

KEYWORD: Financial

DIGEST: This 55-year-old systems analyst filed for Chapter 7 bankruptcy on two occasions, in 1996 and 2004. The first bankruptcy resulted from the breakup of his second marriage, which ended in divorce. The second bankruptcy resulted from his unemployment for a year prior to the bankruptcy. He has a history of filing, but not paying, his state and federal income taxes. He systematically failed to have enough state and federal taxes withheld from his paychecks. State tax liens have been levied against him in the past and he has had payment plans with the Internal Revenue Service to pay delinquent federal taxes. He mistakenly believed that both his state and federal delinquent taxes were discharged in either bankruptcy. Applicant has failed to successfully mitigate the security concern stemming from his history of not meeting financial obligations. Clearance is denied.

CASENO: 03-12155.h1

DATE: 10/13/2005

DATE: October 13, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12155

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 55-year-old systems analyst filed for Chapter 7 bankruptcy on two occasions, in 1996 and 2004. The first bankruptcy resulted from the breakup of his second marriage, which ended in divorce. The second bankruptcy resulted from his unemployment for a year prior to the bankruptcy. He has a history of filing, but not paying, his state and federal income taxes. He systematically failed to have enough state and federal taxes withheld from his paychecks. State tax liens have been levied against him in the past and he has had payment plans with the Internal Revenue Service to pay delinquent federal taxes. He mistakenly believed that both his state and federal delinquent taxes were discharged in either bankruptcy. Applicant has failed to successfully mitigate the security concern stemming from his history of not meeting financial obligations. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the Directive). On December 10, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline F (Financial Considerations). Applicant answered the SOR on December 21, 2004 and denied all of the allegations.⁽¹⁾ He requested a hearing before an administrative judge.

The case was assigned to me on April 13, 2005. The Notice of Hearing was issued by letter dated April 11, 2005. I conducted the hearing on May 26, 2005. The Government offered 11 exhibits (Exs. 1-11) which were identified and admitted into the record; Applicant did not object to these exhibits.. Applicant offered two exhibits (Exs.) and they were identified and admitted into the record as Exs. A and B; Department Counsel did not object. Applicant's response consisted of documents, which were admitted and marked for the record as (Exs.) C-K. The transcript (Tr.) was received on June 7, 2005.

FINDINGS OF FACT

Applicant denied all of the allegations contained in the SOR. I make the following findings of fact:

Applicant is 55 years old and has worked for a defense contractor as a systems analyst since October 2004.⁽²⁾ He has held security clearances in the past.

He attended the Naval Academy and graduated in 1972.⁽³⁾ He served in the Navy from 1968 to 1981 and in the U.S. Navy Reserves from 1981 to 1993.⁽⁴⁾ In 1993, he retired from the U.S. Navy Reserves; consequently, he then stopped receiving a monthly salary of \$550. His retirement pay from the U.S. Navy will not begin until 2010.⁽⁵⁾

Applicant was married twice; both of his marriages ended in divorce. He divorced his second wife in 1988. He was ordered to execute an Interspousal Transfer Deed. For no consideration, he transferred his interest in marital real property to his ex-wife.⁽⁶⁾ Also, he was also ordered to pay his second ex-wife \$300 per month in spousal support, which continues to the present time.⁽⁷⁾ He was ordered to pay \$1,000 per month in child support for his two minor children. From 1998 to 2000, the payment was reduced to \$500.⁽⁸⁾ His second ex-wife received almost half of his pay after the divorce. The expenses from their divorce led to his financial downward spiral.⁽⁹⁾

Beginning in about 1992, Applicant filed his state tax returns but did not pay the taxes due.⁽¹⁰⁾ He did not have enough state taxes withheld from his paychecks because he "needed as much money as possible to pay my [other] obligations."⁽¹¹⁾ Liens were filed against him for unpaid state taxes: December 2000, lien for \$3,551; December 1995, lien for \$456; May 1995, lien for \$2,550.⁽¹²⁾ Not enough state taxes were withheld from his paychecks.⁽¹³⁾

