

KEYWORD: Financial

DIGEST: Despite filing Bankruptcy and receiving a discharge in 2004, applicant is still indebted to one creditor in the approximate amount of \$34,000.00. With this debt, applicant is financially overextended - which puts him squarely within the concern expressed in the Financial Considerations Guideline of the Directive. Clearance is denied.

CASENO: 03-19895.h1

DATE: 03/10/2005

DATE: March 10, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19895

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Despite filing Bankruptcy and receiving a discharge in 2004, applicant is still indebted to one creditor in the approximate amount of \$34,000.00. With this debt, applicant is financially overextended - which puts him squarely within the concern expressed in the Financial Considerations Guideline of the Directive. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 9, 2004, 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, issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on July 30, 2004. The case was assigned to the undersigned on August 27, 2004. A Notice of Hearing was issued on October 27, 2004, and the hearing was held on December 21, 2004. Following the hearing, applicant submitted four sets of documents. The December 21, 2004 letter from the IRS was marked as Exhibit E; the December 21, 2004 Transunion credit report was marked as Exhibit F; the December 21, 2004 Equifax credit report was marked as Exhibit G; and the Bankruptcy Court records were marked as Exhibit H. In addition, Department Counsel's two page letter indicating he has no objection to these four exhibits was marked as Exhibit I. These five exhibits were admitted into evidence. The transcript was received on January 5, 2005.

## FINDINGS OF FACT

Applicant is a 54 year old employee of a defense contractor.

Applicant's financial difficulties began in the late 1990s when his wife's work hours were reduced and he was laid off. To make ends meet, applicant withdrew about \$35,000.00 from his 401k plan. Although this money provided a short term solution, the withdraw actually compounded his financial problems because he was then left with a larger State and Federal income tax liability, something he didn't think of when he withdrew the money. Applicant soon found himself unable to make his debt payments on a timely basis. When he began thinking about filing for Bankruptcy, he stopped trying to service his past-due debts. He eventually filed for Chapter 7 Bankruptcy in May 2004. He received a Discharge from the Bankruptcy Court in August 2004.

**SOR Allegation 1a:** Applicant was indebted to Bank of America in the approximate amount of \$1,566.00. This debt became delinquent and was charged off as a bad debt in 1997. The debt was discharged by the Bankruptcy Court.

**SOR Allegation 1b:** Applicant is indebted to HUD in the approximate amount of \$34,000.00. This debt was sent for collection in 1997. Applicant testified that this debt was discharged by the Bankruptcy Court (TR at 25), but a review of the Bankruptcy petition indicates this debt was never listed by applicant. Accordingly, it could not have been discharged. In addition, the two credit reports offered by applicant indicate that as of December 21, 2004, the debt was still listed as outstanding (Exhibits F and G ).

**SOR Allegation 1c:** Applicant was indebted to SCE in the approximate amount of \$584.00. The debt was sent to collection in 1997. The debt was discharged by the Bankruptcy Court.

**SOR Allegation 1d:** A Federal tax lien in the amount of \$25,568.00 was filed against applicant in 2000. The lien was released by the IRS in September 2004 (Exhibit F). Applicant is not indebted to the IRS for past-due taxes, penalties or interest at the present time (Exhibits D and E).

**SOR Allegation 1e:** Applicant was indebted to Sears in the approximate amount of \$3,465.00. The debt went delinquent and was charged off years ago. The debt was discharged by the Bankruptcy Court.

## **CONCLUSIONS**

The evidence establishes that despite receiving a Bankruptcy Discharge in August 2004, applicant is indebted to HUD in the amount of approximately \$34,000.00. This debt, and the other formerly delinquent debts listed in the SOR, require application of Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) of the Financial Considerations guideline.

In view of how applicant's financial problems began, he qualifies for Mitigating Condition E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*). However, he does not qualify for Mitigating Condition E2.A6.1.3.6 (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) because in this case, filing Bankruptcy, although certainly legal, does not constitute a good-faith effort to resolve debts.

Applicant testified that at the present time he is financially stable (TR at 34). However, his testimony was based on the assumption he was no longer indebted to HUD. When this rather substantial debt, which applicant has little or no chance of satisfying anytime soon, is considered, applicant cannot be deemed to be financial stable; rather, he must be deemed to be financially overextended. As such, his situation fits squarely within the Financial Guideline Concern expressed in the Directive (E2.A6.1.1.1 - *An individual who is financial overextended is at risk of having to engage in illegal acts to generate funds.*) Based on this fact, I have no choice but to conclude it is not now clearly consistent with the national interest for applicant to have access to classified information.

## **FORMAL FINDINGS**

PARAGRAPH 1: 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.

Joseph Testan  
Administrative Judge