

KEYWORD: Financial

DIGEST: Applicant is a 48-year-old welder employed by a defense contractor. He has a long history of financial problems. He filed a Chapter 13 bankruptcy petition in 1997, successfully completed the plan, and was discharged in 2000. Thereafter, he allowed accounts to be charged off and become past due, several judgments were entered against him and his wife, and he incurred federal and state income tax liens for 2002, which remain unpaid. He filed a Chapter 7 bankruptcy petition in 2005 and discharged approximately \$35,000 of debt. He provided no evidence other than to state that he had financially extended himself more than once or twice. He filed no response to the file of relevant material (FORM). He failed to mitigate the security concerns under Guideline F (financial considerations). Clearance is denied.

CASENO: 05-11935.h1

DATE: 03/30/2007

DATE: March 30, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 05-11935
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant is a 48-year-old welder employed by a defense contractor. He has a long history of financial problems. He filed a Chapter 13 bankruptcy petition in 1997, successfully completed the plan, and was discharged in 2000. Thereafter, he allowed accounts to be charged off and become past due, several judgments were entered against him and his wife, and he incurred federal and state income tax liens for 2002, which remain unpaid. He filed a Chapter 7 bankruptcy petition in 2005 and discharged approximately \$35,000 of debt. He provided no evidence other than to state that he had financially extended himself more than once or twice. He filed no response to the file of relevant material (FORM). He failed to mitigate the security concerns under Guideline F (financial considerations). Clearance is denied.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on June 12, 2006, detailing the basis for its decision – security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on July 10, 2006, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government’s case, a copy of which was received by Applicant on November 11, 2006. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by December 21, 2006. He filed no response. The case was assigned to me on January 30, 2007.

## FINDINGS OF FACT

Applicant admitted all the allegations contained in the SOR. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 48-year-old welder employed by a defense contractor.<sup>1</sup> He submitted a security clearance application on December 3, 2003.<sup>2</sup> He is married and has two children.<sup>3</sup> He has no military service and this is his first security clearance application.<sup>4</sup>

Applicant has a long history of financial problems. On March 17, 1997, Applicant filed a Chapter 13 bankruptcy petition.<sup>5</sup> Notwithstanding the allegation listed in the SOR, I found no evidence of the amount of liabilities listed in the Chapter 13 petition. On September 27, 2000, Applicant’s bankruptcy case was completed and he was discharged.<sup>6</sup> Applicant admitted that he financially overextended himself more than once or twice.<sup>7</sup>

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<sup>1</sup>Item 1 (Security Clearance Application (SF 86), dated December 3, 2003) at 1-2.

<sup>2</sup>*Id.* at 1.

<sup>3</sup>*Id.* at 2-3.

<sup>4</sup>*Id.* at 3-4.

<sup>5</sup>Item 11 (U.S. Bankruptcy Court Records, dated June 5, 2006) at 1.

<sup>6</sup>*Id.*

<sup>7</sup>Item 2 (Applicant’s Answer, dated July 10, 2006) at 1.

He filed a voluntary petition for Chapter 7 bankruptcy on October 16, 2005.<sup>8</sup> He listed assets of \$9,523, and listed liabilities of the \$32,759.<sup>9</sup> The bankruptcy petition listed 56 debts, numerous judgments, including credit card companies, cash advance companies, cable and utility companies, and debts for a repossessed automobile. The petition also listed both a federal and state tax debt for 2002.<sup>10</sup> He was discharged in bankruptcy on March 28, 2006.<sup>11</sup>

Even though the tax debts were listed in his 2005 bankruptcy petition,<sup>12</sup> taxes are not dischargeable in bankruptcy.<sup>13</sup> Applicant still owes \$289 to the Internal Revenue Service and \$900 to a state taxing authority for calendar year 2002.

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## **POLICIES**

“No one has a ‘right’ to a security clearance.”<sup>14</sup> As Commander in Chief, the President has “the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.”<sup>15</sup> The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>16</sup> Each security clearance decision “must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy.”<sup>17</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>18</sup>

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative

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<sup>8</sup>Item 10 ( U.S. Bankruptcy Court Records, dated June 5, 2006) at 1.

<sup>9</sup>*Id.* at 8.

<sup>10</sup>*Id.* at 16-25.

<sup>11</sup>*Id.* at 1.

<sup>12</sup>*Id.* at 16.

<sup>13</sup>11 U.S.C. § 523 (a).

<sup>14</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>15</sup>*Id.* at 527.

<sup>16</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

<sup>17</sup>Directive ¶6.2.

<sup>18</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

process factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>19</sup> It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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## CONCLUSIONS

The government established its case under Guideline F. Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*) and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*) are applicable. The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on numerous accounts, had multiple judgments, and lived beyond his means. He provided no evidence on his own behalf. The disqualifying conditions are applicable.

Various conditions can mitigate the security concerns arising from financial difficulties. The Directive sets out Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.3. (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*). Applicant provided no evidence as to the cause or causes of his delinquent debts, nor a reason why he has made no effort to resolve indebtedness. This mitigating condition is not applicable. FC MC E2.A6.1.3.4. (*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*) does not apply as there is no evidence of Applicant seeking financial counseling. FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts*) is not applicable. He was given an opportunity to provide documentation of efforts to resolve his financial difficulties. He chose not to respond. Absent sufficient evidence to determine if mitigating conditions are applicable, I conclude Guideline F against Applicant.

### **Whole Person Analysis**

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”<sup>20</sup> “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”<sup>21</sup> In evaluating Applicant’s case, in addition to the disqualifying and mitigating conditions, I also considered the “whole person” concept in evaluating

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<sup>19</sup>See Exec. Or. 10865 § 7.

<sup>20</sup>Directive ¶ E.2.2.1.

<sup>21</sup>*Id.*

Applicant's risk and vulnerability in protecting our national interests.<sup>22</sup> I considered his age (48), his employment, and what might cause him to be in continual financial distress. He has had a ten-year history of financial delinquencies, including numerous judgements, unpaid taxes, filing two bankruptcies, and he failed to present any evidence showing why he incurred delinquent debts between 2000 and 2005, other than to say that he financially overextended himself more than once or twice. That is an understatement. The past being prologue, the risk is substantial that Applicant will once again find himself in financial exigency. While filing bankruptcy can be a mitigating condition of resolving debt, the record contains insufficient evidence so that the underlying reasons for his delinquent obligations can only be conjecture. Therefore, the totality of the record leads me to conclude that Applicant does not have the ability nor responsibility to protect classified information and cannot exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is not clearly consistent with the national interest to grant or continue Applicant's security clearance.

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### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

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### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Christopher Graham  
Administrative Judge

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<sup>22</sup>*Id.*