He owed the following in delinquent federal taxes to the Internal Revenue Service (IRS): \$840 for 1994; \$2,090 for 1995; \$600 for 1996; \$3,730 for 1997; \$8,538 for 1998.⁽¹⁴⁾ Not enough federal taxes were withheld from his paychecks.⁽¹⁵⁾

By June 1996, Applicant had accrued approximately \$44,005 in liabilities.⁽¹⁶⁾ His debts were mainly due to financial difficulties brought on by expenses related to his second divorce and not adhering to a budget.⁽¹⁷⁾ *Unable to pay his debts, he filed for bankruptcy under Chapter 7 of the United States Bankruptcy Code.*⁽¹⁸⁾ *His dischargeable debts were discharged on August 24, 1996.*⁽¹⁹⁾

At the time he filed his 1996 bankruptcy, he indicated that all of his tax liens listed in the bankruptcy were discharged.⁽²⁰⁾ *He also indicated any monies owed to the IRS for federal taxes were discharged as well.*⁽²¹⁾ *At the time of his 1996 bankruptcy, he owed the state \$3,051 for back taxes for 1993-1994; he owed the IRS \$9,487 for taxes for 1993-1994.*⁽²²⁾ *Generally, debts for most taxes are not discharged in a Chapter 7 bankruptcy.*⁽²³⁾

In March 2000, he quit his federal government job that he had held for 15 years to become a salesman. ⁽²⁴⁾ In Spring 2000, he withdrew his accumulated retirement funds which totaled \$57,000; he also withdrew \$750 from his Thrift Savings Plan and he sold back 80 hours of annual leave to the government in order to receive cash. ⁽²⁵⁾ By law, his second ex-wife was entitled to between \$12,000 and \$15,000 from his retirement fund, which he paid. He also paid for the following: \$4,000 in a lump sum for the purchase of his son's car; \$2,000 to \$3,000 for a trip and hotel expenses for his family for a week in the summer of 2000; \$3,000 for computer and music equipment for his youngest son; \$3,000 for office space for his new career as a salesman. The rest of the "funds were wasted on various unrecalled incidentals." ⁽²⁶⁾ He stated also: "I wanted to use a large portion of said funds to pay off my income taxes. However, I lacked the discipline needed to make that happen." ⁽²⁷⁾

In June 2001, he signed a seven-year contract to buy a timeshare at \$180 per month; the time share was valued at \$17,142.66. ⁽²⁸⁾ In the Summer of 2002, he purchased a new car for \$17,500 with a 20 percent interest rate and a \$450 monthly payment. ⁽²⁹⁾ His state and federal taxes were still outstanding.

He received a notice dated December 18, 2001 from the state tax board indicating he owed \$4,222.67 for the tax years 1994, 1997, 1998, and 1999. ⁽³⁰⁾ The state contacted him in March 2002 regarding the \$4,222.67 in back income taxes, penalties and interest he owed. ⁽³¹⁾ In his earnings and leave statement for the period ending July 31, 2002, there is a payroll deduction for \$250.00 (year to date amount is \$750) and this payment is for his state taxes. ⁽³²⁾

He was unemployed for approximately one year, from October 2003 to October 2004. ⁽³³⁾ He lost his job with a defense contractor because he did not have a security clearance. ⁽³⁴⁾ Unemployed, his debts once again spiraled out of control; his liabilities were \$86,987.73 and his total assets were \$1,725. In 2004, he filed for Chapter 7 bankruptcy. On September 7, 2004, his dischargeable debts were discharged. He mistakenly believed that his state and federal debts were discharged in this bankruptcy. ⁽³⁵⁾

The chart below indicates the current status of delinquent debts as listed in the SOR. The accounts listed as "Bankruptcy" are those presently included in Appellant's petition for bankruptcy under Chapter 7 in either 1996 or 2004.

