

DATE: December 29, 2006

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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P Case No. 06-13879

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has about \$50,000 in delinquent debt on four 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. Under Department of Defense Regulation 5200.2-R (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on July 31, 2006, detailing the basis for its action--concerns raised under Guideline F for Financial Considerations. Applicant answered the SOR in writing on August 12, 2006, and indicated she did not wish to have a hearing. On September 25, 2006, department counsel submitted his written case consisting of all relevant and material information that could be adduced at a hearing. This so-called file of relevant material (FORM) was mailed to Applicant and it was received by her on October 10, 2006. Applicant did not submit any information within the 30-day period after receipt. The case was assigned to me on December 13, 2006.

**FINDINGS OF FACT**

In response to the SOR, Applicant admits the factual allegations in subparagraphs 1.a through 1.d. Her admissions are incorporated herein as findings of fact. In addition, I make the following findings of fact.

1. Applicant is a 39-year-old woman. She is employed as a customer service representative for a company that provides services to the Defense Department. She has worked in this job since May 2001.
2. She married in 1994. She and her husband separated in about February 2002. The current status of her marriage is not

established by the record.

3. Applicant has a history of financial problems as evidenced by delinquent consumer debt. The SOR alleges four accounts that have been charged off as bad debt or placed for collection. Applicant's admissions, coupled with the credit reports and other documentary information in the FORM, establish the factual allegations in the SOR. None of the four accounts have been paid, settled, or otherwise resolved by Applicant.

4. Concerning SOR subparagraph 1.a, this is a delinquent debt from a charged-off credit card account for about \$11,755. The account is now owned by a collection agency, and the current balance is about \$18,473. She paid \$50 on this account in July 2006.

5. Concerning SOR subparagraph 1.b, this is a delinquent debt from a charged-off credit card account for about \$11,548. The account is now owned by a collection agency, and the current balance is about \$11,248.

6. Concerning SOR subparagraph 1.c, this is a delinquent collection account for about \$13,760. The current balance is about \$13,843.

7. Concerning SOR subparagraph 1.d, this is a delinquent debt from a charged-off credit card account for about \$10,428. The current balance is about \$10,327. During 2004-2005, Applicant made four payments of \$100 each on this account.

8. Because she did not respond to the FORM, the available information in support of Applicant is limited. In her March 2005 written statement, she explained that several circumstances caused her financial hardship. In particular, she explained that in about February 2002, her father passed away and she helped her mother with bills. Then around the same time, she and her husband separated and she was paying the family bills. These circumstances resulted in her falling several months behind on payments. Also, she explained that she has been paying her other bills and does not have any new delinquent accounts.

### POLICIES

Positions designated as ADP I or ADP II are classified as sensitive positions; ADP III positions are not. Regulation ¶ AP10.2. By memorandum, dated November 19, 2004, the Deputy Under Secretary of Defense for Counterintelligence and Security directed DOHA to decide all contractor cases submitted for trustworthiness determinations, including ADP I, II, and III, under the Directive. Thus, even though they are nonsensitive positions, ADP III cases are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

"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." 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 under Guideline F. As established above, Applicant has a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts. She has more than \$50,000 in delinquent debt based on four accounts. Three of the accounts are charged-off credit card accounts, which leads me to conclude that Applicant incurred these debts by the irresponsible use of credit.

I reviewed the mitigating conditions under the guideline and conclude she receives some credit in mitigation. The confluence of circumstances in 2002 no doubt contributed to her financial problems, and these circumstances were largely beyond her control. The credit in mitigation is limited, however, because these circumstances happened about four years ago and, aside from a few token payments, she has made no progress in putting her financial house in order.

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 delinquent debt. Absent 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. Indeed, her financial situation is still uncertain. Given these circumstances, I conclude Applicant failed to establish 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**

The following are my conclusions as to each allegation in the SOR:

SOR Paragraph 1-Guideline F: Against Applicant

Subparagraphs a-d: Against 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