

KEYWORD: Financial

DIGEST: Applicant's Chapter 7 discharge in 1996 of about \$21,200.00 in debt resulted from his misuse of credit cards and a car repossession. Applicant's financial problems resumed in 2000 when he mistakenly believed he could increase his credit and use his credit cards responsibly. Even after he reached the credit card limits on three credit cards by the middle of 2001, he demonstrated even more poor judgment by purchasing a house he could not afford. Applicant's praiseworthy job-performance evidence weighs in his favor. His wife's inability to maintain steady employment due to back problems provides some extenuation for his recurring financial difficulties. However, the foregoing factors do not overcome Applicant's history of poor judgment regarding his financial decisions. Clearance is denied.

CASENO: 03-22922.h1

DATE: 02/14/2006

DATE: February 14, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-22922

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole L. Noel, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's Chapter 7 discharge in 1996 of about \$21,200.00 in debt resulted from his misuse of credit cards and a car repossession. Applicant's financial problems resumed in 2000 when he mistakenly believed he could increase his credit and use his credit cards responsibly. Even after he reached the credit card limits on three credit cards by the middle of 2001, he demonstrated even more poor judgment by purchasing a house he could not afford. Applicant's praiseworthy job-performance evidence weighs in his favor. His wife's inability to maintain steady employment due to back problems provides some extenuation for his recurring financial difficulties. However, the foregoing factors do not overcome Applicant's history of poor judgment regarding his financial decisions. Clearance is denied.

**STATEMENT OF THE CASE**

On December 14, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) to the 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On January 6, 2005, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on April 22, 2005. On April 25, 2005, this case was set for hearing on May 18, 2005. The Government submitted six exhibits (GE 1-6), and Applicant submitted two exhibits (AE A) Testimony was taken from Applicant and his wife. After the hearing on June 3 and June 9, 2005, Applicant furnished documentation regarding his bankruptcy in 1996; those documents shall be admitted in evidence as AE C. Applicant's documentation describing his Chapter 13 action filed in 2004, with cover letters, shall be admitted in evidence as AE D. The transcript was received on June 9, 2005.

On April 6, 2005, the Government filed a motion to amend the SOR by adding subparagraph 1.w. as follows: "On December 15, 2004, in the United States Bankruptcy Court for the Eastern District of Arkansas you file a voluntary petition for Chapter 13 Bankruptcy. As of April 6, the petition has not been discharged." At the hearing, Applicant stated he had no objection to the proposed amendment, and, pursuant to E3.1.17. of the Directive, the Motion to Amend was granted (Tr. 7).

### **FINDINGS OF FACT**

The SOR lists 22 delinquent debts under the financial considerations guideline. The 21 debts total \$25, 108.00. Applicant admitted all the debts but claimed some had been discharged by bankruptcy in 1996. Applicant claimed the 1.u. debt was returned to a current status when he paid the arrearage. Applicant furnished no documentation to support his claims that some debts were discharged or returned to a current status.

Applicant is 41 years and has been employed as a network administrator since April 2000. He seeks a secret level clearance.

Applicant and his wife were both working from 1988 until his discharge from the United States (U.S.) Army in March 1994. After his discharge, the family (including three children) moved to the southeastern part of the U.S. where he worked as a carpenter and an electrician, making about \$9.00 an hour. His wife was unemployed. While Applicant claims he and his wife were both working between August 1995 and August 1996, and did not need credit cards (Tr. 31), he filed a Chapter 7 bankruptcy in March 1996 and discharged about \$22,200.00 of delinquent debt in July 1996. Nine

delinquent, consumer debts (including three credit card debts and a car repossession) totaling \$12,304.00 were listed in the petition (AE C). Delinquent credit card debt and a repossessed auto were the reasons for his Chapter 7 bankruptcy filing (Tr. 32) in 1996.

Applicant's wife was unemployed from 1997 to 2001 (Tr. 35). Serious back problems, then nerve complications from surgery left her with long bouts of constant pain. From December 1996 until November 1999, Applicant was working and able to meet his family obligations. In November 1999, Applicant's earnings substantially increased (Tr. 39) when he began employment with his current employer.

