

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's recurrent financial difficulties that precipitated the filing of a second bankruptcy in 2005 generate a security concern. Since incurring the debts that precipitated the bankruptcy, she has obtained a steady, well-paying job that has enabled her to make payments toward the satisfaction of her outstanding delinquencies through a Chapter 13 payment plan without interruption for the past 18 months, while comfortably managing her other monthly expenses. She has mitigated the security concern. Clearance is granted.

CASENO: 06-15191.h1

DATE: 04/20/2007

DATE: April 20, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-15191
SSN: -----)	
)	
Applicant for Security Clearance)	

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

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Department Counsel

FOR APPLICANT

Mitchell Adams, Personal Representative

SYNOPSIS

_____Applicant's recurrent financial difficulties that precipitated the filing of a second bankruptcy in 2005 generate a security concern. Since incurring the debts that precipitated the bankruptcy, she has obtained a steady, well-paying job that has enabled her to make payments toward the satisfaction of her outstanding delinquencies through a Chapter 13 payment plan without interruption for the past 18 months, while comfortably managing her other monthly expenses. She has mitigated the security concern. Clearance is granted.

STATEMENT OF THE CASE

On November 21, 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.¹ Applicant answered it on December 12, 2006, and requested a hearing.

The case was assigned to me on January 10, 2007. DOHA issued a notice of hearing on February 27, 2007, scheduling it for March 13, 2007. The hearing was held as scheduled. During the hearing, I received five government exhibits, five Applicant exhibits, and the testimony of two Applicant witnesses. At the conclusion of the hearing, I left the record open through March 27, 2007 for Applicant to submit additional exhibits. That day, she submitted five additional exhibits. Department Counsel did not object to their admissibility. I then marked them as Applicant's Exhibits I through M, and incorporated them into the record. DOHA received the transcript on March 23, 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 39-year-old married woman with two children, ages 15 and 4. She has a high school diploma. For the past three years, she has worked as a process inspection operator. Her duties include, among other things, quality control, and employee training. She is an exemplary employee who is highly respected by her coworkers.²

In early 2000, Applicant's quit her full-time job and took a part-time job in order to care for her ailing mother.³ Although she obtained another full-time job a few months later, she only made

¹This 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).

²Exhibit G, Supervisor's Reference Letter (undated).

³Tr. 89.

half the income than she earned at her previous full-time job.⁴ At or about the time she obtained the new job, her husband was severely burned in a household accident, rendering him unable to work for six months.⁵

Subsequently, Applicant and her husband grew delinquent on their debts. They met with a financial counselor who advised them to consider filing for bankruptcy.⁶ On or about February 15, 2001, they filed for Chapter 7 bankruptcy. On May 22, 2001, they obtained a discharge of approximately \$42,100 of delinquent debt,⁷ including the one listed in subparagraph 1.c.⁸

Applicant's husband returned to work approximately one month before filing for bankruptcy. In late 2001, he injured himself on the job. For the next three years, the injury severely limited his wage-earning capacity, because he could no longer perform his previous job duties.⁹ Although Applicant during this period had begun working a full-time job in addition to the part-time job she had taken when her mother grew ill, she was still making less than she did before quitting the job she held in 1999.¹⁰

Applicant and her husband again accrued significant financial delinquencies. In 2003, Applicant's husband received a \$65,000 worker's compensation settlement. He spent approximately \$25,000 of the settlement on the purchase of a recreational vehicle and an automobile. Applicant spent the remainder of the settlement money primarily on routine expenses. Because her husband remained unable to find full-time work throughout the rest of the year, they were unable to make significant progress toward the satisfaction of their delinquent debt.

On approximately June 17, 2005, Applicant and her husband filed for Chapter 13 bankruptcy protection. Approximately \$16,000 of debt is included in the court-ordered payment plan, including the debts listed in subparagraphs 1.a. and 1.b.¹¹ For the past 18 months, they have been paying the trustee \$30 per week. They have not missed any payments, and are on schedule to satisfy the delinquencies over the next 33 months.¹²

⁴*Id.*

⁵Tr. 73.

⁶Tr. 75-76.

⁷*See generally*, Summary of Schedules, dated February 9, 2001, as included in Exhibit M, Bankruptcy Records, at 14. The amount discharged is the difference between the total liabilities, as listed at the bottom of the summary of schedules, and the amount of her mortgage and car note, both of which she re-affirmed.

⁸Exhibit M at 3; Security Clearance Application, dated July 29, 2005.

⁹Tr. 79-80.

¹⁰Tr. 89.

¹¹Exhibit A, Interim Statement as of September 23, 2006, at 1.

¹²*Id.*; Exhibit K, Interim Statement as of March 15, 2007, at 1.

