

KEYWORD: Financial

DIGEST: This 39-year-old contractor employee obtained bankruptcy protection in 1999, but reaffirmed two mortgages on his home. He separated from his wife, who remained in the house and agreed with Applicant for her to make payments. She did not do, but neither did Applicant over the past two years. He still owes the two mortgage holders a total of at least \$140,000, but has not made any substantive effort to resolve the debts, despite having some money available to do so. No mitigation has been established. Clearance is denied.

CASENO: 01-01046.h1

DATE: 01/07/2002

DATE: January 7, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-01046

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

STATEMENT OF THE CASE

On August 10, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended), issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On September 5, 2001, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge.

The case was assigned to me on October 4, 2001. A Notice of Hearing was issued on October 9, 2001 and the hearing was conducted on October 26, 2001. At the hearing, Department Counsel offered five exhibits, which were marked as Government Exhibits (GX) 1 - 5. Applicant testified on his own behalf and offered a number of exhibits, which were marked for identification as Applicant's Exhibits (AX) A - J. Without objection by either party, all above exhibits were admitted into evidence as marked. Another exhibit, actually a collection of documents, was timely received after the hearing and, without objection by Department Counsel, was marked and admitted collectively as AX K, pp. 1 - 8. The transcript (Tr) was received at DOHA on November 6, 2001.

FINDINGS OF FACT

Applicant is a 39-year-old Logistician for a defense contractor. His employer is seeking a Secret security clearance for Applicant in connection with his employment.

In 1995, Applicant married Wife (GX 1). The couple separated several times, the last time being in January 2000 (GX 3), and are now divorced (Transcript (Tr) at 22, AX G and AX J). Among the reasons for the family's financial problems, separation and divorce was Wife's extensive gambling activity (Tr at 20 - 27, GX 3, AX E (check from Applicant's father to Wife to cover "hot check" written by Wife to obtain gambling money), and AX F, AX G, AX H, and AX K, page 1 (letter from Applicant's divorce counsel)).

Based on the contents of the case file, including Applicant's testimony and all exhibits, I make the following findings of facts as to each SOR allegation.

#### GUIDELINE F (Financial Considerations)

1.a. - On or about February 19, 1999, Applicant, along with Wife as joint debtor, filed a voluntary petition for bankruptcy in State A under Chapter 7. The petition showed total assets of \$117, 011.00 and total liabilities of \$140, 124.68. The bankruptcy court granted a discharge under Chapter 7 on or about May 28, 1999.

1.b. - After the bankruptcy discharge, Applicant and Wife reaffirmed the first and second mortgages on the family home in State A. The mortgages were held by Bank B (first) and Bank C (second).

As part of the divorce settlement, the two parties agreed that Wife would stay in the house and be responsible for making house payments. However, monthly payments apparently stopped as of April 1, 2000, "a few months" after Applicant "moved out" of the house for the last time (GX 3 (Applicant's Sworn Statement) and AX A (Letter from Bank B)). Wife remained in the house, informed Bank A on May 2, 2000 she would be selling the house but did not do so by May 23, 2000, at which time she informed the bank she would "bring the loan current on May 30, 2000. She failed to perform as promised (AX A).

On June 6, 2000, Bank B issued a 30 day Demand Notice to both Applicant and Wife. Applicant informed the bank he was considering moving back into the house if he could bring the loan current and find a roommate who could share the mortgage payment. He was apparently unable to resolve either problem. As a result, Bank B began foreclosure proceedings on July 24, 2000 and the property was sold at a foreclosure sale on February 20, 2001 (AX A).<sup>(1)</sup>

1.c. - Applicant is indebted to Bank B in the amount of approximately \$89,300.00 for past due/delinquent mortgage payments owed on the first mortgage (GX 1 at Item 38). It does not appear that Applicant has made any payment on this debt. He has contacted Bank B but has not reached any agreement or ascertained the exact amount now owing (Tr at 53).

1.d. - Applicant is also indebted to Bank C in the amount of approximately \$25,047.78, for

a second real estate mortgage on the same property as that in SOR 1.a. Applicant did not pay his monthly installments on time. As of January 2000, the house was sold at a foreclosure sale (AX A, letter from Bank B). However, according to Applicant, as of August and September 2000, the house was in foreclosure proceeding in a State A court (GX 1 at Item 38, GX 2 at p.3, GX 3, and GX 4. As of the hearing date, Applicant admittedly has not made any payments on the second mortgage debt (Tr at 54), and is still waiting to learn from bank B if he owes anything under the first mortgage (Tr at 50 -52). The house "is still for sale" (Tr at 57). I accept Applicant's statements as being most current and likely to be accurate.