In an effort to increase his credit, Applicant began using a credit card between 2000 and the second quarter of 2001, "and then got another one, and ended up with three of them. And we took a vacation, went home and - - and [the bills] just started piling up and I got carried away (Tr. 39)." They stopped using the credit cards in the second quarter of 2001 after the credit cards reached their limits. Later in 2001 while his wife was working, they purchased a house (Tr. 41, 43). Then his wife stopped working in January 2002, and returned to school (Tr. 44). She resumed working in March, and worked until August 2002 when she had back surgery. In July 2003, Applicant provided a sworn statement (GE 2) stating his intention to refinance his house to pay the creditors.

Applicant's wife resumed employment from January to July 2004, and Applicant claims he paid the arrearages on a few bills and the mortgage. No documentation was provided. He also informed DOHA in May 2004 he could not refinance his house, but was going to contact debt consolidation organizations to repay his debts (GE 3). While Applicant's wife was on a new depression medication beginning in March 2004, she neglected to balance the checkbook for two months resulting in a large overdraft of about \$6000.00 (Tr. 47). After the accounting error was discovered, Applicant found out he could not refinance his house because of bad credit. He then filed a Chapter 13 petition in December 2004 and allowed the house to go into foreclosure. However, Applicant did not believe he could maintain the high monthly payments under the wage earners plan, so he changed the Chapter 13 to a Chapter 7 petition (AE D) in March 2005, providing for a complete discharge of all debts. Schedule F of the Chapter 7 petition lists 23 consumer debts, including eight credit card debts, totaling approximately \$26,300.00. Schedule F also includes five medical debts totaling about \$10,750.00. All debts in the SOR appear to be included in the petition. The department store debt in 1.b. became delinquent in 1997 while the mortgage debt (1.d.) went into an overdue status in October 2003. Applicant expected the Chapter 7 discharge to occur in July 2005.

Applicant has been married to his wife for about 18 years. She confirmed she made errors in the checkbook ledger in February 2004 so that the actual amount was less than appeared in the ledger. On reflection, she agreed with Applicant that her medical problems and their misuse of the credit cards caused the financial problems. Applicant's wife was certain the debt in 1.b. had been paid and the documentation was at home (Tr. 63).

Applicant believed he has improved his financial practices by devoting more attention to his finances. He is receiving additional money from his National Guard employment while his wife is

earning about \$200.00 a week as a bookkeeper for her brother. They are in the process of establishing a budget. Their objectives continue to be paying with cash instead of credit, and maintaining their health (Tr. 66).

Applicant's performance evaluations include good reviews for 2000 through 2003. He received an ethics certification in January 2005. Applicant is considered by his coworkers as a competent, motivated and knowledgeable employee.

## **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 (Guideline F)**

An individual's financial practices are a private matter between him and the creditor. However, when evidence discloses he is not paying his bills on time, then his financial practices become a government concern. Accumulated debt places the individual at risk of engaging in illegal acts to generate funds.

## CONCLUSIONS

Indicators of financial mismanagement include, but are not limited to, continued financial problems after a discharge of debts in bankruptcy. An individual who is overextended puts himself at risk of engaging in criminal acts to generate funds. Applicant's delinquent debts totaling approximately \$21,200.00 were eliminated in 1996 through a Chapter 7 discharge. The reason he filed the petition was in part due to misuse of credit cards. In 2000, Applicant exercised poor judgment by repeatedly misusing credit cards until they reached their limits in approximately May 2001. Rather than addressing his overextended credit status with at least three creditors, Applicant purchased a house in the latter part of 2001. Although he testified he paid off several debts between 2001 and the December 2004, he provided no evidence in support. In March 2005, Applicant converted his Chapter 13 petition to a Chapter 7, and expected a complete discharge of delinquent debts totaling \$26,300.00 in July 2005. The foregoing financial events since his Chapter 7 discharge in 1996 reflect adverse conduct under financial considerations (FC) disqualifying condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*). Applicant's inability to address his past due debt and the lack of documentation in support of his claims of paying any of the listed creditors also makes FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*) applicable.