¶	Account	Status	Evidence
1.a	Civil judgment \$1,344	Discharged in bankruptcy	Tr. at 24
1.b	State tax lien (2000) \$3,551	Unpaid	Ex. 10
1.c	State tax lien (1995) \$456	Unpaid	Ex. 10
1.d	State tax lien (1995) \$2,550	Unpaid	Ex. 10
1.e	Cable \$750	Discharged in bankruptcy	Ex. G
1.f	Financing Co. \$1,244	Discharged in bankruptcy	Same debt as 1.a even though amounts are different
1.g	Towing Service \$960	Challenged;	Ex. 2 at 12

	son's debt	
1.h Bank \$244	Discharged in bankruptcy	Tr. at 24
1.i Bank \$684	Discharged in bankruptcy	Tr. at 24
1.j Credit card \$171	Discharged in bankruptcy	Tr. at 24
1.k Car \$8,4553	Discharged in bankruptcy	Tr. at 24.
1.l Delinquent State taxes (1992-1999) \$4,604.00	Unpaid	Ex. 4; Ex. 2 at 7
1.m State income tax not filed (2000)	Unfiled	Ex. 2 at 11
1.n Delinquent IRS tax (1994) \$840	Unpaid	Ex. 5
1.o Delinquent IRS tax (1995) \$1,090	Unpaid	Ex. 5
1.p Delinquent IRS tax (1996) \$600	Unpaid	Ex. 5
1.q Delinquent IRS tax (1997) \$3,730	Unpaid	Ex. C
1.r Delinquent IRS tax (1998) \$8,538	Unpaid	Ex. B.
1.s Delinquent IRS tax (1999) \$8,336	Unpaid	Ex. B.

In December 2000, he entered into an agreement with the IRS to pay \$500 per month for back taxes. ⁽³⁶⁾ He made these monthly payments but payments ceased when he became unemployed in 2003. ⁽³⁷⁾ The record indicates that he still owes taxes to both the state and federal governments but the amount owed is uncertain. ⁽³⁸⁾

POLICIES

Each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽³⁹⁾ The government has the burden of proving controverted facts. ⁽⁴⁰⁾

⁽⁴¹⁾

The burden of proof in a security clearance case is less than a preponderance of the evidence. Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁴²⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁴³⁾

No one has a right to a security clearance⁽⁴⁴⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁴⁵⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁴⁶⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽⁴⁷⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: a security concern exists when a person has significant delinquent debts. 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I carefully considered all the facts in evidence and the legal standards. The government has established its case under Guideline F. Based on all the evidence as a whole, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (a history of not meeting financial obligations) and FC DC E2.A6.1.2.3 (inability or unwillingness to satisfy debts), apply in this case. Applicant accumulated significant delinquent debt over the past few years. His delinquent debts caused him to file bankruptcy under Chapter 7 twice. Applicant has a history of financial difficulties with both the state tax authority as well as the IRS; he did not have enough state or federal taxes withheld from his paychecks because he needed the money to pay his other financial obligations. Thus, he incurred almost \$30,000 in debt related directly to the nonpayment of state and federal taxes. Moreover, there are three state tax liens filed against him and they appear on his latest credit report.⁽⁴⁸⁾ He has had payment plans with the IRS but when he was unemployed for a year in 2003-

2004, he ceased payment of those monies and he has not followed up regarding any future payments. Even when he received a financial windfall for approximately \$57,000, he did not use any of that money to pay his delinquent taxes.

I considered all the Financial Considerations Mitigating Conditions (FC MC) and find that FC MC 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, unexpected medical emergency, or a death, divorce or separation) applies in this case. Based on the record evidence, because of Applicant's financial support to his family after his second divorce and due to Applicant's unemployment for one year prior to his second bankruptcy, his accumulation of debts was largely beyond his control.

Moreover, FC MC A6.E2.1.3.1 (the behavior was not recent) does not apply because the existing tax debts remain unpaid. FC MC A6.E2.1.3.2 (it was an isolated incident) is not applicable in mitigation because Applicant's two bankruptcies do not qualify as an "isolated incident." FC MC A6.E2.1.3.6 (the individual initiated a good-faith effort to repay over creditors or otherwise resolve debts) does not apply because he has not established a good-faith effort to repay his overdue taxes. Once applicant had those delinquent tax debts paid off and behind him, he should be on his way to financial solvency. His failure to take any action to resolve his tax debts fails to substantially mitigate the security concerns. The evidence does not suggest Applicant's financial problems are under control. Some of his debts have been resolved either through bankruptcy or being paid off and he has mitigated the financial concerns; these debts are found in his favor: ¶¶ 1.a, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.p, 1.q, and 1.t. Thus, other debts have not been paid and the financial concerns for these debts have not been mitigated. These debts are found against him: ¶¶ 1.b, 1.c, 1.d, 1.l, 1.m, 1.n, 1.o, 1.r, 1.s, 1.t. Accordingly, Guideline F is decided against Applicant.

