November 20, 2006, and a notice of hearing was issued scheduling the case for December 14, 2006. Applicant appeared and the hearing took place as scheduled. DOHA received the hearing transcript on January 4, 2007.

RULINGS ON PROCEDURE

In her reply to the SOR, Applicant raised her state's statute of limitations as related to a lawsuit to collect on the delinquent debts. At the close of the hearing, I indicated that I intended to take administrative notice of the statute of limitations (R. 62-63). Upon further consideration, I have decided not to do so because the societal value of application of a statute of limitations, which is the laudable goal of law to promote and achieve finality in litigation, is largely irrelevant here. This is a federal administrative action to determine a person's trustworthiness to have access to sensitive information. In making this determination, the federal government may consider all relevant and material information, past and present, to include delinquent debts that may be barred by a state's statute of limitations.

FINDINGS OF FACT

In response to the SOR, Applicant admitted the Guideline F allegations. Concerning the allegation that she gave a deliberately false answer to a question on an official questionnaire, she admitted omitting information in response to the question, but explained that it was an honest mistake due to forgetfulness. Her admissions are incorporated herein as findings of fact. And I make the following findings of fact.

1. Applicant is a 65-year-old claims analyst for a company that provides healthcare services to the Defense Department. She has worked for this company since 1996. She currently earns a gross monthly income of about \$1,730. Since about 1987, she has worked as a part-time cashier earning about \$160 monthly. Also included in her household income is a disability or Medicare payment received for the benefit of her 43-year-old daughter. The daughter is mentally retarded and lives with Applicant.
2. Applicant was divorced from her husband in 1972. She had custody of both her son and daughter, and she raised both without financial assistance from her ex-husband.
3. Applicant has a history of financial problems dating back to at least 1997, when she obtained a Chapter 7 bankruptcy discharge. The bankruptcy records (Exhibit 3) indicate that she filed the petition in June 1997 and obtained a discharge in September 1997. The schedules show that she had \$42,985 in total assets and \$80,847 in total liabilities. Concerning liabilities, the Schedule F (for creditors holding unsecured nonpriority claims, otherwise known as unsecured debt) listed 16 creditors with a total indebtedness of \$38,481. It appears that the Schedule F debts were credit card purchases or collection actions on credit card purchases. At the hearing, Applicant explained that she ended up in bankruptcy because she got behind on her payments and "just could not get out" (R. 28).
4. In January 1999, there was a fire at Applicant's home. She described it as a total loss, as she lost everything and had to start over (R. 28). She had insurance, which did not cover the full cost of rebuilding, but she did not provide any details or specifics in this regard. Later on in 2001 or 2002, the house was foreclosed upon when Applicant was unable to make the mortgage payments (R. 29). Sometime after the foreclosure, the IRS informed Applicant she owed \$5,500 for taxes related to the house. She is paying off her tax debt to the IRS at \$85 per month (Exhibit 2).
5. During 2000-2001, due to a long-term problem with a knee, Applicant had to undergo surgery (Exhibit 4). She was out-of-work for about a month. At about the same time, Applicant was attempting to obtain a debt consolidation loan to take care of her debts. The process took too long and the loan fell through (Exhibit 4).
6. In addition to the Chapter 7 bankruptcy, the SOR alleges that Applicant is indebted to four creditors for a total of more than \$13,000. Each debt is discussed below.
7. SOR subparagraph 1.b concerns a collection account for \$2,953 (Exhibit 6). During the 1997 bankruptcy action, Applicant agreed to reaffirm this debt that then had an unpaid balance of \$2,236 (Exhibit 3). Thereafter, she was unable to make the required payments. The last activity on the account was in January 1998 (Exhibit 6 at 4). The creditor charged off the account as a bad debt and placed it for collection. On November 15, 2006, Applicant called the creditor, but was unable to find any information about the account (Exhibit C).
8. SOR subparagraph 1.c concerns a charged-off account for \$2,598 (Exhibit 7). This credit card account was opened in April 1997, and the last activity on the account was in September 2000 (Exhibit 6 at 3; Exhibit 7 at 2). On December 7, 2006, Applicant called the creditor and was told the account was included in the bankruptcy. Review of the bankruptcy records, with particular emphasis on Schedule F, indicates the account was not included in her Chapter 7 bankruptcy.
9. SOR subparagraph 1.d concerns a collection account for \$2,054 (Exhibit 7). This debt started as a credit card account until it was placed for collection. On November 30, 2006, Applicant settled the account for a lump-sum payment of \$1,173 (Exhibit B). To resolve the debt, Applicant took a loan against her 401(k) plan.
10. SOR subparagraph 1.e concerns a collection account for \$5,575 (Exhibits 6 and 7). This debt started as a credit card account until it was placed for collection. On September 6, 2006, Applicant called the creditor and was told the account

was now with a different collection firm. She called that firm and was told the account was included in the bankruptcy. Review of the bankruptcy records, with particular emphasis on Schedule F, indicates the account was not included in her Chapter 7 bankruptcy.

