

DATE: February 26, 2007

In Re:

SSN: -----

Applicant for a Trustworthiness Determination

ADP Case No. 06-15913

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although Applicant has been making regular payments of \$215.00 a month since December 2003 to satisfy her federal tax lien, that record of payments and documented evidence of an offer to settle another debt does not meet Applicant's ultimate burden of persuasion under the financial considerations guideline. Eligibility for assignment to a sensitive position is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 29, 2006, under Executive Order 10865 and Department of Defense Directive 5200.6, DOHA issued a Statement of Reasons (SOR) detailing the reasons for its security concerns raised under the financial considerations guideline (Guideline F) of the Directive. Applicant furnished an answer to the SOR on September 22, 2006. Applicant requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the SOR) was sent to Applicant on October 26, 2006. Applicant received the FORM on October 31, 2006. Applicant's response was due on November 30, 2006. No response was submitted. The case was assigned to me for decision on January 11, 2007.

FINDINGS OF FACT

The SOR alleges financial considerations. Subparagraph 1.a. identifies a federal tax lien in the amount of \$16,172.00 that was filed by the Internal Revenue Service (IRS) against Applicant in April 1998 for federal taxes owed in tax years 1993 through 1996. Applicant denied the lien in her answer though she indicated she had been paying \$215.00 a month under an installment plan that is discussed in the next paragraph. Applicant and her daughter now live together to reduce expenses.

The IRS sent Applicant a letter on October 29, 2003 (attachment to her Answer to the SOR). The letter indicates the lien applies for tax years 1993, 1994, 1995, 1996, and for 1997, and 2002, two additional years not alleged in the SOR. The

letter then details the terms of payment. Pursuant to a proposal communicated and agreed upon over the telephone with the IRS on October 21, 2003, Applicant's monthly payments of \$215.00 were to begin in December 2003, and last until the lien was paid. According to the letter, a monthly payment statement and voucher would be sent shortly before the next payment was due. Applicant was also advised that if she did not meet the terms of the installment agreement, the IRS would impose a range of sanctions to protect the government interests.

Applicant admitted SOR 1.b. through 1.f. She only provided additional information under 1.f., a delinquent debt of \$849.00. The information under 1.f. is a July 2006 settlement offer of \$509.50 from the creditor. ⁽¹⁾ Applicant's counteroffer is dated August 2006, and contains a request to accept the settlement offer in two payments of \$254.85 each. No additional information is provided as to whether the counteroffer was accepted or negotiations continued.

SOR 1.b. is a medical account (\$102.00) that became delinquent July 2002. SOR 1.c. is a credit card account (\$1,634.00) that became delinquent in March 2003. SOR 1.d. is a delinquent debt of \$1,670.00 that Applicant owes to a direct merchant seller. The account became delinquent in March 2003.

SOR 1.e. is a delinquent debt of \$72.00 on an account that was opened in April 2002 and became past due in June 2003.

Applicant explains in her answer that:

My financial debts occurred when, due to health reasons, I could no longer work full-time hours. I was in the hospital in [city] with pneumonia and irregular heartbeat for five days. My bill after insurance was almost \$6,000.00. At that time I was employed by [previous employer]. The only housing up there is tied to your employment so I was forced to leave the area to seek part-time employment in the [second city's] area. I had to get transportation and furniture in order to live down here-they were not necessary up in [previous employer's area]. I was forced to let the credit cards go (Answer to SOR).

The "previous employer's area" referred to by Applicant in the above quotation is in an area of the state where an airport is located. According to module 11 (Your Employment Activities) of her public trust questionnaire signed on May 3, 2004 (Item 4), Applicant was employed in a gift shop as an administrative assistant from March 2002 to May 2003.

In her answer to the SOR, Applicant quoted the language of the financial guideline and opined that at her age (67), it would be highly unlikely she would start a criminal career. She continues to work part-time hours. The consequence of working more hours would be an increase in the amount of her monthly payments to the Internal Revenue Service (IRS) to satisfy her federal tax lien. Applicant owes six creditors approximately \$20,499.00.

Applicant furnished no evidence regarding her job performance or her ties to the community where she lives.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to

rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations (Guideline F)

Being financially overextended or unable to pay debts on time places an individual at risk of having to engage in illegal acts to generate funds.

CONCLUSIONS

Applicant's debt problems since April 1998 establish trustworthiness concerns as defined by financial considerations (FC) disqualifying condition (DC) 1. (*a history of not meeting financial obligations*) and FC DC 3. (*inability or unwillingness to satisfy debts*) In a little over eight years, Applicant has collected five delinquent debts and a federal tax lien totaling approximately \$20,499.00.

There may be one or more of the FC mitigating conditions (MC) that could remove or dramatically reduce the security concerns associated with Applicant's delinquent debts: FC MC 1. (*the behavior was not recent*); FC MC 2. (*it was an isolated incident*); FC MC 3. (*the conditions that resulted in the behavior were largely beyond the person's control*); FC MC 4. (*the person has received or is receiving counseling for the problem and there are clear indications the problem is under control*); and, FC MC 6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolved debts*). Neither FC MC 1. nor FC MC 2. apply as Applicant is currently delinquent on five debts and a federal tax lien.

Applicant's pneumonia and continuing heart problems generated a \$6,000.00 medical bill that has required a reduction of her work hours to a part-time level. The medical problems also required her to leave a job in one part of the state, and work part-time at her present job in another part of state. Applicant receives extenuation under FC MC 3.

Although there is no evidence of financial counseling, the limited mitigation Applicant receives under FC MC 4. is based on the monthly payments she has made with the IRS since December 2003, and her efforts thus far to settle with the SOR 1.f. creditor. The mitigation is limited as there is no documented evidence Applicant has actually repaid or settled with the creditors in SOR 1.b. through 1.f.

FC MC 6. acknowledges good-faith efforts to repay creditors. Even though Applicant provided no evidence demonstrating she made all the plan payments, I shall assume she has made all the payments since December 2003. That assumption however, earns her no mitigation under FC MC 6. because of the sanctions she must face should she stop her payments. The mitigation Applicant receives under FC MC 6., FC MC 4. and FC MC 3. falls far short of overcoming the adverse evidence under FC DC 1. and FC DC 3. of the FC guideline. SOR 1.a. through 1.f., and the FC guideline are found against Applicant.

The adjudicative process must include an evaluation of these financial issues under the whole person model of the Directive. Applicant's failure to pay taxes for six years is serious misconduct because it demonstrates a pattern of poor judgment, unreliability, and irresponsibility. Failing to pay her taxes for six out of 11 years between 1993 and 2002 removes any thought the conduct occurred through inadvertence or negligence. Applicant was between 54 and 63 years old when she decided not to pay taxes. The medical problems that required her to change jobs have been considered. Insufficient supporting information has been presented to convince me the health issues prevented her from paying her taxes or paying the other debts. With no documented evidence that five of the six debts have been settled or repaid, Applicant's current financial problems are likely to persist in the future.

FORMAL FINDINGS

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

Subparagraph 1.a. Against 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.

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 or continue trustworthiness position for Applicant. Clearance is denied.

Paul J. Mason

Administrative Judge

1. Based on the large number of financial cases that I have adjudicated, I recognize the creditor in 1.f. as a credit card company.