



## **SYNOPSIS**

In November 1998, Applicant discharged \$114,640.00 in liability under a Chapter 7 bankruptcy petition. In January 2002, Applicant filed a bankruptcy petition under Chapter 13. When Applicant made no payments under the payment plan, the petition was dismissed in December 2002. He filed a second Chapter 13 petition in September 2002. The second petition was dismissed when Applicant made no payments. While he claimed he wanted to repay the creditors, Applicant filed the two petitions to protect the equity interest in his house. In September 2004 (less than six years after receiving his first Chapter 7 discharge, and less than two years after his second Chapter 13 petition was dismissed) Applicant filed his second Chapter 7 petition. In March 2005, he eliminated \$267,481.00 in liability through discharge. Considering (1) the passage of less than three years since his discharge, (2) the evidence of continuing though minor financial problems, and (3) the absence of financial counseling and character evidence, I am unable to find in his favor under the financial guideline. Regarding the worthless check crimes Applicant pled guilty to, and other worthless checks that he was not prosecuted for, the passage of time, as well as Applicant's remorse and restitution persuades me to find in his favor under the criminal conduct guideline. Clearance is denied.

## **STATEMENT OF CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 17, 2006, under Executive Order 10865 and Department of Defense Directive 5200.6, with revised Adjudicative Guidelines, effective September 1, 2006, DOHA issued a Statement of Reasons (SOR) detailing the reasons for its security concerns raised under the financial considerations guideline (Guideline F) and the criminal conduct guideline (Guideline J) of the Directive. In his notarized answer dated December 29, 2006, Applicant submitted admissions to each of the nine allegations under Guideline F. Though he did not provide an answer to the allegation under Guideline J, the findings of guilt under subparagraphs 1.f. and 1.g., and his guilty plea under subparagraph 1.h. manifests criminal conduct. He 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 April 23, 2007. He received the FORM on May 2, 2007. Applicant's undated response to the FORM was received by DOHA on July 20, 2007 via United States Post Office, Express Mail. The response, objected to by Department Counsel, contains documents dated in May 2007, as well as documents dated after the June 1, 2007 date when Applicant's response was due.<sup>1</sup> Department Counsel's objection is overruled, and the entire response is admitted in evidence. The case was assigned to me for decision on July 26, 2007.

## **FINDINGS OF FACT**

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<sup>1</sup> One of the documents entitled "Investigative Status" is dated July 18, 2007, and contains information indicating that Applicant was notified that the estimated completion date of his investigation request of certain disputed debts would be July 28, 2007.

Applicant is 47 years old and has been employed as a fireman by a defense contractor since June 2004. He married his present wife in September 2002, and has five children and stepchildren. He seeks a security clearance.

In May 1998, Applicant filed a Chapter 7 bankruptcy petition (SOR, 1.a.). In November 1998, Applicant was granted a Chapter 7 discharge with assets totaling \$80,196.00 and liabilities adding up to \$114,640.00. Applicant's SCA reflects this petition was filed while he was married to his second wife.<sup>2</sup> The Schedule F (unsecured creditors with nonpriority claims) section of the petition reflects that his second wife was liable for most of the unsecured debt. Of the 15 unsecured personal claims against his wife, 13 were for medical services and two were for legal services. However, after adding the Schedule F debts with those appearing in Schedule D (Item 11), most of the debt identified in the 1998 bankruptcy arose during the course of the second marriage.

In September 1999, Applicant began a debt consolidation plan involving 10 creditors. He made regular payments under the plan over the next 13 months. He made his first payment of \$130.00, one payment of \$140.00, four payments of \$150.00, six payments of \$162.00, and one payment of \$552.22 on December 20, 2000 under the plan. Applicant received a letter dated May 20, 2007 from the debt plan organization indicating, "Congratulations! You have successfully completed the Debt Management Program of [organization]. The status of your account has been changed to "Paid in Full." Applicant provided no other information about the plan except his claim that his successful completion of the plan after his divorce to his second wife constituted credit counseling. Even though his final payment under the plan was in December 2000, he provided no explanation why notification of successful completion of the plan did not arrive until May 2007.

