DATE: February 26, 2003

In Re:

SSN: ----------

Applicant for Security Clearance

CR Case No. 01-17525

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's three bankruptcies in 20 years--including one Chapter 13 filing in which Applicant repaid 100% of his outstanding debt--lacked security significance where financial difficulties were due to circumstances beyond his control and he had always sought appropriate financial counseling to avoid bankruptcy if possible. Bankruptcy filings were responsible actions under circumstances which had no security significance under Personal Conduct. Clearance granted.

STATEMENT OF THE CASE

On 23 September 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding[(1)] that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant submitted an undated Answer, received by DOHA on 20 October 2002. The case was originally assigned to a different Administrative Judge, but was reassigned to me on 8 January 2003 and received by me the same day. On 15 January 2003, I set the case for hearing and issued a Notice of Hearing (NOH) on 21 January 2003 for a hearing on 4 February 2003.

At the hearing, the government submitted 6 exhibits--admitted without objection--and no witnesses. The Applicant submitted no exhibits and the testimony of one witness, himself. DOHA received the transcript on 19 February 2003.

PROCEDURAL ISSUES

At the hearing, I gave Applicant until the close of business on 11 February 2003 to mail me a copy of his retirement discharge (DD Form 214). Applicant timely mailed the document on 6 February 2003, but it was not received at DOHA until 25 February 2003.[(2)] Department Counsel agreed that the submission was timely filed, and I admitted the DD Form 214 as A.E. A.

FINDINGS OF FACT

Applicant admitted the financial allegations of the SOR, except for portion of subparagraph 1.a. which alleged that he had not made payment arrangements on the debt. He essentially denied that his bankruptcy filings demonstrated questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

Applicant--a 51-year-old employee of a defense contractor--seeks to retain the clearance he first obtained in approximately 1976. He was medically retired from the U.S. Navy as a Fire Controman Chief (FCC; E-7) in June 1997 after serving 20 years on active duty. During his career, he was awarded the Navy Achievement Medal, Navy "E" ribbon, Good Conduct Award (5), Armed Forces Expeditionary Medal, Sea Service Deployment Ribbon (3), and the National Defense Service Medal (A.E. A).

During his service in the Navy, Applicant experienced financial difficulties that caused him to seek bankruptcy protection on three occasions. The circumstances leading to those bankruptcies and Applicant's response to them are the focus of the security concerns in this case.

Applicant's first bankruptcy petition--a Chapter 7 filed in 1977 and discharged in approximately 1978[(3)]--occurred shortly after he entered the Navy and reported to boot camp for basic training. In 1975, Applicant was working for a company which decided to phase out the portion of the company which employed Applicant. He had been thinking about enlisting in the Navy before. The prospect of losing his civilian employment crystalized his thinking and he enlisted in the Navy in December 1975. Before entering the Navy, Applicant and his wife owned a mobile home secured by a mortgage in the same state where he now lives. He knew he would not be able to keep up the mortgage payments on his Navy pay. Two months before he enlisted, he arranged (with an appropriate agreement with the mortgage company), for his cousin and wife to take over the payments on the mortgage, and, two or three months later, transfer title to the cousin. The cousin and his wife made some payments on the mortgage, but then defaulted on the note. The mortgage company pursued foreclosure with the legal owner of the property--Applicant. In summer 1977, when Applicant received notice of the default, he was an E-4 with a family at a duty station with little government housing in a high-cost area, especially difficult for junior enlisted personnel living on the economy. Unable to make payments on the note and maintain a household with his family at his duty station, Applicant consulted legal counsel, who recommended the Chapter 7 filing. Applicant believed he had little choice but to follow that advice (Tr. 23-24; 30-35).

Applicant's Navy career prospered--he quickly advanced to progressively higher levels of authority (Tr. 62-65)--and he experienced no more financial difficulties until 1985. Applicant was stationed in the same state as his 1977 bankruptcy, but in an area with an even higher cost of living than before. Both Applicant and his wife worked to make ends meet. However, when Applicant deployed for six-months, his wife was unable to keep her job because the costs of child care began to exceed what she was able to net with her job. When Applicant returned from deployment, he realized the financial hardship he had place on his family, and decided to leave the Navy when his enlistment expired. Applicant had just been selected for promotion to Chief Petty Officer (E-7)[(4)], and was frocked (permitted to wear the insignia, before receiving the concomitant pay). He let his enlistment expire (which meant foregoing the promotion to Chief), went to work in the private sector (for a government contractor) at a higher salary in January 1985, and began working with credit counselors to address his accumulated debt. In the summer of 1985, when his family rejoined him, the credit counselor recommended filing bankruptcy. He again consulted with legal counsel, who recommended that Applicant pursue a Chapter 13 Wage Earner Plan (Tr. 24-26; 35-39). Applicant filed the plan in December 1985 for 100% repayment of his debts (G.E. 3). He also affiliated with the inactive Naval Reserve, where he made Chief for the second time. He remained in the private sector about 18 months total. Once he got his financial affairs in order and the wage earner plan well-established, he re-enlisted in the active Navy in June 1986. The tech jobs he had held, while more financially desirable, were more tenuous; the Navy offered more permanence, so he re-enlisted. To do so, he again gave up his anchor (the insignia for Chief Petty Officers), but was quickly selected again for Chief and ultimately promoted. He completed the wage earner plan without incident, obtaining a discharge of the plan in March 1989.