11. On August 16, 2004, Applicant completed a questionnaire for public-trust positions (Exhibit 1). In response to Question 22b--are you now over 180 days delinquent on any loan or financial obligation, including loans or obligations funded by the federal government--she replied in the negative. She did not disclose the four accounts in subparagraphs 1.b, 1.c, 1.d, and 1.e in response to Question 22b or anywhere else on the questionnaire. Similar to her reply to the SOR, she explained at the hearing that her answer to Question 22b was an honest mistake (R. 41).

12. In October 2006, Applicant met with a credit counseling organization to assist her in investigating negative information on her credit reports (Exhibit F). The investigation is in progress.

13. Applicant presented favorable employment and personal references (Exhibit G). Her references describe Applicant as a person of integrity, honesty, and trustworthiness. Also, Applicant presented performance reports from her employer (Exhibit A). These reports show Applicant is doing well in her job.

POLICIES

In deciding these ADP cases, we follow the procedures contained in the Directive, and we apply the adjudicative guidelines contained in Department of Defense Regulation 5200.2-R. Under the Regulation, "[t]he 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." Regulation ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. Regulation ¶ C8.2.1.

CONCLUSIONS

1. The Personal Conduct Concern

Personal conduct under Guideline E addresses issues of questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. In this regard, the deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully. An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

Applicant provided a reasonable explanation why she did not report the four delinquent debts in response to Question 22b. In summary, she explained that her negative answer was an honest mistake, and that she was not trying to mislead, falsify, or be untruthful. Having had a chance to listen to Applicant's testimony, observe her demeanor, and gauge her sincerity, I found Applicant's explanation to be credible, and I am not persuaded that her answer to Question 22b was deliberately false. Accordingly, Guideline E will be decided for Applicant.

2. The Financial Considerations Concern

Under Guideline F, a concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. 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 or classified information.

Here, based on the record evidence as a whole, a concern is raised by significant unpaid debts. Applicant has a history of not meeting financial obligations as well as inability to pay just debts. The record evidence shows a pattern of

Applicant being unable to fulfill her financial obligations. This pattern is established by the 1997 Chapter 7 bankruptcy and the more recent delinquent debts. These circumstances raise a concern about Applicant's trustworthiness to occupy an information systems position designated as an ADP I, II, or III position.

I reviewed the mitigating conditions (MC) under the guideline and conclude she receives some credit in mitigation. Each MC is discussed below.

The first MC--the behavior was not recent--does not apply. Her financial problems are current and ongoing, as opposed to matters from the distant past.

The second MC--it was an isolated incident--does not apply. As noted above, the record evidence shows a pattern of Applicant being unable to fulfill her financial obligations.

The third MC--the conditions that resulted in the behavior were largely beyond the person's control--applies in her favor. The fire that destroyed her house in 1999 was a circumstance beyond her control that had to have a negative effect on her overall financial situation. Likewise, Applicant's ongoing care and support of her 43-year-old daughter is a circumstance that creates additional financial pressure, which must be considered in this case. The same is true for Applicant's knee surgery several years ago.

The fourth MC--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. Applicant met with a credit counseling organization in October 2006 to investigate her credit reports, and that investigation has yet to produce results. Moreover, at this time, it is too soon to say that her financial problems are being resolved or are under control.

The fifth MC--the affluence resulted from a legal source--is not applicable here.

The sixth MC--the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts--applies somewhat. Applicant was able to settle one of the delinquent debts and made some efforts to address the others.

Viewing the record evidence as a whole, here we have an individual who sought protection and a fresh start from a Chapter 7 bankruptcy in 1997. Her bankruptcy case included many credit card accounts. Despite the fresh start, she now has more delinquent debts, which is indicative of a pattern of irresponsible financial behavior. Her efforts to address her financial situation are well intentioned, but not sufficient to overcome the case against her. Indeed, what's missing here is a demonstrated consistent payment record, along with a substantial improvement in her overall financial situation, that would signal that she is serious about getting control of her financial situation.

In conclusion, I have weighed the favorable and unfavorable information, and I conclude that Applicant has failed to rebut, explain, extenuate, or mitigate the financial considerations concern based on her significant unpaid debts. Given these circumstances, I conclude Applicant failed to establish that it is in the interests of national security to grant her eligibility for an ADP I/II/III position. In reaching this conclusion, I also considered Applicant's case under the whole-person concept, which a detailed discussion thereof would not change the outcome.

FORMAL FINDINGS

Here are my conclusions for each allegation in the SOR:

SOR Paragraph 1-Guideline F: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: For Applicant

Subparagraph e: Against Applicant

SOR Paragraph 2-Guideline E: For Applicant

Subparagraph a: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is denied.

Michael H. Leonard

Administrative Judge