

DATE: February 21, 2007

In re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 06-10888

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 lengthy delinquent debt history that was aggravated by reduced medical coverage and subsequent medical bills she incurred in 2004 after the birth of her child. However, without even a plan to eliminate the debt, the unanticipated incidents in 2004 do not warrant a finding in Applicant's favor under the financial guideline. In addition, Applicant's deliberate omission of her old debts has not been mitigated either. Eligibility for assignment to a trustworthiness position is denied.

STATEMENT OF CASE

On June 9, 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 June 21, 2006, Applicant submitted her answer to the SOR.

The case was assigned to me on July 25, 2006. On September 12, 2006, DOHA issued a Notice of Hearing for October 4, 2006. At the hearing, the Government's six exhibits (GE 1 through GE 4) were admitted in evidence. Applicant's five exhibits (AE A through AE E) were admitted in evidence. Following the hearing, she offered, and I admitted AE F in evidence. Those exhibits include character statements, correspondence with a credit bureaus, and her leave and earnings statement. The transcript was received on October 18, 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 (ADP) cases. Applicant had no objection to the proposed amendment (Tr. 9). Pursuant to

E3.1.17. of the Directive, the motion was granted. (Tr. 10). 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 ADP cases and the Directive shall apply to adjudicative procedures that are utilized in ADP cases.

A Motion to Amend Subparagraph 1.h. was made in order to correct certain misspelled words and dates. The word "Calvary" should be changed to Cavalry," and "May 5, 2004" should be changed to May 5 2006. Pursuant to E3.1.17. of Directive 5220.6, the motion was granted (Tr. 11).

FINDINGS OF FACT

The SOR alleges ten overdue debts that Applicant is responsible for. ⁽¹⁾ The total amount of delinquent debt is \$13,515.00. The debts became delinquent between April 2001 and August 2005 (GE 3, GE 4). She admitted she owed all the debts except for subparagraph 1.a. Applicant is 30 years old and has been employed as a claims associate since November 1998. Through promotions she is currently a claims associate III. She seeks assignment to a trustworthiness position.

Financial considerations. Subparagraph 1.a. is found for Applicant as no evidence has been presented establishing that the debt belongs to her. Though subparagraph 1.e. and 1.g. were also deleted from her credit file, she admitted these debts were her responsibility, and there is no evidence in the record demonstrating action by her to address either debt before they were deleted. My findings against her under SOR 1.e. and 1.g. shall be discussed in CONCLUSIONS, *infra*.

Applicant provided an affidavit in June 2005 and, after being handed a credit report, discussed most of the debts identified in the SOR. She recalled the SOR 1.b. debt, but claims she attempted to settle the debt. Negotiations ended when Applicant informed the creditor she did not have the money to settle the account in one payment. She recalled receiving emergency medical services (SOR 1.f.); she was waiting for the insurance company to pay their part of the bill. Then she forgot about the bill. She indicated plans to pay the bill (GE 2).

Also in her affidavit, she claims she set up an informal payment plan, and made an undetermined number of payments to the medical provider in SOR 1.i. and 1.k, ⁽²⁾ but stopped her payments when she no longer had sufficient funds (Tr. 41). Also, she recalled that before she received the medical services, her employer changed the medical coverage to a different plan requiring larger co-pays by members.

Applicant provided a position statement (AE A) explaining she had contacted a debt consolidation agency in late September 2006. A preliminary payment plan was established where she would pay \$221.00 a month for almost four years. She declined to participate in the plan because she could not afford the payments. Instead, she believed she would pay off some of the smaller creditors. She provided no evidence to show she paid any of the smaller creditors.

Personal Conduct. Applicant was given about two days (Tr. 30) to fill out the public trust questionnaire on August 23, 2004. In response to question 22.b. (requiring the identity of all debts over a 180 days delinquent), Applicant answered "yes." However, she only listed the SOR 1.g. debt, and did not list the SOR debts identified in 1.b., 1.c., 1.d., 1.e., and 1.f. In her June 2005 affidavit, she stated she did not list the other debts under question 22.b. as the debts were old and she believed they did not need to be listed. She testified:

Actually, sir, I was not thinking at the time. Going through this clearance, these were such old accounts I didn't have all the account information. And at the time, had I answered - listed them on the report, there would have been at the time maybe the [SOR 1.e. creditor] and the [SOR 1.d. creditor], along with the [SOR 1.c. creditor]. These other accounts, they occurred after the Statement of - this questionnaire (Tr. 30).

Her statement in her affidavit and her testimony that she did not need to list the debts indicates she knew about the debts in August 2004 when she provided the partial response to question 22.b. of the questionnaire. I find Applicant deliberately omitted material information from her questionnaire in August 2004.

Character Statements. Applicant's sister, who had primary liability for the car identified in SOR 1.g., indicated in a statement that Applicant co-signed for the car. The sister kept the payments current until the car was involved in an

accident in 2004. Applicant and her sister have been trying to negotiate a payment plan with the collection agency. A coworker of eight years believes Applicant is trustworthy. A lifelong friend commented favorably on Applicant's caring and honest nature. Applicant produced a budget indicating she has \$78.00 every month for discretionary purposes after paying her bills. Applicant's performance reviews for 2000 through 2005 are good to excellent.