Applicant has stayed current on all of her other debts, including two home mortgages, while making her Chapter 13 bankruptcy payments.¹³ Between 2004 and 2005, Applicant's income nearly doubled.¹⁴ During that time, her husband was successfully able to obtain a full-time job. Currently, she has approximately \$232 of income remaining after all monthly expenses have been paid.¹⁵

Applicant completed a security clearance application (SF 86) in July 2005. In response to Question 33 (*Your Financial Record - Bankruptcy - In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?*), she listed the 2001 bankruptcy, but not the 2005 bankruptcy. According to the facility security officer (FSO) at Applicant's company, she originally completed an SF 86 in February 2004, and submitted it through her employer to Defense Security Services (DSS), the agency handling the security clearance investigative function at the time.¹⁶ DSS never opened an investigation before their investigative function was transferred to the U.S. Office of Personnel Management (OPM). When OPM assumed the function, it requested the management at Applicant's company to resubmit any security clearance applications that had been pending immediately before the transfer. It was unclear whether they wanted the employees to update the information.¹⁷ The FSO at the time, returned the applications to Applicant and the other employees similarly situated, instructed them to sign them again, but did not instruct them to update any information.¹⁸

Applicant's second bankruptcy occurred after she submitted the first SF 86. Consistent with instructions from management, she re-signed the copy of the SF-86 submitted the previous year, and did not update it.¹⁹

Applicant also did not list any of the SOR debts in response to Question 38 (*Your Financial Delinquencies - 180 Days - In the last 7 years, have you been over 180 days delinquent on any debt?*), and Question 39 (*Your Financial Delinquencies - 90 days - Are you currently over 90 days past due on any debt(s)*). SOR subparagraphs 1.a. and 1.b. were included in the Chapter 13 bankruptcy filed in June 2005. There is no evidence on file that they were 90 or more days delinquent in 2004 when Applicant originally completed the SF 86. SOR subparagraph 1.c. was discharged in the Chapter 7 bankruptcy in 2001.

POLICIES

¹³Exhibit 5, Credit Bureau Report, dated November 14, 2006.

¹⁴Compare Applicant's 2004 IRS Form W-2 with her 2005 IRS Form W-2, at pages 14-15 of Exhibit L.

¹⁵Exhibit 3, Personal Financial Statement, signed November 10, 2005.

¹⁶Tr. 29; see also Exhibit 2, SF-86 electronically submitted February 2, 2004.

¹⁷Tr. 31-38.

¹⁸Tr. 32.

¹⁹Tr. 49.

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: 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.

Guideline E - Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

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."²⁰ 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.

²⁰See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

CONCLUSIONS

Financial Considerations

Applicant's recurrent financial difficulties which contributed to the filing of two bankruptcies between 2001 and 2004, trigger the application of Financial Considerations Disqualifying Condition (FC DC) a (*inability or unwillingness to satisfy debts*), FC DC c (*a history of not meeting financial obligations*), and FC DC e (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio and other financial analysis*).

The recurrent nature of the financial problems eliminates Financial Consideration Mitigating Condition (FC MC) a (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur*) from consideration. FC MC 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*) is also inapplicable. Specifically, the first prong of FC MC b applies, but not the second prong. The financial problems that led to the filing of the 2001 bankruptcy primarily were caused when Applicant quit her full-time job, and took a lesser-paying, part-time job, to enable her to spend more time caring for her seriously ill mother, and they recurred shortly thereafter, when an on-the-job injury disabled her husband from working full time for approximately three years. Conversely, Applicant and her husband used part of his 2003 worker's compensation settlement to buy a recreational vehicle and an automobile, rather than to satisfy outstanding debts.

Applicant has been paying her creditors through a bankruptcy trustee for the past 18 months without interruption. Her salary has nearly doubled since 2004, and she has approximately \$232 of income remaining after all monthly expenses have been paid. FC MC c (*there are clear indications that the problem is being resolved or is under control*), and FC MC d (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

Personal Conduct

Applicant's responses to Questions 33, 38, and 39 of her 2005 SF 86 raise the issue of whether Personal Conduct Disqualifying Condition a (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. Applicant completed her first SF 86 in February 2004. The Chapter 13 bankruptcy occurred in 2005, 16 months later. When the FSO gave her a copy of the 2004 SF 86, he simply asked her to re-sign it, and return it, not update it. The omission of the Chapter 13 bankruptcy was not intentional.

The debts listed in subparagraphs 1.a. and 1.b. were included in the Chapter 13 bankruptcy. No evidence indicates that the debts were either 90 days overdue, or had ever been 180 days overdue at the time she initially completed the SOR in 2004. Subparagraph 1.c. was discharged in the Chapter 7 bankruptcy in 2001. PC DC a does not apply.

There are no personal conduct security concerns.

Whole Person Concept

Applicant’s recurrent financial difficulties that precipitated the filing of a second bankruptcy in 2005 generate a security concern. These adverse facts are outweighed by the length of time she has earned enough income to comfortably satisfy her monthly expenses, and the extensive period of time she has been in compliance with the Chapter 13 bankruptcy plan. Evaluating these facts in the context of the whole person concept, particularly the presence of rehabilitation,²¹ and the minimal potential for coercion,²² I conclude she has mitigated the security concern.

FORMAL FINDINGS

Paragraph 1 – Guideline F:

FOR APPLICANT

Subparagraph 1.a.:

For Applicant

Subparagraph 1.b.:

For Applicant

Subparagraph 1.c.:

For Applicant

Subparagraph 1.d.:

For Applicant

Subparagraph 1.e.:

For Applicant

Paragraph 2 - Guideline E:

FOR APPLICANT

Subparagraph 1.a.:

For Applicant

Subparagraph 1.b.:

For Applicant

Subparagraph 1.c.:

For Applicant

DECISION

²¹Directive ¶E2.2.1.6.

²²Directive ¶E2.2.1.8.

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Marc E. Curry
Administrative Judge