

DATE: January 31, 2007

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 06-16586

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

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

**FOR APPLICANT**

Jack Matthews Peterson, Personal Representative

**SYNOPSIS**

Both state and federal tax authorities have placed liens against Applicant due to delinquent income taxes. In addition, Applicant has nine unpaid accounts in a collection or charged-off status. Applicant 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 ¶ 2.4 of 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. 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 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. 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 Exhibits E, F, G, and H. DOHA received the hearing transcript on January 4, 2007.

**FINDINGS OF FACT**

In response to the SOR, Applicant denied the indebtedness alleged in subparagraphs 1.b, 1.f, and 1.g. She admitted the indebtedness in all other subparagraphs. Her admissions are incorporated herein as findings of fact. And I make the following findings of fact.

1. Applicant is a 41-year-old customer service representative for a company that provides services to the Defense Department. She has worked in this job since 1986.
2. She married in 1986. She and her husband have no children. Her husband is a few years older than she, and he works as an operator at a plastics plant.
3. Applicant has a history of financial problems, as evidenced by delinquent consumer debts as well as state and federal tax debts. As part of the background investigation, a credit report was obtained in November 2004 (Exhibit 3). The public record section of the report revealed three state tax liens filed in 1992, 1996, and 2003. The trade section of the report revealed 69 accounts, to include about 20 accounts described as past due and 3 accounts described as bad debts place for collection. There are five accounts in the collections section of the report. An additional credit report was obtained in 2006 (Exhibit 4), and this report further revealed or confirmed Applicant's unfavorable financial history. For example, it revealed four additional tax liens, with two filed in 2005 and two filed in 2006.
4. The SOR alleges that Applicant is indebted to multiple creditors for nearly \$37,000 in total. The total includes about \$28,000 for the state and federal tax liens. Her indebtedness is summarized in the table below.

<b>SOR Allegations</b>	<b>Current Status</b>	<b>Record</b>
¶ 1.a-\$1,390 charged-off account.	Unpaid.	R. 32.
¶ 1.b-\$2,010 collection account.	Unpaid.	R. 32-33
¶ 1.c-\$259 collection account.	Unpaid. Plans to pay \$10 monthly.	R. 33-34.
¶ 1.d-\$653 collection account.	Unpaid.	R. 34.
¶ 1.e-\$434 charged-off account.	Unpaid. Plans to pay \$30 monthly.	R. 34.
¶ 1.f-\$853 collection account.	Unpaid. Does not recognize account.	R. 35.
¶ 1.g-\$2,881 collection account.	Unpaid. Disputes amount.	R. 36.
¶ 1.h-\$70 collection account.	Unpaid.	R. 36-37.
¶ 1.i-\$2,657 state tax lien.	Unpaid. Being paid via payroll deduction. Current balance unknown.	Exhibit A.
¶ 1.j-\$2,769 state tax lien.	Unpaid. Being paid via payroll deduction. Current balance unknown.	Exhibit A.
¶ 1.k-\$209 collection account.	Unpaid. Owes about \$150.	R. 37-38.
¶ 1.l-\$111 delinquent account.	Paid in full.	R. 38; Exhibit G.
¶ 1.m-\$6,997 federal tax lien for tax year 2002.	Unpaid. Being paid via payroll deduction. Current balance unknown.	Exhibit F; R. 30-31, 47-48.
¶ 1.n-\$7,154 federal tax lien for tax year 2003.	Unpaid. Being paid via payroll deduction. Current balance unknown.	Exhibit F; R. 30-31, 47-48.
¶ 1.o-\$6,060 federal tax lien for tax year 2004.	Unpaid. Being paid via payroll deduction. Current balance unknown.	Exhibit F; R. 30-31, 47-48.
¶ 1.p-\$2,460 state tax lien.	Unpaid. Being paid via payroll deduction. Current balance unknown.	Exhibit A.

To sum up, the table shows Applicant paid one debt. The other nine collection or charged-off accounts are unpaid. Although she denied the indebtedness alleged in subparagraphs 1.b, 1.f, and 1.g, she did not provide any documentary information to rebut the debts. The state and federal tax debts are not yet paid, although some progress has been made. At the hearing, Applicant did not know how much she currently owed to state and federal tax authorities (R. 47-48).

5. The indebtedness to the IRS for tax years 2002-2004 is a joint debt owed by Applicant and her husband. Applicant explained that a tax preparer prepared their state and federal income tax returns incorrectly, which resulted in the

indebtedness. Applicant called the IRS on September 26, 2006, to set up a payroll deduction for herself (R. 25), and it took effect on about December 26, 2006, in the amount of \$75 biweekly (Exhibit F).

6. In addition to the three tax years in the SOR, Applicant and her husband owed \$9,545 for a federal tax liability for tax years 1993, 1995, 1997, 1998, 1999, 2000, and 2001 (Exhibit B). In February 2003, Applicant's husband agreed to pay \$200 per month until the balance was paid. So far, it appears that about \$8,900 has been paid to the IRS by payroll deduction from Applicant's husband's pay (Exhibit C).

7. Applicant described her overall financial situation as living paycheck-to-paycheck (R. 42). She estimated her gross income for 2006 at about \$30,000. She did not know how much her husband earned in 2006, nor did she know how much he earned on an hourly basis. She and her husband have separate accounts, and her husband pays his bills and she pays her bills. She estimated that she had about \$30 in her account (R. 44-45).

8. Asked to explain the chief factor of her financial problems, she said "I guess I just don't know. I just don't know how to manage my money, especially if someone else needs something. Even though I know something is due, I just give it up, basically. Give it to whoever I think need it at that time" (R. 54).

### POLICIES

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 (Jan. 1987), as amended (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 or unwillingness to pay just debts. She has both consumer debt and tax debt. She does not have a realistic plan in place to address the consumer debt, and her effort to address the most recent federal tax liability has just begun. It is likely that one of the chief causes of her financial problems is that she and her husband are not on the same page when it comes to handling their financial affairs.

I reviewed the mitigating conditions under the guideline and conclude she receives some credit in mitigation. The circumstances surrounding the preparation of the tax returns no doubt contributed to her financial problems. The credit in mitigation is limited, however, because these circumstances happened some time ago, and, ultimately, Applicant and her husband were responsible for the accuracy of their tax returns.

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. Time will tell if she will follow through and take the necessary actions to clean up her financial house. Indeed, in addition to the state and federal tax liabilities (current balances unknown), she has nine delinquent consumer accounts for more than \$8,000, which shows her financial irresponsibility is ongoing and not a thing of the past. At this time, her financial situation is uncertain. Given these circumstances, I conclude that 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**

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: 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: For Applicant

Subparagraph m: Against Applicant

Subparagraph n: Against Applicant

Subparagraph o: Against Applicant

Subparagraph p: 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