In January 2002, Applicant filed a Chapter 13 bankruptcy petition (SOR 1.b.) with assets totaling \$285,386.00 and liabilities of \$255,496.02. The Chapter 13 petition was dismissed (SOR 1.c.) As Applicant defaulted on the payment plan obligating him to pay \$900.00 a month. Applicant strenuously maintains his third wife (April 2000 to November 2001) was the primary reason the petition was filed. While they were married, he discovered she had a criminal record and a mental problem. When he confronted her with her history, she launched a campaign to destroy him. According to Applicant, she hit him, vandalized his auto, and stole his computer. She violated a court-order not to sell their house. Applicant is certain he suffered emotional distress and embarrassment from her constant harassment. He lost his job as a paramedic/fireman and had trouble finding other employment.<sup>3</sup> He filed the Chapter 13 to protect the property he had left, and to control his financial situation. However, the fees associated with the divorce and lack of income forced him to have the Chapter 13 petition dismissed in December 2002.

There were 25 creditors listed in Schedule F of Applicant's Chapter 13 petition (SOR 1.b., 1.c., Item 12) filed in January 2002, and the total amount of Schedule F debt was \$25,976.25. Applicant provided non-sufficient fund checks to 11 of the 25 listed creditors. Though Applicant claims that "Many of the checks were paid, even though they were listed," no documentation was

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<sup>2</sup> His SCA indicates he was married to her between March 1994 and January 2000.

<sup>3</sup> According to his Security Clearance Application (SCA), Applicant was unemployed from July 2001 to June 2002, and from June 2003 to November 2003. *See* Item 5.

provided to support this claim.”<sup>4</sup> In addition, there is no record in the documentation (Item 12) that Applicant made any payments under the Chapter 13 plan.

In September 2002, Applicant filed a second Chapter 13 petition (SOR, 1.d., Item 13) with assets totaling \$266,811.00 and liabilities of \$248,857.38. The petition was dismissed in May 2003. Applicant was hoping to receive a settlement from the divorce proceedings (involving his third wife) based on his equity in the house. Because the judge concluded Applicant filed the bankruptcy proceedings to delay the divorce proceedings, the judge, according to Applicant, did not award him any money from the house. Applicant also noted the divorce decree order required him to provide spousal maintenance. He mentioned the house and the maintenance as reasons the second Chapter 13 was dismissed. He reiterated his displeasure with the divorce court’s ruling against him regarding the equity interest in the house.

The second Chapter 13 petition (SOR, 1.d.) lists 33 Schedule F creditors totaling \$96,709.68. Twelve of the debts were non-sufficient fund checks<sup>5</sup> written by Applicant. On March 25, 2003, the trustee entered a final report and accounting indicating that Applicant paid \$595.00 under the Chapter 13 petition. The petition was dismissed in May 2003. Applicant does not understand why his filing of the Chapter 13 petition is not considered a bona fide effort to repay his creditors.

In September 2004, Applicant filed a Chapter 7 bankruptcy petition (SOR, 1.e.). At the time of filing, his assets were \$13,080.00 and liabilities \$267,481.00. Applicant was granted a Chapter 7 discharge in March 2005. He noted in his answer to the SOR and/or his response to the FORM, that impending suits by creditors and potential wage garnishments were the reason for filing his Chapter 7 petition. There were additional debts included in the Chapter 7 petition as “it is mandatory that all creditors be listed.”<sup>6</sup> There are 81 creditors identified in the Schedule F portion of this petition.

Applicant admitted he was found guilty of insufficient funds - check (SOR, 1.f.) on February 18, 2004. He and his wife were working at a hospital in different capacities. He claims she discovered the hospital was committing violations and she threatened to notify the authorities. The hospital fired her, and subsequently fired Applicant. Applicant forgot about the outstanding checks he had written before he closed his checking account at the local bank. No additional information was provided.

On February 18, 2004, Applicant was found guilty of three additional counts of insufficient funds - check (SOR, 1.g.), a misdemeanor. He paid a fine and completed 30 additional hours of community service. According to Applicant, no additional, non-sufficient funds checks have been written since 2004.

On October 15, 2002, Applicant pled guilty to three counts of worthless check (SOR, 1.I) and ordered to pay restitution, sentenced to 30 days (suspended), and placed on unsupervised probation

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<sup>4</sup> The second page of Applicant’s three-page explanatory response to FORM..

<sup>5</sup> Eleven of the checks were the same as those listed in the previous Chapter 13 filing.

<sup>6</sup> The second page of Applicant’s three-page explanation to his response to the FORM.

for 12 months.