## POLICIES

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

### **GUIDELINE F (Financial Considerations)**

*The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise security concerns and may be disqualifying include:

1. A history of not meeting financial obligations;

3. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, business turndown, unexpected medical emergency, or a death, divorce, or separation).

I have evaluated the totality of the evidence under both the specific additional guidance found in Enclosure 3 to the Directive and the general guidelines under Section E2.2.1. of Enclosure 2 to the Directive.

## CONCLUSIONS

Applicant's documented history of financial problems surfaced in 1999 with the filing of the petition for bankruptcy protection under Chapter 7. The Federal Bankruptcy laws provide a legal method of avoiding debts that are excessive in that they are beyond a person's ability to pay, as determined by a court. Since bankruptcy is legal, it is not, by itself, generally a basis for an adverse security clearance determination. It usually becomes a security issue only when the record shows that the bankruptcy law was improperly used or that it is a part of a pattern of financial behavior demonstrating questionable judgment, unreliability, and/or untrustworthiness that is indicative of a person's overall character, rather than an aberration.

While single, Applicant's finances were such as to allow him to purchase a house in December 1994 (GX 1 at Item 4). Applicant and Wife were married in December 1995 (Id. at Item 8). Applicant claims he was unaware of the extent of Wife's gambling when they were married

(Tr at 27 - 30). As the debt accrued, they sought counseling related to Wife's gambling (Tr at 28), but within a year, they had to obtain a second mortgage of \$25,000.00 to cover the family's debts, which were substantially gambling related. The first house was apparently sold and a second house purchased in 1998, with a \$5,000 down payment (GX 1). They "hit rock bottom" in November 1999 and the bankruptcy was a last effort to resolve their financial problems, but it didn't work since Wife continued to gamble (Tr at 29 -31). Separation and divorce followed. The extensive testimony and documentation about Wife's gambling (AX B, AX C, AX D, AX E, and AX G) makes a strong case in support of Applicant's claims about this ex-wife's financial culpability, <sup>(2)</sup>

but the same evidence does not reduce Applicant's joint responsibility for resolving the mortgage-related debts.

It is a basic tenet of the security clearance adjudication process that the Government must first provide evidence establishing that a doubt exists as to an applicant's judgment, reliability, and trustworthiness. After the Government also establishes a connection between an applicant's conduct and his/her current security clearance eligibility, the burden shifts to the applicant to demonstrate rehabilitation, mitigation, and/or extenuation.

In the present matter, the totality of the evidence supports all of the SOR allegations and their nexus or connection with Applicant's security clearance eligibility. The same can not be said for Applicant's offer of evidence in mitigation and/or extenuation. Regardless of Wife's responsibility for debts, as agreed to between the two of them, Applicant has failed to demonstrate he is not presently legally responsible. Of the four SOR allegations, 1.a. and 1.b. are currently of security significance primarily because they provide background for 1.c. and 1.d. It is not clear how much of the \$140,124.68 in liabilities cited in the bankruptcy documents is related to the two mortgages.

Applicant has provided evidence that appears contradictory and is certainly puzzling. Bank B say the house was sold in February 2000 (AX A). At the same time, Applicant testified that the house is still for sale, that he has been in contact with the bank, *and* he admits he owed the \$114,124.68 alleged in the SOR 1.c. At one point, Applicant testified he has been making payments "on this reaffirmed mortgage . . . to this moment, yes"(Tr at 46) and is "paying the bills" and is "as good as up to date" (Tr at 47). However, he also testified he has not made any payments on the two mortgage debts (Tr at 51, 54). The differing information creates a doubt as to the true status of the debt amounts.

Because Applicant has not clearly established to the contrary, I conclude that Applicant remains liable for the \$114,124.68 (and more if interest and penalties are involved) on the two mortgages, has made no payments on either mortgage for almost two years, and has made no substantive effort to resolve the debts during that period, in part, it seems, because he believes his ex-wife should be at least partially responsible for the mortgage debts. Overall, too much time has passed without a resolution to allow a finding that Applicant has demonstrated fiscal rehabilitation and/or responsibility.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security." There are significant doubts remaining because of inadequate evidence mitigating or extenuating the Government's evidence. From the totality of the evidence, I conclude Applicant has not demonstrated he possesses the requisite judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

## FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline F (Financial Considerations) Against the Applicant

Subparagraph 1.a.. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c Against the Applicant

Subparagraph 1.d. Against 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.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**

1. Applicant claims he has recently driven by the house and it is "still for sale" (Tr at 57). The apparent discrepancy does not affect the admitted and otherwise unrefuted point that Applicant owes about \$114,124.68 on the two mortgages
2. After the granting of a divorce in 2000, Applicant's ex-wife was held in contempt of court for not honoring financial obligations agreed to as part of the divorce settlement (AX H).