

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: In 2003, while in the process of filing for Chapter 7 bankruptcy, Applicant concealed her employment status, several financial transactions, and more than \$130,000 of assets from the bankruptcy court. Subsequently the trustee filed a lawsuit against her, which is still pending. These issues raise security concerns that Applicant failed to mitigate. Clearance is denied.

CASENO: 06-14085.h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-14085
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline H. Jeffreys, Esq. Department Counsel

**FOR APPLICANT**

*Pro se*

**SYNOPSIS**

\_\_\_\_\_ In 2003, while in the process of filing for Chapter 7 bankruptcy, Applicant concealed her employment status, several financial transactions, and more than \$130,000 of assets from the bankruptcy court. Subsequently the trustee filed a lawsuit against her, which is still pending. These issues raise security concerns that Applicant failed to mitigate. Clearance is denied.

### **STATEMENT OF THE CASE**

On August 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find it clearly consistent with the national interest to grant or continue a security clearance.<sup>1</sup> Applicant filed an undated answer requesting a hearing.

The case was assigned to me on February 23, 2007. DOHA issued a notice of hearing on March 6, 2007, scheduling it for March 23, 2007. The hearing was held as scheduled. During the hearing, I received seven government exhibits, nine Applicant exhibits, and Applicant's testimony. Also, at the government's request, I took administrative notice of 11 U.S.C. Ann. §727 (2006) which sets forth the criteria governing Chapter 7 bankruptcy discharges. DOHA received the transcript on April 10, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_ Applicant's admissions are incorporated as findings of fact. In addition, I make the following findings of fact.

Applicant is a 42-year-old married woman with a three-year-old child. She earned a college degree in communications in 1989 and a master's degree in business administration in 1992. For the past three years, she has worked in the quality assurance field for a software development company.<sup>2</sup> Her supervisor describes her as a "jewel"<sup>3</sup> to the company who is "consistently one of the top performers. . . ."<sup>4</sup>

Throughout the 1990s, Applicant earned a high salary. Because she had no student loans, no children, and a husband who also earned income, she was able to enjoy a comfortable lifestyle. Among other things, she frequently took tropical vacations. On one occasion, she purchased a work

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<sup>1</sup>This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

<sup>2</sup>Tr. 43.

<sup>3</sup>Exhibit A, Performance Evaluation, dated March 7, 2006, at 6.

<sup>4</sup>Exhibit B, Performance Evaluation, dated February 26, 2007, at 5.

of art for \$5,000. During this period, she incurred between \$45,000 and \$60,000 of credit card debt, but never had trouble satisfying it in a timely manner.<sup>5</sup>

In May 2001, Applicant lost her job, and was unable to obtain a full-time job until nearly two years later.<sup>6</sup> During this time, her husband, who only earned a fraction of the income Applicant earned before her unemployment, was unable to support them both, and they began to have difficulty satisfying their debts. During her unemployment, she started a network marketing business, but it was unsuccessful, leading to the accrual of more debt.<sup>7</sup>

While unemployed, Applicant did not curtail her spending.<sup>8</sup> On one occasion in October 2002, she went on another tropical vacation.<sup>9</sup> In March 2003, she obtained a full-time job. She has been employed continuously since then.

In June 2003, Applicant's husband entered into an agreement to purchase an undeveloped parcel of real estate in a foreign country.<sup>10</sup> His intention was to build a resort. According to the agreement, he was to pay the seller \$130,000 in several increments over six months in exchange for the property.<sup>11</sup> Although Applicant did not sign the agreement, she considered it a joint venture, characterizing it as "an investment in the future for us all,"<sup>12</sup> and "our dream that we were chasing."<sup>13</sup>

Applicant and her husband made an initial deposit of \$5,000 three days after the agreement's execution. Approximately three weeks later, they paid \$60,000 toward the purchase price.<sup>14</sup> Approximately half of this sum was generated through the refinance of their home, and the other half was generated from her husband's business.<sup>15</sup> In July 2003, Applicant and her husband took a vacation to the country where the property is located.

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<sup>5</sup>Tr. 50, 52.

<sup>6</sup>Tr. 46.

<sup>7</sup>Tr. 71.

<sup>8</sup>Tr. 70.

<sup>9</sup>Exhibit 1, Security Clearance Application, dated July 15, 2005, at 27.

<sup>10</sup>Exhibit 3, Agreement for Sale, executed June 6, 2003.

<sup>11</sup>*Id.* at Paragraph 2.

<sup>12</sup>Tr. 111.

<sup>13</sup>*Id.*

<sup>14</sup>Tr. 77.