I considered all the evidence in this case. I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that Applicant has not mitigated the security concerns caused by his financial considerations.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations (Guideline F): AGAINST APPLICANT

Subparagraph 1.a For Applicant

Subparagraph 1.b Against Applicant

Subparagraph 1.c Against Applicant

Subparagraph 1.d Against Applicant

Subparagraph 1.e For Applicant

Subparagraph 1.f For Applicant

Subparagraph 1.g For Applicant

Subparagraph 1.h For Applicant

Subparagraph 1.i For Applicant

Subparagraph 1.j For Applicant

Subparagraph 1.k For Applicant

Subparagraph 1.l Against Applicant

Subparagraph 1.m Against Applicant

Subparagraph 1.n Against Applicant

Subparagraph 1.o Against Applicant

Subparagraph 1.p For Applicant

Subparagraph 1.q For Applicant

Subparagraph 1.r Against Applicant

Subparagraph 1.s Against Applicant

Subparagraph 1.t For Applicant

DECISION

In light of all of 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. Clearance is denied.

Jacqueline T. Williams

Administrative Judge

1. Applicant's response consisted of documents admitted and marked for the record as Exhibits (Exs.) C-K. Applicant's Exs. A and B were admitted at the hearing.

2. Tr. at 51.

3. Id.

4. Ex. 3, Sworn Statement of Applicant, dated June 15, 200, at 1.

5. Ex. 2, Sworn Statement of Applicant, dated September 19, 2002, at 3.

6. Ex. D, Interspousal Transfer Deed, dated April 11, 1988.

7. Ex. 3, supra note 4, at 1.

8. Id.

9. Ex. 2, supra note 5, at 2.

10. Id. at 7-9; Ex. 4 (State Information Storage Document).

11. Ex.2, supra note 5, at 8.

12. Ex. 10, Credit Report, dated April 11, 2000.

13. Ex. 2, supra note 5, at 8.

14. See, SOR, ¶¶ 1.n-1.s.

15. Ex. 2, supra note 5, at 8.

16. Id. at 2; Tr. at 21.

17. Ex. 2, supra note 5, at 8.

18. Id.; Tr. at 21.

19. Ex. 9, Credit Report, dated October 2, 2003; *see*, SOR ¶ 1.t; tr. at 39.
20. Ex. 2, *supra*, at 2.
21. Tr. at 19-21; 24-35.
22. Ex. K, Discharge of Chapter 7 Debtor Notice, dated September 24, 1996.
23. Ex. 11, Discharge of Chapter 7 Debtor Notice, dated September 7, 2004.
24. Ex. 2, *supra* note 5, at 24.
25. *Id.* at 25.
26. *Id.*
27. *Id.*
28. *Id.* at 11; Ex. G, Voluntary Petitioner for Bankruptcy, dated May 7, 2004.
29. Ex. 2, *supra*, at 6.
30. Ex. 5, Internal Revenue Monthly Statements, at 3.
31. *Id.*
32. *Id.* at 2.
33. Tr. at 38, 40.
34. *Id.* at 23.
35. *Id.* at 24; Ex. G, *supra* note 28.
36. Ex. 5, *supra* note 30.
37. Tr. at 34-39.
38. *Id.* at 39, 40.
39. ISCR Case No. 96-0277 (July 11, 1997) at 2.
40. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
41. *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988).
42. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
43. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
44. *Egan*, 484 U.S. at 531.
45. *Id.*
46. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

47. Executive Order 10865 § 7.

48. Ex. 10, Credit Report, dated April 11, 2005, at 1.