

KEYWORD: Financial

DIGEST: Applicant is a 46-year-old pipe fitter, who has worked for a federal contractor for the last 28 years. From 1998 to March 2006, Applicant accumulated a significant amount of debt that he resolved through three bankruptcies, two Chapter 7 bankruptcies and one Chapter 13 bankruptcy. Since March 2006, he has begun to demonstrate some financial responsibility. However, he did not mitigate the security concerns raised by financial considerations. Clearance is denied.

CASENO: 06-11185.h1

DATE: 05/21/2007

DATE: May 21, 2007

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| In re: |) | |
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| SSN: ----- |) | ISCR Case No. 06-11185 |
| |) | |
| Applicant for Security Clearance |) | |
| |) | |

**DECISION OF ADMINISTRATIVE JUDGE
SHARI DAM**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 46-year-old pipe fitter, who has worked for a federal contractor for the last 28 years. From 1998 to March 2006, Applicant accumulated a significant amount of debt that he resolved through three bankruptcies, two Chapter 7 bankruptcies and one Chapter 13 bankruptcy. Since March 2006, he has begun to demonstrate some financial responsibility. However, he did not mitigate the security concerns raised by financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On January 27, 2004, Applicant submitted a security clearance application (SCA). 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, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on December 20, 2006, detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on January 19, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on February 28, 2007. DOHA issued a Notice of Hearing on March 16, 2007, setting the case for April 5, 2007.

At the hearing, Department Counsel introduced Government Exhibits (GX) 1–2 into evidence without objections. Applicant testified in his case and introduced Applicant Exhibits (AX) A–B into evidence without objections. The record was left open until April 15, 2007, to give Applicant additional time to submit documents. By agreement, that date was extended to April 20, 2007. DOHA received the hearing transcript (Tr.) on April 16, 2007. I received additional documents from Applicant on April 19, 2007, that I marked AX C. Department Counsel had no objection to the documents and they were admitted into the record on said date.

FINDINGS OF FACT

Based on the entire record, including Applicant’s admissions in his Answer to the SOR and at the hearing, I make the following additional findings of fact:

Applicant is a 46-year-old pipe fitter for a federal contractor. He is single and has a 28 year old son. He has worked for his current employer since June 1979 (GX 1). He has received good evaluations over the years. (Tr. 21) He has held a secret security clearance since 1980 (GX 1 at 5). He has access to classified information and has never been charged with mishandling it (Tr. 21) He believes this is the second time he has gone through the SCA renewal process (Tr. 29).

Paragraph 1 of the SOR alleges security concerns under the financial guidelines. Applicant admitted that he filed bankruptcy three times. In October 1998, he petitioned for Chapter 13 bankruptcy, having accumulated approximately \$101,280 in liabilities. The Chapter 13 was converted into a Chapter 7 and the debts were discharged in May 1999 (AX A; Tr. 32). Some of the

debts arose because he was unemployed for a period time while his company was on strike. Others were related to his elderly mother's medical condition. He also acknowledged that he purchased many items that he could not afford, including a \$30,000 corvette and a pick-up truck (Tr. 22-23).

In September 2000, Applicant filed his second Chapter 13 bankruptcy petition. After he completed making payments through a wage earner plan with the bankruptcy court, the court discharged approximately \$46,066 of his debts in April 2004 (Tr. 32-34).

In October 2004, Applicant filed his third Chapter 13 bankruptcy petition. That petition was converted into a Chapter 7 bankruptcy in September 2005 with liabilities of \$41,878.36 (Tr. 35). His Chapter 13 petition with \$38,556.36 in liabilities was dismissed in July 2005. He had again accrued numerous debts related to his indiscriminate spending habits (Tr. 45). In March 2006, the court discharged the \$41,878 of debts, which included all of the debts listed in SOR ¶¶ 1.e–1.i (Tr. 54; 58). Those debts consisted of car and furniture repositions, a car loan that he co-signed for his son, and other loans. The two wage garnishments noted in SOR ¶¶ 1.m and 1.n were also included in the discharge (Tr. 34-38). He believes the creditors listed in SOR ¶¶ 1.h and 1.i represent the same debt (Tr. 57). A November 2006 credit report continues to document many of the debts alleged in the SOR and his over-all financial history (GX 2). He claims they should have been removed from his credit report after the last bankruptcy (Tr. 37). He has not taken any action to have his credit report corrected.

