

DATE: March 20, 2007

In re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 06-12751

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated her history of financial problems based on her good-faith effort to repay or otherwise resolve her debts coupled with circumstances largely beyond her control that contributed to her financial problems. Eligibility is granted.

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, dated January 2, 1992, as amended (Directive), DOHA issued a statement of reasons (SOR) on August 30, 2006. The SOR--which is the administrative complaint--detailed the factual basis for the action and alleged trustworthiness concerns under Guideline F for financial considerations. Applicant answered the SOR on September 28, 2006, and requested a hearing.

The case was assigned to me November 20, 2006. A notice of hearing was issued scheduling the case for December 12, 2006. The hearing took place as scheduled. DOHA received the hearing transcript December 29, 2006.

I left the record open until December 30, 2006, to allow Applicant to submit additional documentary evidence. She did so, and those matters were forwarded to me by department counsel who raised no objections to the post-hearing exhibits, which are admitted as Applicant's Exhibits G and H. A month later on January 25, 2007, and without objections by department counsel, I reopened the record until March 2, 2007, to allow Applicant an opportunity to submit documentary evidence showing her efforts to settle certain debts, as she testified to during the hearing (Appellate Exhibit I). Applicant's 13-page submission was timely submitted. On March 5, 2007, those matters were forwarded to me by department counsel who raised no objections. Accordingly, her multi-part exhibit is admitted as Applicant's

Exhibit I.

FINDINGS OF FACT

In response to the SOR, Applicant admitted the indebtedness alleged in subparagraphs 1.a, 1.b, 1.c, 1.f, 1.g, 1.h, 1.i, and 1.j. She denied the indebtedness alleged in subparagraph 1.d and explained that the debt was paid. She denied the indebtedness alleged in subparagraph 1.e and explained that she had disputed the debt and had it removed from a credit report. Her admissions are incorporated herein as findings of fact. And I make the following findings of fact.

1. Applicant is a 36-year-old service center manager for a company that provides health care services to the Defense Department. She has worked for this company since November 1998. Her educational background includes a nursing degree, and she is a licensed nurse. The performance of her work duties is described as above average (Exhibit F). Her husband is unemployed and receives a disability payment. Her children from her first marriage are ages 18 and 10. The 18-year-old daughter is a high-school senior and the 10-year-old daughter is a fourth grader. Both girls live with Applicant.

2. Applicant has a history of financial problems, as evidenced by delinquent consumer debts reflected in credit reports (Exhibits 4, 5, and 6). The SOR alleges that she has ten delinquent debts for about \$8,000 in total. Her indebtedness is summarized in the table below.

SOR Allegations	Current Status	Record
¶ 1.a-\$326 charged-off account.	Resolved by paying \$386.	Exhibit I at 1, 3.
¶ 1.b-\$639 charged-off account.	By letter, proposed lump-sum payment of \$339 to settle account.	Exhibit I at 7.
¶ 1.c-\$2,481 collection account.	Her ex-husband is responsible per divorce decree.	R. 51; Exhibit H at 6.
¶ 1.d-\$93 charged-off account.	Resolved by paying \$132.	Exhibit A.
¶ 1.e-\$1,604 collection account.	Denied account is hers. Disputed and deleted from credit report.	R. 26-28; Exhibit B.
¶ 1.f-\$709 collection account.	By letter, proposed lump-sum payment of \$400 to settle account.	Exhibit I at 10.
¶ 1.g-\$1,033 past-due account.	By letter, proposed lump-sum payment of \$450 to settle account.	Exhibit I at 9.
¶ 1.h-\$345 collection account.	Resolved by paying \$350.	Exhibit I at 1-2.
¶ 1.i-\$819 charged-off account.	By letter, proposed lump-sum payment of \$419 to settle account.	Exhibit I at 8.
¶ 1.j-\$228 collection account.	Resolved by paying \$228.	Exhibit C.

The table shows Applicant has: (1) paid four accounts; (2) proposed lump-sum payments to settle four accounts; (3) denied and disputed one account; and (4) established that her ex-husband is responsible for one account.

3. Applicant traces her financial problems to July 1999 when she and her then husband separated. She received no child support for her two children during the next 18 months until the state department of social services brought an action to establish an order, which was effective in January 2001. The child-support payments are now current, but her ex-husband fell behind during the fall of 2005 (R. 40-43; Exhibit E). As of January 2006, he was in arrears for about \$627. The child-support payments were brought current when the IRS intercepted the ex-husband's income-tax refund.

4. Her divorce was final in September 2004. She remarried in October 2004. Thereafter, her husband, who is also 36 years old, was injured in a car accident. As a result of a traumatic head injury, he is unable to work and receives a disability payment of \$792 per month from the Social Security Administration. He receives less than the full amount

because a portion is deducted and provided to his minor child from another marriage. Other than the disability payment, her husband has not received any other compensation due to the accident. Her husband uses the disability payment to pay his medical bills and some other expenses, but he otherwise does not contribute much to the household income.

5. In about April 2005, Applicant's father fell seriously ill and he passed way in May 2006. Applicant incurred additional expenses so she could assist in caring for her father. To obtain additional money, Applicant used a paid-off car as collateral to obtain a loan of about \$2,600 with monthly payments of \$215 (Exhibit 2 at 10). Although she was 30-days past due on four occasions, she repaid the loan in May 2006, and the account is rated as satisfactory.