Though Applicant was unsure about the status of the public utility debt (SOR, 1.i.) in his answer to the SOR, he and his wife discovered the debt was his. Documentation reflects Applicant paid at least \$294.00 on the debt under a payment plan.

In his three-page response to the FORM, Applicant stated he continued to repay some creditors that were listed in the Chapter 7 petition, and listed at a subsequent location of his response under the heading “**2004 Chapter 7, PAID DEBTS and Duplicates.**” The first entry is a \$3,000.00 Promissory Note applying to a personal auto loan. While the Promissory Note that was signed on October 2003 indicates the note was to be paid on October 1, 2004, there is no record of payments. The second entry refers to a \$24.00 bill to a video store, followed by a date of “2002.” There is documentation (at a subsequent location in his response to the FORM) dated August 2006 from a collection agency that Applicant owed \$10.72 on the bill. A handwritten notation of paid and a date of January 18, 2007 was placed under the typed August date of the bill. The third creditor is a collection agency holding a \$500.00 account, followed by the date “7/13/00.” No documentation in Applicant’s response to the FORM was found explaining the status of the collection account.

The fourth entry of Applicant’s list of paid debts is a \$1,042.00 account from a state credit bureau. The supporting documentation is dated January 18, 2000. Applicant provided no explanation why the account, that was supposedly paid in January 2000, would appear four years later in his Chapter 7 petition. The fifth and seventh entries were discharged in Applicant’s Chapter 7 bankruptcy in 1998. The sixth and ninth entries were resolved in 2000 through Applicant’s debt consolidation plan. The tenth entry (\$155.00) makes a reference to “Sure Check.” No additional information was provided.

The documentation furnished under the next two entries reflects that both debts totaling about \$1,600.00 were dismissed on March 9, 2006. However, the documentation does not reveal why both civil actions were dismissed, and I cannot assume Applicant paid both accounts.

The thirteenth and fourteenth entry of the section listing paid debts and duplicates, identify two debts Applicant claimed did not belong to him. Applicant noted that he never incurred the debts, but did not provide information in support of his position. The final entry listed is for \$48.00 held by a management company. The typed date “1/27/04” appears to the right of the management company. The documents placed behind the list of paid debts provide no additional information about this account.

The next section “**DEBTS BEING PAID**” lists additional debts Applicant is supposedly paying. The first entry is the medical credit union account with a current balance of \$6,888.00. The credit union is not listed in the Chapter 7 bankruptcy petition, and there is no documentation of the actual status of the account. There is no documentation either regarding how the college account, listed in the Chapter 7 petition (Item 14), was reduced to \$1,000.00. There is an amount (\$2943.84) appearing to the right of state bank entry, but there is no supporting documentation that tracks how the account was paid.

The fourth entry in the debts being paid section is a medical debt (listed in the Chapter 7 petition) of Applicant’s wife. The original amount was \$2,562.00, and documentation reflects the

account has been paid down to \$1,805.76. There is no documentation indicating the education debt is down to \$3,000.00. There is an educational loan document referring to Applicant's wife that indicated a balance owing the department of education, and a handwritten notation the account was paid on August 28, 2005. No other documentation was provided. Finally, there is no documentation supporting Applicant's claim the sixth creditor (Applicant's third wife, and the purported cause of his unsuccessful, Chapter 13 petitions) is being paid.

In a subsequent section of Applicant's response to the FORM entitled "**ADDITIONAL PAID ACCOUNTS NOT SHOWING**," Applicant listed six creditors that were not listed in his bankruptcy or credit bureau report due to the fact he satisfied them. Applicant stated he made a payment of \$294.24 to the collection agency for the public utility's agency to bring the delinquent account down to \$876.73. The documentation does not show the payment amount, but it does reflect a balance of \$876.73. The documentation also indicates the next payment of \$150.00 was due on July 21, 2007. The collection agency for an anesthesia business firm acknowledged the firm was paid in full in July 2000. The third debt was satisfied in July 2003. The fourth debt dated August 17, 2006 (addressed earlier) belongs to a collection service who advised Applicant of a debt of 10.72. A handwritten note underneath the typed date indicates Applicant paid the debt in January 2007.