Applicant currently lives with his 88 year old mother (Tr. 40). His net monthly income is \$2,976 and his housing expenses are approximately \$982 (AX C at 7). He also makes a car and motorcycle payment that total approximately \$1,055 per month, in addition to repaying a \$3,000 loan he took out against his 401(k) (Tr. 42). He does not have any credit cards and believes he is living within his financial means because he supplements his income with \$500 in overtime each month (Tr. 44). Since the last bankruptcy discharge in 2006, he has become more financially responsible (Tr. 59). He does not spend more than he earns (Tr. 46). He is very aware of the consequences that his financial history could have on his employment (AX C at 4).

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority . . . 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.” *Id.* at 527. 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.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Each security clearance decision “must be a fair and impartial common sense determination based upon consideration of all relevant and material information and the pertinent criteria and adjudication policy.” Directive ¶ 6.3. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The revised Adjudicative Guidelines set forth potentially 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 process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

CONCLUSIONS

Upon consideration of all facts in evidence and application of the appropriate adjudicative factors and legal standards, I conclude the following with respect to the allegations set forth in the SOR:

Guideline F - Financial Considerations

The security concern under Guideline F is that the failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

Based on Applicant's admissions and a November 2006 credit report, the Government established a disqualification under Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*), and FC DC 19(c) (*a history of not meeting financial obligations*). Applicant has been unable to manage his debts from approximately 1998 to March 2006, when he discharged a large amount of debt, for the second time, through bankruptcy because he was unable to pay his bills.

After the Government raised a security concern, the burden shifted to Applicant to mitigate or rebut the allegations. Six conditions can mitigate security concerns arising from financial difficulties. After reviewing all of them, I conclude he presented some evidence to establish two of them.

(1) Financial Considerations Mitigating Condition (FC MC) 20(a) *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment* does not apply because Applicant's problems have been ongoing from 1998 until March 2006, and do cast doubt on his judgment and reliability.

(2) FC MC 20(b) *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*, offers limited mitigation in view of Applicant's unemployment for a period of time and sick mother. However, there is no evidence that he acted responsibly in handling the problems at the time they occurred as required under this condition.

3) FC MC 20(c) *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* cannot apply because Applicant acknowledged that he has not obtained credit counseling, and the budget he

submitted after the hearing does not contain all of his expenses or income, namely those that he disclosed during the hearing relating to his vehicle loans and overtime. Thus, there is no solid evidence that his problems are under control.

(4) There is some evidence to support the establishment of FC MC 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* because he repaid \$46,006 of debt through a bankruptcy repayment schedule.

(5) Based on his acknowledgment of all of the debts and the absence of documentation indicating that he disputed any debt, FC MC 20(e) *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue* cannot be applied.

(6) FC MC 20(f) *the affluence resulted from a legal source of income* is not applicable.

“Whole Person” Analysis

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is known as the “whole person” analysis. Directive ¶ E2.2. In evaluating the conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I considered the totality of the evidence in view of the “whole person” concept, including Applicant’s middle age, the fact that he has held a security clearance for more than twenty years, his demeanor while testifying, and candid disclosure about his history of financial problems. I also considered that over the course of time he failed to pay some of the smaller debts included in the last bankruptcy, for example, \$71 noted in SOR ¶ 1.f and \$86 noted in SOR ¶ 1.k. While he stated he has been managing his money responsibly since March 2006, one year of financial responsibility does not mitigate approximately \$150,000 of discharged debts in less than ten years and his current tight budget. Although he expressed a willingness to continue living within his financial means, he has not established a solid budget that would assure the Government that he will not incur similar financial problems in the future. Given his current awareness of the effect that his financial situation has on his employment, I believe he will initiate further steps to manage his financial obligations and demonstrate good judgment. However, at this time all allegations under Paragraph 1 of the SOR are concluded against him. Accordingly, Guideline F is found against him, as is the “whole person concept.”

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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| Paragraph1: Guideline F (Financial Considerations) | AGAINST APPLICANT |
| Subparagraphs 1.a.–1.n: | Against Applicant |

DECISION

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

Shari Dam
Administrative Judge