

DATE: January 31, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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ADP Case No. 06-12076

## **DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has about \$20,000 in delinquent debt on 15 accounts. She failed to present sufficient evidence to rebut, explain, extenuate, or mitigate the concerns under Guideline F for financial considerations. 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 Regulation 5200.2-R (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive), DOHA issued a statement of reasons (SOR) on August 7, 2006, detailing the basis for its action--concerns raised under Guideline F for Financial Considerations. Applicant answered the SOR in writing on September 6, 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 13, 2006. Applicant appeared and the hearing took place as scheduled. I left the record open until December 30, 2006, to allow Applicant to submit additional documentary evidence. To date, none were received. DOHA received the hearing transcript on January 4, 2007.

### **RULINGS ON PROCEDURE**

At hearing, the government moved to amend the SOR by deleting reference to DoD Regulation 5200.2-R, as mentioned in the preamble of the SOR. The result of the amendment would be to rely exclusively on DoD Directive 5220.6, which is also mentioned in the preamble. I took the motion under advisement and indicated that I would address it in the written decision. The motion to amend is denied because the government did not provide a sufficient legal argument or analysis why such an amendment was proper and necessary to adjudicate this case.

## **FINDINGS OF FACT**

In response to the SOR, Applicant admitted the indebtedness alleged in subparagraphs 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.l, 1.m, and 1. n. She denied the indebtedness in subparagraph 1.a and explained that she had paid about \$1,500 to settle this account. She denied the indebtedness alleged in subparagraph 1.k and explained that she owed a lesser amount and disputed the greater amount. She denied the indebtedness alleged in subparagraph 1.o and explained that she did not recall having this credit card account. She, in effect, denied the indebtedness alleged in subparagraph 1.p and explained that she did not recognize the account. She, in effect, denied the indebtedness alleged in subparagraph 1.q and explained that she paid this \$25 medical co-payment on the day of her visit. Her admissions are incorporated herein as findings of fact. And I make the following findings of fact.

1. Applicant is a 62-year-old customer service representative for a company that provides services to the Defense Department. She has worked for this company since October 2000. She currently earns \$11.68 per hour.
2. Applicant was divorced from her husband in 1991. She now lives with an adult son and his family, and she contributes about \$300 per month on mortgage payment. As a result of the divorce, Applicant estimates her annual income dropped substantially, and since the divorce she has not earned more than \$25,000 per year. She has been continuously employed since her divorce.
3. Applicant has a history of financial problems. The background investigation in this case revealed unfavorable financial information. For example, a credit report was obtained in September 2003 (Exhibit 4), and the collections section of the report listed seven collection accounts. A second credit report was obtained in October 2004 (Exhibit 5), and it listed ten accounts in the collections section. The most recent credit report from May 2006 (Exhibit 6) also contains unfavorable information.
4. The SOR alleges that Applicant is indebted to multiple creditors for nearly \$24,000 in total. In reply to the SOR, she admitted the vast majority of the debts. Her indebtedness is summarized in the table below.

<b>SOR Allegations</b>	<b>Current Status</b>	<b>Record</b>
¶ 1.a-\$3,892 charged-off account referred for collection.	Settled for about \$1,500 in 2000.	Exhibits B, C, and D and testimony related thereto.
¶ 1.b-\$336 collection account.	Unpaid.	R. 44-45.
¶ 1.c-\$285 charged-off account.	Unpaid.	R. 45.
¶ 1.d-\$546 collection account.	Unpaid.	R. 45.
¶ 1.e-\$11,486 collection account.	Unpaid. Deficiency balance owed after voluntary repossession of car when could no longer make payments.	R. 45, 57-58.
¶ 1.f-\$49 collection account-medical bill.	Unpaid.	R. 45.
¶ 1.g-\$694 collection account.	Unpaid.	R. 45.
¶ 1.h-\$76 collection account-medical bill.	Unpaid.	R. 45.
¶ 1.i-\$1,067 charged-off account and referred for collection.	Unpaid.	R. 45.
¶ 1.j-\$83 collection account.	Unpaid.	R. 45.
¶ 1.k-\$555 collection account.	Unpaid. Disputes amount owed.	R. 34-35.
¶ 1.l-\$2,910 collection account-medical bill.	Making payments, but balance unknown.	R. 46.
¶ 1.m-\$130 collection account-medical bill.	Unpaid.	R. 46.

¶ 1.n-\$150 collection account-medical bill.	Unpaid.	R. 46.
¶ 1.o-\$948 collection account based on delinquent credit card account.	Unpaid. Now admits this was an account she established for daughter who did not pay.	R. 37-42, 46.
¶ 1.p-\$750 collection account-medical bill.	Unpaid. Does not recognize account.	R. 47.
¶ 1.q-\$25 collection account-medical bill (co-payment).	Paid.	R. 42

To sum up, the table shows Applicant paid one debt, settled one debt, and has made some payments on another. Otherwise, her delinquent indebtedness remains unpaid.

5. Concerning her overall financial situation, Applicant has filed her annual state and federal income tax returns and she is not delinquent with tax authorities. She estimated having about \$35 in a checking account and maybe \$20 in a savings account. She participates in a 401(k) plan at work, and she estimates the account has a \$3,000 balance. Her car is paid for. She is aware of her "poor financial condition" (Exhibit A), but she maintains that does not make her a risk and she is living within her means.

### **POLICIES**

In deciding these ADP cases, we follow the procedures contained in the Directive, and we apply the adjudicative guidelines contained in the Regulation. 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**

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 classified information.

Here, based on the record evidence as a whole, a concern is raised by significant unpaid debt. As established above, Applicant has a history of not meeting financial obligations as well as inability to pay just debts. For example, the largest delinquent debt is the \$11,486 collection account stemming from auto financing. Review of the credit reports (Exhibits 4 and 5) show the account was opened in 1998 (several years after the divorce), had a high credit of \$16,077, and a \$379 monthly payment. Before the voluntary repossession, the account was 30-days past due ten times, 60-days past due four times, and 90-days past due three times. 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 under the guideline and conclude she receives some credit in mitigation. Her divorce in 1991 and the unexpected medical problems that generated the medical bills noted above (for example, subparagraph 1.i) no doubt contributed to her financial problems and were conditions largely beyond her control. The credit in mitigation is limited, however, for two reasons, First, her divorce took place about 15 years ago and she has been continuously employed since her divorce. Second, the total of the unpaid medical bills (as described in the table above) is about \$4,000, which means that consumer debt is the majority of her indebtedness.

Although she receives some credit in mitigation, she has not presented sufficient evidence to mitigate the financial considerations concern. In particular, the record evidence is insufficient to establish that she has made a good-faith

effort to pay or otherwise resolve her indebtedness. She currently owes about \$20,000 in delinquent debt to multiple creditors. Moreover, what's missing here is: (1) a comprehensive, realistic approach for paying off, settling, or otherwise resolving her indebtedness; (2) documented actions taken in furtherance of that approach; and (3) a substantial improvement to her financial situation. It appears Applicant does not have the means to pay or otherwise resolve her delinquent indebtedness at any time in the near future. 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: For Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: Against Applicant

Subparagraph j: Against Applicant

Subparagraph k: Against Applicant

Subparagraph l: Against Applicant

Subparagraph m: Against Applicant

Subparagraph n: Against Applicant

Subparagraph o: Against Applicant

Subparagraph p: Against Applicant

Subparagraph q: 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