As noted earlier in the discussion about paid debts, the fifth debt (education loan belonging to Applicant's wife) has a handwritten note indicating the debt was paid in August 2005. The credit bureau report belonging to Applicant's wife is not helpful in ascertaining the status of education loan as there are several education loans listed; their status varies from "INCLUDED IN BANKRUPTCY" to "TRSF/SOLD."

Applicant's credit bureau report prepared by the three major credit agencies on July 18, 2007 shows that between 16 and 23 accounts were reported. Up to three accounts were determined to be delinquent. Up to seven accounts contained derogatory information. At least nine of the accounts were determined to be current. Applicant also disputed at least eight of the accounts with the requisite credit agencies on June 27, 2007, and was notified the estimated completion date for the investigation results would be July 28, 2007.

As noted earlier in this section, Applicant supplied documentation of his successful completion of a debt consolidation plan that lasted from September 1999 to December 20, 2000. Applicant provided no evidence of financial counseling. There is no independent character evidence describing Appellant's job performance.

## **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**

Failure to live within one’s means by satisfying debts in a timely fashion raises security concerns under this guideline.

### **Criminal Conduct**

The guideline addresses criminal activity that casts doubt on a person’s judgment, reliability and trustworthiness. A person who cannot comply with the law may not be a suitable candidate to safeguard classified information.’

### **CONCLUSIONS**

**Financial Considerations (FC)** Paying debts on a timely basis furnishes persuasive evidence of financial responsibility and good judgment. Conversely, the failure to pay debts, indicated by collection accounts, judgments, repossessions and garnishments, generates security concerns by placing the individual at risk of committing acts of poor judgment to generate funds. Obtaining relief under the bankruptcy laws is a legal method of resolving financial difficulties. Therefore, a Chapter 7 bankruptcy discharge in an applicant’s financial history does not automatically have a disqualifying impact on an applicant’s security suitability. However, resorting to the bankruptcy laws on four occasions between November 1998 and September 2004 raises significant questions about Applicant’s capability of managing his financial responsibilities.

Having weighed and balanced the circumstances of this case under the disqualifying conditions (DC) of the FC guideline, FC DC 19.a. (*inability or unwillingness to satisfy debts*), and c. (*a history of not meeting financial obligations*) the government has established its case. Additionally, Applicant’s judicial pleas and/or findings of guilt for writing worthless checks fall within the scope of 19.d. (*deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense fraud, filing deceptive loan statements and other intentional financial breaches of trust*)

The government’s case is also established by FC DC 19.e. (*consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-*

*to-income ratio, and/or other financial analysis*) based on the filing of four petitions between May 1998 and September 2004, and the sizeable amount liability accumulated and discharged during the period.

There are five potentially mitigating conditions (MC) that may overcome the disqualifying evidence under the financial guideline. FC MC 20.a. (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that are unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) would be seriously considered had there been no continuing evidence of financial trouble after November 1998 when Applicant received his first Chapter 7 discharge. However, FC MC 20.a. must be removed from consideration due to the second Chapter 7 bankruptcy petition that was discharged less than three years ago.

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 reasonably under the circumstances*) applies to those situations where an unforeseen, unanticipated event(s) arise to preclude a person from handling their financial obligations in a responsible manner. Applicant has provided a large amount of documentation, e.g., police reports, affidavits, written exchanges between attorneys, describing his relationship with his third wife during and after his marriage. While I conclude the documentation shows there was animus between Applicant and his third wife, I cannot assign much weight to the documentation because it is hearsay and has not been officially adjudicated. In addition, I also conclude Applicant lacked bona fide intentions of complying with the terms of the first Chapter 13 petition as he was unemployed in January 2002 when the petition was filed. It appears the only reason he filed was to protect his equity interest in his house. Even before the first Chapter 13 was dismissed, he filed a second Chapter 13 petition in September 2002, claiming again he wanted to repay his creditors. The fact that no payments were made under the first or second petitions (dismissed in May 2003) belies: (1) Applicant's claim that he was seriously intending to repay his creditors, and (2) his claim he acted reasonably in filing both petitions. The limited extenuation that Applicant's unemployment and divorce afford him under FC MC 20.b. is insufficient to overcome the adverse evidence under FC DC 19.a., c., d. and e.

FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies in those circumstances where there has been a good faith effort to repay creditors. Though Applicant provided documented evidence of completion of a debt consolidation plan in December 2000, I am unable to determine why he did not receive acknowledgment of the plan's completion until six years later in May 2007, and in an ambiguously worded letter. Furthermore, his successful completion of the plan in December 2000 is outweighed by the countervailing evidence of his failure to complete either Chapter 13 plan in 2002 and 2003.

