

KEYWORD: Financial

DIGEST: Between 2001 and 2004, Applicant accrued more than \$15,000 of post-Chapter 13, delinquent debt. The debt that resulted in the bankruptcy was caused by circumstances beyond his control. Approximately \$11,000 of the post-bankruptcy debt was accrued on behalf of his ex-employer and was in dispute for several years. Over the past two years, Applicant has retained a credit correction agency and a credit counseling agency. He has been making debt payments consistent with the agreements with creditors for the past five months. He has mitigated the security concern. Clearance is granted.

CASENO: 06-20091.h1

DATE: 08/30/2007

DATE: August 30, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-20091
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Between 2001 and 2004, Applicant accrued more than \$15,000 of post-Chapter 13, delinquent debt. The debt that resulted in the bankruptcy was caused by circumstances beyond his control. Approximately \$11,000 of the post-bankruptcy debt was accrued on behalf of his ex-employer and was in dispute for several years. Over the past two years, Applicant has retained a credit correction agency and a credit counseling agency. He has been making debt payments consistent with the agreements with creditors for the past five months. He has mitigated the security concern. Clearance is granted.

STATEMENT OF THE CASE

On February 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. 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. Applicant answered the SOR on March 15, 2007, and requested a hearing.

The case was assigned to me on May 9, 2007. On May 24, 2007, DOHA issued a notice of hearing scheduling it for June 12, 2007. During the hearing, I received six government exhibits, 19 Applicant exhibits, and Applicant's testimony. At Applicant's request, I left the record open for him to submit additional exhibits. Within the time allotted, he submitted two documents received as Exhibits T and U. DOHA received the transcript on July 6, 2007.

FINDINGS OF FACT

_____ Applicant admitted to the allegations listed in SOR subparagraphs 1.a and 1.b, and denied the remainder. The admissions are incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 46-year-old married man with an adult stepson. He has a high school diploma and is currently working toward an associate's degree in network administration.¹ He is an Army veteran, retiring at the rank of sergeant first class (E 7) in 2000 after 21 years of service.² Throughout his career in the Army and the civilian world, he has worked as a telecommunications specialist.

Applicant has a history of financial problems beginning in the early 1990s. At that time, his in-laws simultaneously experienced serious health problems, compelling his wife to assist in caring for them. Subsequently her work hours grew more sporadic as the time spent caring for her parents

¹Tr. 25.

²Tr. 26.

increased, decreasing her wages. Because Applicant and his wife depended on both incomes to make ends meet, they gradually began to fall behind on their debts.³

At approximately the same time, Applicant's grandfather who raised him died. He had to pay between two and three thousand dollars in funeral expenses.⁴

In December 1996, Applicant and his wife filed for Chapter 13 bankruptcy, as alleged in subparagraph 1.a. It included \$32,000 of unsecured debt and \$110,000 of secured debt.⁵ Under the bankruptcy payment plan, they were to pay \$241 per month for three years. In December 1999, they successfully completed the payment plan, and the court discharged the bankruptcy.⁶

Between January and July 2000, Applicant held a job that required extensive travel.⁷ To facilitate the performance of his job duties, Applicant used a credit card to charge travel-related work expenses, such as rental cars, hotel expenses, and meals.⁸ Also, he was required to purchase any equipment needed to complete his tasks while on travel. The expenses averaged between four and five thousand dollars each trip.⁹

Under the arrangement with the employer, the credit card was issued in Applicant's name. At the conclusion of each trip, Applicant was to submit the credit card bill to his employer, whereupon the employer would pay it.¹⁰

In July 2000, Applicant was laid off as part of a company downsizing.¹¹ Before leaving, he submitted reimbursement paperwork for his remaining corporate credit card debt.¹² After leaving, however, he continued to receive bills from the credit card company. He then attempted to contact his former supervisor for help in correcting the discrepancy, and discovered that he had also been laid off.¹³ Next, he tried to contact his ex-employer's central office to resolve the problem.¹⁴ He was

³Tr. 82.

⁴Tr. 83.

⁵Exhibit 3, U.S. Bankruptcy Court Documentation, Schedules E and F, dated December 16, 1996.

⁶Discharge of Debtor, dated December 21, 1999, as included in Answer, dated March 15, 2007, at 7.

⁷Tr. 41; Exhibit 1, Security Clearance Application, dated October 16, 2005, at 17; Exhibit 2, Interrogatories, dated November 8, 2006, at 6.

⁸Tr. 90.

⁹Tr. 67.

¹⁰Tr. 90.

¹¹Tr. 31.

¹²Tr. 30.