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

In November 2003, Applicant filed for Chapter 7 bankruptcy, listing \$368,448 in liabilities, and \$218,955 in assets. Approximately \$124,000 of the liabilities constituted credit card debt.<sup>16</sup> Three months before filing for bankruptcy, Applicant had obtained a new job earning \$10,000 per month. She did not report this income, as required, in the bankruptcy petition.<sup>17</sup> She also did not disclose the investment property, as required under Schedule A of the petition, the agreement for the purchase of the investment property, as required under Schedule G of the petition, the installment payments executed according to the terms of the investment agreement, as required under Schedule J of the petition, or the refinance of their home in June 2003, as required under Schedule D of the petition.<sup>18</sup>

On December 22, 2003, Applicant and her husband completed interrogatories provided by the Chapter 7 trustee. In response to question number 6, “Are all of your assets identified in the schedules?” they answered “yes.”<sup>19</sup>

By December of 2003, Applicant and her husband had deposited an additional \$20,000 toward the execution of the agreement.<sup>20</sup> They generated this money through her employment income in addition to money borrowed from an insurance policy. Later that month, Applicant received \$10,000 in gift money from relatives after the birth of their child. “It was funneled” to their real estate investment.<sup>21</sup>

By February 2004, Applicant and her husband had paid approximately \$38,000 of post-petition income toward the purchase of the investment property.<sup>22</sup> At no time did they make any payments toward the satisfaction of any of the debts listed in the bankruptcy. In August 2005, the trustee discovered the investment property, and sold it after obtaining authorization from the court.<sup>23</sup> In July 2006, the trustee filed a complaint objecting to the discharge of Applicant and her husband’s debts, alleging “concealment of assets,” and “false oath or account.”<sup>24</sup> The litigation is pending and the debts are still outstanding.

## POLICIES

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<sup>16</sup>Exhibit 6, Schedule F of Bankruptcy Petition, dated November 12, 2003, at 13-15.

<sup>17</sup>Tr. 117; *See* Schedule I - Current Income of Individual Debtor(s), of Bankruptcy Petition, Ex. 6.

<sup>18</sup>Exhibit 6; Tr. 98.

<sup>19</sup>Interrogatories, executed December 22, 2003, as listed in Exhibit 2 at 10.

<sup>20</sup>Tr. 116.

<sup>21</sup>Tr. 110.

<sup>22</sup>Tr. 119; Exhibit C, Agreement, at 4, Notice of Motion of Chapter 7 Trustee for Authorization to Sell Debtor’s Interest in Contract Free and Clear of Liens, Claims, Encumbrances and Interests, dated August 17 2005.

<sup>23</sup>*Id.*

<sup>24</sup>Exhibit 2, Complaint, dated July 17, 2006.

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are raised:

Guideline F - Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Guideline J - Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."<sup>25</sup> In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

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<sup>25</sup>See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

## CONCLUSIONS

### **Financial Considerations and Personal Conduct**

Applicant accrued between \$45,000 and \$60,000 of debt in the 1990s that she was unable to satisfy after she lost her job in 2001, prompting her to file for Chapter 7 bankruptcy in 2003. She fraudulently omitted several assets from the bankruptcy petition, including among other things, her lucrative job, her interest in an investment property, and multiple cash transactions executed to purchase an investment property. Financial Considerations Disqualifying Condition (FC DC) 1 (*A history of not meeting financial obligations*), FC DC 2 (*Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust*), and FC DC 3 (*Inability or unwillingness to satisfy debts*) apply.

I have considered all the mitigating conditions and conclude none apply. Applicant lived a spendthrift, carefree lifestyle when she held a lucrative job in the 1990s, accruing up to \$60,000 of debts. She maintained this lifestyle after losing her job in 2001, going on a tropical vacation in October 2002, while still unemployed. Approximately 11 months later, she sought to facilitate the purchase of an investment property by obtaining a discharge of all of her debts through the Chapter 7 bankruptcy process, while concealing both the purchase of the property and any assets associated with its purchase from the bankruptcy trustee. Applicant has not mitigated the financial considerations security concern.

Applicant's conduct also generates security concerns under Personal Conduct Disqualifying Condition (PC DC) 1 (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*), PC DC 4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*), and PC DC 5 (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*). The gross duplicity of Applicant's conduct completely undermines her credibility. Consequently, upon considering all of the personal conduct mitigating conditions, I conclude none apply. She has not mitigated the personal conduct security concerns.

### **Criminal Conduct**

The SOR alleges civil infractions, not criminal. Absent the allegation of any criminal infractions, there are no criminal conduct security concerns.

### **Whole Person Concept**

Applicant's pattern of duplicity began when she concealed the real estate investment and its multiple related financial transactions from the bankruptcy court, continued when she made installment payments without notifying the bankruptcy court trustee, and did not end until nearly two years later, when the trustee discovered the property, and initiated a forced sale. Throughout the hearing, she attempted to minimize responsibility for the fraud by asserting that her role was secondary to her husband's role. Given her educational background, and the fact that she was the primary wage earner throughout their marriage, this contention has little probative value.

Applicant's contention that she currently manages money responsibly, and has not accrued any additional debt since filing for Chapter 7 bankruptcy in 2003, similarly has limited probative value. Her testimony simply was not credible in light of the scope of the duplicity.

Applicant's investment in the real estate scheme was motivated by the admirable desire to achieve financial independence for her family. However, she resorted to duplicity in an attempt to achieve this objective. Upon considering this case in light of the whole person concept, I conclude that Applicant has not mitigated the security concerns. Clearance is denied.

### **FORMAL FINDINGS**

Paragraph 1 – Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Paragraph 2 - Guideline E:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Paragraph 3 - Guideline J:	FOR APPLICANT
Subparagraph 1.a.:	For 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 a security clearance for Applicant. Clearance is denied.

Marc E. Curry  
Administrative Judge