Applicant has not had financial counseling. She did not investigate any debt relief service at work because she believes none exists (Tr. 31). She has tried a budget but does not earn enough money (Tr. 45) Applicant is currently living with her mother; she pays no rent but contributes to the utility bill every month. She also pays her mother \$50.00 a week to care for her child.

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⁽³⁾ 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)

The focus of this guideline is questionable judgment and/or dishonesty demonstrated during the course of the trustworthiness investigation.

CONCLUSIONS

Financial considerations (FC). A debtor who is financially overextended is at risk of committing irresponsible or even illegal acts to generate funds. The debt alleged in SOR 1.a. is found for Applicant based on insufficient evidence. FC disqualifying condition (DC) 1. (*a history of not meeting financial obligations*) and FC DC 3. (*inability or unwillingness to satisfy debts*) apply as Applicant owes eight of the remaining ten debts. Though AE F does not specifically identify the reason why SOR debts 1.e. and 1.g. were deleted from Applicant's credit report, experience in similar cases relating to the FC guideline persuades me to conclude the debts were probably removed by the expiration of the state statute of limitations. Under the statute, a creditor has a finite period of time to seek redress for his claim. After the period ends, the claim is time-barred. I also hold Applicant responsible for the SOR 1.e. and 1.g. debts due to her inaction in addressing both debts when they were enforceable. *See*, ISCR Case No. 03-10880 (App. Bd. Mar. 27, 2003).

The FC guideline lists five mitigating conditions that could potentially allay trustworthiness concerns raised by Applicant's financial problems. FC mitigating condition (MC) 1. (*the behavior was not recent*) is inapplicable. About half of her debts became delinquent in 2001, but some of the other debts became overdue in 2005. The fact that there are ten past due accounts that still have not been satisfied makes FC MC 2. (*it was an isolated incident*) inapplicable.

FC MC 3. (*the conditions that resulted in the behavior were largely beyond the person's control*) confers credit in those situations where a unforeseen incident prevents a person from paying their bills. Applicant's medical costs in July 2004 related to her child's birth and the costly change in medical insurance constitute two incidents that negatively impacted her ability to pay her bills. However, after weighing the medical debt delinquency against her history of not meeting financial obligations, not much weight can be accorded to her delinquent financial history where no action was taken by Applicant even before the medical problems in July 2004.

FC MC 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 as Applicant has had no financial counseling, so the problem is not being resolved and is not under control. Her decision not to take part in a debt consolidation plan in September 2006 may mean investigating different plans, as well as financial counseling regimens, until she finds the tools to regain control over her delinquent financial obligations.

FC MC 6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) acknowledges a track record of payments or a sustained demonstration of financial responsibility that supports a finding the person should be eligible for a position of trust. Though Applicant no longer owes the SOR 1.e. and 1.g. debts due to the statute of limitations, the removal of the two debts from her credit file does not equate to a good-faith effort to resolve her debts under FC MC 6. This is particularly true under these circumstances where Applicant has done nothing to reduce her overdue debts. All subparagraphs, except for 1.a., are found against Applicant.

Personal conduct (PC). A person aspiring for a trustworthiness position must demonstrate honesty and good judgment during the trustworthiness investigation. Applicant's dishonesty falls within PC DC 2. (*the deliberate omission of relevant and material matters to an investigator in connection with a trustworthiness investigation*). Her statements in her affidavit (GE 2) and her testimony at the hearing indicate that Applicant knew she had other old debts when she completed the public trust questionnaire. In her affidavit, she stated she did not list the other debts as she thought they were too old to list. She testified she did not list the debts because she did not have the account information. She deliberately withheld information from a document used by the government to determine trustworthiness.

The first three mitigating conditions may potentially mitigate the deliberate misconduct. PC MC 1. (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness and reliability*) is inapplicable. The omission of debts from a questionnaire is always relevant to determination of judgment.

E2.A5.1.3.2. (*the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily*) is not applicable either. Though the deliberate omission was an isolated incident, it occurred less than three years ago, and Applicant still believes she did not falsify the questionnaire. PC MC3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) does not mitigate as the affidavit reflects that Applicant did not discuss her debts until she was shown a credit report by the investigator. The apparent truthfulness Applicant displayed in the subsequent affidavit (June 2005) does not eliminate her deliberate concealment of material information from her questionnaire in August 2004. SOR 2.a. is found against Applicant.

Applicant's favorable character evidence describing her job performance and exemplary character over the last five of her eight-year tenure with her employer has been carefully analyzed. However, her reliability (a component of trustworthiness) on the job cannot be applied to her financial difficulties because she has demonstrated no reliability in paying her debts. Her character evidence does not overcome the adverse evidence under the FC and PC guidelines. My ultimate findings against Applicant under the specific guidelines has included an evaluation of this case under the general factors of whole person concept. With no plan to extricate herself from her indebtedness, it likely her financial problems will continue in the future.

FORMAL FINDINGS

Paragraph 1 (Financial Considerations, Guideline F): AGAINST THE APPLICANT

Subparagraph 1.a. For 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 1g. 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.

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

Subparagraph 2.a. 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 trustworthiness position is denied.

Paul J. Mason

Administrative Judge

1. After having her credit file investigated to determine whether she was responsible for certain debts, she was advised by a nationwide credit bureau agency that SOR 1.a., 1.e., and 1.g. were deleted from her credit report (AE F).

2. The debt in 1.k. represents the cost of medical services in connection with the delivery of Applicant's baby in July 2004 (Tr. 41).

3.