Applicant's final bankruptcy--a Chapter 7 filed in July 1996 and discharged in November1996 (G.E. 4)--occurred at the end of his Naval career. Applicant and his family were living in a low-cost area where Applicant was assigned to the pre-commissioning crew of a guided-missile destroyer. He was coming up for the selection board for promotion to Senior Chief (E-8), had just re-enlisted for the six years that would take him past the 26-year mark for retired pay, and looking forward to deploying with the ship when it moved from the shipyard to its homeport--with the concomitant increase in pay because of sea pay. Applicant had no financial problems at the time because his family was residing in another state in a home he had bought in 1992.

Instead, Applicant was diagnosed with a heart condition, requiring surgery, that made him ineligible for sea duty, ineligible for re-enlistment, and--because he now required shore assignments commensurate with his rate--required him to relocate to a duty station in a high-cost area. When the costs became too high, Applicant again sought legal counsel, hoping to set up another Chapter 13 plan. His legal advisor recommended a Chapter 7 instead, and Applicant reluctantly took that advice (Tr. 26-27; 41-49). His retirement in June 1977, was essentially a negotiated, but forced, retirement due

to his medical issues, and managed under circumstances which permitted him to obtain the necessary surgery while remaining eligible for insurance once he retired.[(5)]

Applicant believed that the debt at 1.a. was included in the Chapter 7, but he was mistaken (Tr. 59-60). Applicant's Chapter 7 filing (G.E. 4) reaffirmed two secured debts to the same creditor, debts that Applicant has since repaid. However, in effect, the debt at 1.a. remains secured by the title to one of the vehicles securing the reaffirmed debts because Applicant's loan agreement on the debt at 1.a. (a signature loan for a car Applicant bought for one of his daughters) permits the creditor to retain the title as long as he owes the creditor money on any account. Applicant reached a repayment agreement with the creditor in April 2002, but only made one payment on the agreement pending resolution of Applicant's clearance. According to Applicant, the creditor is aware of his current financial situation and is prepared to accept payment when Applicant is better able to make regular payments. In the meantime, the debt remains on Applicant's credit report (G.E. 6) as a bad debt. It is the only bad debt listed on his credit reports not otherwise resolved by his bankruptcy (G.E. 5, 6). He intends to satisfy this bill, but cannot do so without his current job, which hangs in the balance of this clearance decision (Answer, Tr. 52-54; 58).

While Applicant was in the Navy, his clearances came up for periodic review. He recalls providing information about his financial difficulties (having always kept his command apprised of the situation), but never having his clearance suspended or revoked (Tr. 68).

Applicant is currently maintaining two households again, as his father's income from social security dropped dramatically when Applicant's mother died in September 2002; Applicant's spouse is essentially running the household for him. Despite this, Applicant is not experiencing any financial difficulties at present, and has not experienced any since his last bankruptcy in 1996. He acknowledges that his monthly positive cash flow varies depending on the exigencies of supporting his father, to whom he provides about $700.00 per month (Tr. 55-56).

On 21 October 1998, Applicant executed a Security Clearance Application (SCA)(SF 86)(G.E. 1) that truthfully disclosed the 1996 bankruptcy as required. The two earlier bankruptcies were beyond the scope of the question. However, he truthfully discussed his earlier bankruptcies with the DSS agent who interviewed him in September 2000 (G.E. 2). At that time, he estimated his positive monthly cash flow at approximately $400.00; with the extra expenses of caring for his father, he now estimates his net at $200.00 (Tr. 55).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc*.

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FINANCIAL CONSIDERATIONS (GUIDELINE F)

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.1. The behavior was not recent;

E2.A6.1.3.2. It was an isolated event;

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment, a business downturn. . .);

E2.A6.1.3.4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

E2.A6.1.3.6. the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

None.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The government has established its case under Guideline F. However, Applicant has mitigated the security concerns. Although Applicant has availed himself of bankruptcy protections on three occasions, each of those occasions had a distinct cause which was beyond Applicant's control. And in each instance, he dealt responsibly with his financial problems. He used bankruptcies only as a last resort, and, where possible, took the wage earner route resulting in complete repayment of his debt in 1986. Further, he left the Navy to deal with debts, then returned when back on more stable footing. Although there is one debt remaining that Applicant has not yet either paid, discharged, or otherwise resolved, I conclude under the circumstances of this case that it has little security significance. He intends to pay the debt, assuming he remains employed, and the creditor is understanding of the Applicant's circumstances. Further, Applicant has a favorable track record with this creditor, having re-affirmed two secured debts during his last bankruptcy and paying them off. While in the Navy, Applicant kept his command advised of his financial situation when it was appropriate to do so. He is clearly aware of the security significance of an individual's financial situation. Here, however, I conclude that there is nothing in the record to suggest that Applicant could be pressured to resort to illegal activity to address his finances. I resolve Guideline F for Applicant.

The government failed to establish its case under Guideline E. While three bankruptcies in twenty years supports the issuance of the SOR, review of the complete record in this case reveals that Applicant has utilized good judgment in dealing with his financial issues. There is no evidence to suggest Applicant lived irresponsibly regarding his finances, but was merely unable to weather unforeseen events which befell him during his otherwise exemplary Navy career. I resolve Guideline E for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph a: For the 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).

2. I note that winter weather in the Washington, DC metropolitan area over the weekend of 14-17 February 2003 caused the closing of the federal government and delays in postal service delivery of mail. Applicant's part of the country has similarly been beset with worse-than-usual winter weather.

3. The bankruptcy records from that petition are apparently no available, being more than 20 years old.

4. Applicant made Chief in the January 1984 cycle, an extremely short period of time to make Chief having entered active duty in January 1976.

5. The type of accommodation only made for sailors with exemplary records.