¹³*Id.*

¹⁴Tr. 67.

unsuccessful. Consequently, the bill grew delinquent, and the creditor reported it, as alleged in SOR subparagraph 1.b.

Applicant contacted the creditor to contest the charges. It refused to remove them from his record. In March 2007, after his appeal was rejected, he developed a plan to pay the delinquency. The following month, Applicant submitted \$100 to the creditor. He has been making \$100 payments since that time.¹⁵

Subparagraphs 1.c and 1.d allege delinquencies owed to the same creditor. Applicant denied these bills in September 2005 when he discovered them on his credit report.¹⁶ He retained a credit correction agency to investigate.¹⁷ Five months later, in March 2006, the creditor contacted him, and confirmed they were his responsibility.¹⁸ In April 2007, he began paying them \$25 per month. Currently, he has collectively paid \$150 toward their satisfaction.¹⁹

Applicant disputed the debt alleged in subparagraph 1.e. He contacted the creditor who informed him the account was not his, and that it had been stricken from his record.²⁰

Currently, Applicant has approximately \$18,000 of debt. Approximately \$3,200 was not included in the SOR. He owes approximately \$11,000 toward the satisfaction of the corporate credit card bill, and approximately \$4,000 on the credit cards listed in 1.c and 1.d. He has been making payments on all of these debts since April 2007. In addition, he has attended a class in financial management sponsored by the credit counseling agency he retained in March 2007.²¹

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they 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

¹⁵Exhibit E, Receipt, dated April 19, 2007, Exhibit F, Undated Receipt, and Exhibit T, Undated Receipt.

¹⁶Tr. 91; Exhibit R, Credit Bureau Report, dated September 26, 2005, at 1.

¹⁷Tr. 92. The credit correction agency is different from the credit counseling agency he consulted in March 2007 (Note 13, *supra*).

¹⁸Tr. 92; Exhibit Q, Credit Bureau Report, dated March 7, 2006, at 1.

¹⁹Exhibits F through P, Payment Receipts.

²⁰Answer, dated March 15, 2007, at 2; Letter from Creditor to Applicant as included in Answer at 8.

²¹Tr. 62. The creditors in the SOR rejected the counseling agency's offer to be included in the debt consolidation plan.

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 guideline is 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.

Conditions pertaining to this adjudicative guideline 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."²² 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.

CONCLUSIONS

Applicant's history of financial problems triggers the application of Financial Considerations Disqualifying Conditions (FC DC) 19(a): *inability or unwillingness to satisfy debts*, FC DC 19(c): *a history of not meeting financial obligations*, and 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*.

The majority of Applicant's delinquencies either originated before 1996, or related to the non-reimbursed, corporate credit card expenses he accrued seven years ago. Applicant's troubled finances in the early 1990s were caused by several family crises including the serious illnesses of his in-laws, and the expenses associated with the death of his grandfather. Applicant's corporate credit card debt grew delinquent because of the failure of his ex-employer to reimburse him after terminating his employment.

²²See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

Applicant resolved the debts that accrued in the early 1990s by filing for Chapter 13 bankruptcy in 1996 (subparagraph 1.a). His compliance with the plan led to a discharge of the petition in 1999. He disputed the corporate credit card delinquency, as alleged in subparagraph 1.b, in good faith. After his dispute failed, he arranged a payment plan to satisfy it. Financial Considerations Mitigating Condition (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,* and 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,* apply.

Applicant disputed subparagraphs 1.c through 1.e upon discovering them on his credit report. He retained a credit correction agency to conduct an investigation. It revealed that subparagraphs 1.c and 1.d were his responsibility, and subparagraph 1.e was not his responsibility. He then made arrangements to satisfy subparagraphs 1.c and 1.d, and has been steadily satisfying them since April 2007.

Also, Applicant retained a credit counseling agency to help him with other debts not listed in the SOR, and has taken a financial management class through the agency. 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,* and FC MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,* apply. Applicant has mitigated the financial considerations security concern.

Whole Person Concept

Applicant's financial problems recurred less than two years after the successful execution of a Chapter 13 bankruptcy plan. The significance of this problem is outweighed by the circumstances surrounding the accrual of the debt both before and after the Chapter 13 bankruptcy. In both instances, it was caused primarily by circumstances beyond his control rather than irresponsible spending or bad judgment. Applicant has been actively engaged in the resolution of his financial problems, retaining a credit correction agency to investigate disputed debts, and a credit counseling agency to help him pay undisputed ones. He has been making payments toward the satisfaction of his debts for the past four months. Moreover, I was impressed with the organized manner he discussed his finances at the hearing. Evaluating these variables in conjunction with the whole person concept, I conclude Applicant has mitigated the security concern. Clearance is granted.

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

DECISION

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