6. In October 2006, Applicant sought assistance in resolving her indebtedness from a nonprofit consumer credit counseling organization (R. 37-40; Exhibit D). She was referred to this organization by her company's employee-assistance program. They advised her that she was not a good candidate for a debt-management program given the age and status of her debts. After meeting with this organization, Applicant decided to pay what she could and then make lump-sum payments to settle accounts when she received income-tax refunds in 2007.

7. At the hearing in December 2006, Applicant described her overall financial situation as improving. She was able to meet her current debts, which include a monthly car payment of \$470 (for another seven or eight months) and a monthly mortgage payment on a mobile home, which sits on 1.9 acres of land she owns. Given her husband's disability, she handles the family finances. She had less than \$500 in a checking account and several hundred dollars in a savings account (R. 58). She has participated in a 401(k) retirement account for the last few years, and this account has a balance of about \$4,000 (R. 60).

8. In early February 2007, Applicant received both federal and state income-tax refunds for \$3,295 and \$1,562, respectively, for a total of \$4,857 (Exhibit I at 4-5). Consistent with her plan, this money is available to make lump-sum payments to settle the four accounts mentioned in the table. As of March 2, 2007, Applicant had more than \$5,100 in her checking account (Exhibit I at 6).

POLICIES

This case involves an adjudication of Applicant's eligibility to occupy an ADP position, not an adjudication of Applicant's eligibility for a security clearance. In deciding 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, dated January 1987. ⁽⁴⁾ 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. Concerning any differences between the Regulation and the Directive, I note that the provisions of the Regulation and the Directive under Guideline F are substantially the same and any differences would not have a material effect on the outcome of the case. 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 sensitive information.

Here, based on the record evidence as a whole, a concern is raised by significant unpaid debts and a history of not meeting financial obligations. She incurred debt that she was unable to pay. The charged-off and collection accounts are ample evidence of Applicant's derogatory financial history. 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 substantial credit in mitigation.

Each MC is discussed below.

The first MC--the behavior was not recent--applies in her favor. Her financial problems are based on matters that, for the most part, took place some time ago. She is not experiencing any current financial problems.

The second MC--it was an isolated incident--does not apply. The record evidence shows multiple unpaid debts, establishing a pattern of Applicant not meeting her financial obligations.

The third MC--the conditions that resulted in the behavior were largely beyond the person's control--applies in her favor. Her separation in 1999, the lack of child support for 18 months, her father's serious illness, and her current husband's disability and unemployment are all circumstances largely beyond her control that had a negative effect on her overall financial situation. Indeed, these circumstances, taken together, would result in some people quitting or giving up, but Applicant has made due during some difficult circumstances.

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--applies in her favor. She met with a consumer credit counseling organization and received advice on how to resolve her indebtedness, and she acted on the advice. Based on the table above, it appears the ten accounts alleged in the SOR are resolved or are being resolved.

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 in her favor. The SOR concerns about \$8,000 in delinquent debts, which is not a large amount. To resolved her indebtedness, she has: (1) paid four accounts; (2) proposed lump-sum payments to settle four accounts; (3) denied and successfully disputed one account; and (4) established her ex-husband is responsible for one account. Her proposed lump-sum payments are not empty offers as she has nearly \$4,900 in income-tax refund money available. Taken together, her efforts are a substantial improvement to her overall financial situation and sufficient to fall within the meaning of good-faith effort.

I have also considered the record evidence in the context of the whole-person concept. Applicant is 36 years old and has a history of financial problems. Her financial history includes circumstances largely beyond her control that contributed to her financial problems. She has made a mature, good-faith effort to resolve the accounts in the SOR, including settlement offers on four accounts. It is likely that her offers will be accepted since bad debt is often settled for pennies on the dollar. Also, she paid off the \$2,600 loan in May 2006, which deserves favorable consideration. She accomplished all this while taking care of two children and a disabled husband. Considering the difficult family circumstances she has faced (the separation and divorce, her father's illness, her disabled husband), she has carried and continues to carry a rather heavy load, which many people could not bear.

In conclusion, after weighing the favorable and unfavorable evidence, I conclude Applicant has overcome the trustworthiness concerns. She has shown that she is serious about resolving her past financial problems and her overall financial situation is improving. Although she has not presented a perfect case in mitigation by paying off all accounts alleged in the SOR, ⁽²⁾ she has provided sufficient information to mitigate the financial considerations concern. Accordingly, I conclude Applicant has established that it is in the interests of national security to grant her eligibility for an ADP I, II, or III position.

FORMAL FINDINGS

Here are my conclusions for each allegation in the SOR:

SOR Paragraph 1-Guideline F: For Applicant

Subparagraphs a-j: For Applicant

DECISION

In light of all the facts and circumstances, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I, II, or III position. Eligibility is granted.

Michael H. Leonard

Administrative Judge

1. ADP Case No. 03-21205, 2005 DOHA LEXIS 289 (App. Bd. Dec. 23, 2005).
2. ISCR Case No. 02-25499 (Ap. Bd. Jun. 5, 2006) (Applicant was not required, as a matter of law, to establish that he had completely paid off his indebtedness).