In his response to the FORM, Applicant listed 21 creditors in an attempt to establish that he had continued to repay creditors even though they were listed in his 2004 Chapter 7 petition. Apparently, there were creditors that were not discharged from the 2004 Chapter 7. The supporting documentation for each creditor was evaluated in my factual findings. Aside from four debts that have appropriate documentation corroborating payment, most of the listed debts have little or no documentation showing that repayments were made. Two of the listed debts were resolved in the debt consolidation plan in December 2000. Two of the listed debts were discharged in Applicant's



bankruptcy in 1998. Considering the evidence as a whole, I find that FC MC 20.d. has only limited application concerning Applicant's efforts to repay overdue creditors.

Applicant's Chapter 7 discharge in March 2005 represents another way to resolve debts within the meaning of "otherwise resolve debts" portion of FC MC 20.d. As discussed at the outset of this section, a Chapter 7 bankruptcy discharge provides the individual a legitimate way to eliminate debt, and is not necessarily disqualifying when followed by convincing evidence demonstrating a sustained track record of financial responsibility. But, this record reflects Applicant's continuing financial problems, culminating in the discharge of his second Chapter 7 bankruptcy discharge in March 2005. Because resolution of debts through bankruptcy does not furnish the same level of mitigation as an extended record of good-faith effort to repay creditors, Applicant's second Chapter 7 discharge in less than seven years receives even less mitigation/extenuation under FC MC 20.d. Even when the evidence under FC MC 20.d. is combined with the unemployment and divorce problems triggering the application of FC MC 20.b., Applicant has provided no evidence under 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 under control*) Considering the entire record under the financial allegations, particularly the lack of financial counseling and independent character evidence, I find against Applicant under subparagraphs 1.a., 1.b., 1.c., and 1.d. I find for him under subparagraph 1.e. but against him under subparagraph 1.i. for failing to include the debt in his Chapter 7, then neglecting to resolve the debt immediately after he received the SOR in November 2006. Applicant has not met his ultimate burden of persuasion under the FC guideline.

**Criminal Conduct (CC).** Criminal behavior establishes doubt about a person's judgment, reliability, and trustworthiness. If a person is willing to violate the criminal laws, then there is an unacceptable risk he may capriciously refuse to comply with security rules and regulations he chooses not to follow. The circumstances in this case invoke CC DC 31.a. (*a single serious crime or multiple lesser offenses*) as Applicant wrote at least eleven worthless checks in 2001 and 2002. He pled guilty to writing three worthless checks in 2002 and 2004. The passage of several years without the recurrence of similar activity, coupled with Applicant's contrition and restitution dispel the security concerns associated with Applicant's criminal misconduct. CC MC 32.d. (*there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*) to support a finding in Applicant's favor under subparagraph 2.a. of the SOR.

My formal findings under the specific guidelines must be also evaluated in the context of the whole person concept set forth at page 18, paragraph 2.a. of the Directive. Though Applicant's Chapter 7 discharge has been found in his favor, the elimination of \$267,481.00 in liability occurred in March 2005, less than two and a half years ago. Applicant has produced little or no evidence identifying the systemic changes he has made in his financial practices to prevent a recurrence of financial problems. Without financial counseling, a good-faith effort to repay creditors, and a significant period of time that demonstrates financial responsibility, I cannot state with complete confidence that Applicant's financial problems will not return in the future.

**FORMAL FINDINGS**

Paragraph 1 (Financial Considerations, Guideline F):

AGAINST THE APPLICANT

- Subparagraph a.
- Subparagraph b.
- Subparagraph c.
- Subparagraph d.
- Subparagraph e.
- Subparagraph f.
- Subparagraph g.
- Subparagraph h.
- Subparagraph i.

Against the Applicant.  
Against the Applicant.  
Against the Applicant.  
Against the Applicant.  
For the Applicant.  
Against the Applicant.  
Against the Applicant.  
Against the Applicant.  
Against the Applicant.

Paragraph 2 (Criminal Conduct, Guideline J):

FOR THE APPLICANT.

- Subparagraph a.

For 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 a security clearance for Applicant. Clearance is denied.

Paul J. Mason  
Administrative Judge