The FC guideline has six mitigating conditions (MC) that are potentially applicable to the circumstances of this case. However, FC MC E2A6.1.3.1. (*the behavior was not recent*) and FC MC E2.A6.1.3.2. (*it was a isolated incident*) are inapplicable as Applicant has past due debts that are as recent as 2003, and there are 22 debts listed in the SOR.

FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) is listed with the other conditions because there are unforeseen incidents that intervene in a person's life to hinder his or her ability to pay debts. A recurring medical condition like a back problem can be minor in nature or it can be so serious that it prevents a person from working in those jobs requiring a person's use of her back. The evidence shows that Applicant's wife has had a back problem since 1997 that still may be triggering pain throughout her body. The back condition rendered her incapable of working between 1997 and 2001, between August 2002 and 2004, and between July 2004 and March 2005.

The circumstances of his wife's medical condition would have been a complete and extenuating explanation for Applicant's financial problems had it not been for his independent acts of poor judgment in 2000 after he received a substantial salary increase from his present employer. Having already had his dischargeable debts extinguished in 1996 because of credit card misuse, Applicant decided to risk credit card misuse a second time by acquiring credit cards again to supposedly increase his credit during a period his wife was still unable to work. Though he could not anticipate when his wife's back condition would prevent her from working, he was aware in the middle of 2001 that he had credit problems, having exhausted his credit on three credit cards. Yet, Applicant demonstrated poor judgment by buying a house he could not afford. In sum, Applicant's financial problems are only partially extenuated by his wife's medical problems.

FC MC E2.A6. (*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*) can assist the applicant substantiate his commitment to implementing

sound financial practices to prevent a recurrence of problems in the future. The condition is not applicable to these circumstances because Applicant has received no counseling and there are no clear indications he has regained control over his finances, notwithstanding his expected Chapter 7 discharge in July 2005.

FC MC E2.A6.1.3.5. (*the affluence resulted from a legal source*) does not apply. FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does apply as Applicant has resolved his past due debts through a Chapter 7 petition. The legal option of liquidating one's debts through the bankruptcy laws allows the debtor a fresh start however, it does not have the same probative value as a good-faith effort to repay creditors. Because Applicant's history of financial problems since 1996 includes two Chapter 7 bankruptcies, the favorable job performance and the testimony Applicant and his wife provided about their future financial decisions is insufficient to overcome the adverse evidence under FC DC E2.A6.1.2.1. All factual allegations under the FC guideline are found against Applicant.

In reaching my decision under the FC guideline, I have examined the circumstances of this case against the general factors of the whole person concept. In view of puzzling testimony provided by both Applicant and his wife on the subject of whether they had adopted a budget to help them track their earnings and expenditures, it is too early to confidently conclude Applicant's financial problems are unlikely to recur in the future. See, E2.2.1.9. (*the likelihood of continuation or recurrence*).

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F): 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.

Subparagraph 1.e. Against the Applicant.  
Subparagraph 1.f. Against the Applicant.  
Subparagraph 1.g. Against the Applicant.  
Subparagraph 1.h. Against the Applicant.  
Subparagraph 1.i. Against the Applicant.  
Subparagraph 1.j. Against the Applicant  
Subparagraph 1.k. Against the Applicant.  
Subparagraph 1.l. Against the Applicant.  
Subparagraph 1.m. Against the Applicant.  
Subparagraph 1.n. Against the Applicant.  
Subparagraph 1.o. Against the Applicant.  
Subparagraph 1.p. Against the Applicant.  
Subparagraph 1.q. Against the Applicant.  
Subparagraph 1.r. Against the Applicant.  
Subparagraph 1.s. Against the Applicant.  
Subparagraph 1.t. Against the Applicant.

Subparagraph 1.u. Against the Applicant.  
Subparagraph 1.v. Against the Applicant.  
Subparagraph 1.w. 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.

Paul J. Mason

Administrative Judge