

KEYWORD: Financial Considerations

DIGEST: Applicant is a 43-year-old female working for a defense contractor. Following a joint bankruptcy and divorce in the 1990s, Applicant continued to acquire debt. Despite an attempt to pay off her debt through a budget, she eventually resorted to Chapter 13 bankruptcy. She has been paying on the bankruptcy plan since October 2003. Applicant has mitigated the financial concerns raised. Clearance is granted.

CASENO: 03-12149

DATE: MM/DD/YYYY

DATE: May 24, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12149

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 43-year-old female working for a defense contractor. Following a joint bankruptcy and divorce in the 1990s, Applicant continued to acquire debt. Despite an attempt to pay off her debt through a budget, she eventually resorted to Chapter 13 bankruptcy. She has been paying on the bankruptcy plan since October 2003. Applicant has mitigated the financial concerns raised. Clearance is granted.

STATEMENT OF THE CASE

On February 2, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statements of Reasons (SOR) concluding it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (Financial Considerations). In a notarized statement, dated March 8, 2004, Applicant responded to the SOR allegations and waived her right to an administrative hearing in favor of a decision based on the record.

Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on August 4, 2004. She acknowledged receipt of the FORM on August 10, 2004, and submitted a response, dated August 29, 2004. In her response, admitted to the existence of her debts, but denied that they remained unpaid. Department Counsel submitted a Reply to Applicant's Response, dated February 11, 2005. The case was assigned to me on February 17, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 45-year-old employee of a defense contractor. She is married and has five children from a previous marriage. Additionally, she has earned an Associate's degree.

In June 1980, Applicant married her second husband. The couple began acquiring some debt in the early 1990s. Those debts became delinquent, and were compounded with additional debt, when her husband was laid off from his job around 1994. With no wage earner in the home, debt became unmanageable and the couple declared bankruptcy in July 1995. By June 1998, Applicant had left her duties as a housewife to take a job as an accounting assistant. She and her husband separated in August 1998. In January 1999, the couple was divorced.

As part of the divorce decree, Applicant was awarded primary custody of the couple's five children. She also retained possession of the house. The house, however, was not yet completely constructed and necessitated additional work and installations. Of major concern was an air conditioning/heating system that was improperly installed, which incurred higher than average utility bills until it was eventually repaired. She also had a brief relationship with a man who stole over \$4,000 in money and property from her, then reneged on a promise to pay \$1,300 for utility bills. During this same period, Applicant's car had to be replaced, and it was later discovered that its replacement needed a new transmission.

In September 2001, Applicant was diagnosed with a ruptured disk in her back. Immediate surgery was required. Although her injury was job related, she was a contract employee and ineligible for worker's compensation. By the end of 2001, she had lost over two months of wages from post-surgical recuperation time. Moreover, the balance of what Medicare did not cover for her surgery and recuperation was added to her debt.

Applicant became engaged in August 2002. Together, they put together a budget and a plan to pay off her various debts. (2) Among those debts were at least 10, as noted in the SOR, which amounted to almost \$48,000 and which had been charged off or turned over for collection sometime between 1997 and 2003. (3) The couple eventually married. Eventually, in August 2003, the couple jointly filed for Chapter 13 bankruptcy protection. Payments on their preliminary plan began in October 2003. (4) The final bankruptcy plan was filed on May 5, 2004, and the Bankruptcy Court issued an order confirming a bankruptcy plan in late September 2004.

In October 2003, a home equity company was enabled to pursue all remedies, including foreclosure, of Applicant's home; its claim is for approximately \$47,000. (5) That company remains under the final bankruptcy's secured creditor surrender provision and the issue regarding its pursuit of its claim is unresolved.

An amended order confirming the bankruptcy plan was issued in December 2004. Under the final plan, as amended,

Applicant and her husband pay back a little over 47% of their general unsecured creditors' claims. Starting with the payments first commenced in October 2003, repayment is being accomplished through payments of \$527 per month for the first 14 months, and then \$930 a month for the final 46 months of the term of the bankruptcy, for a total of \$50,158. The records indicate that payments are made through an automatic or systematic draw-down or direct deposit from Applicant's bank account.⁽⁶⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, 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 determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁷⁾ The government has the burden of proving controverted facts.⁽⁸⁾ The burden of proof is something less than a preponderance of evidence.⁽⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

No one has a right to a security clearance⁽¹²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁵⁾ 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 the evidence, I find the following adjudicative guidelines most pertinent to the evaluation

of the facts in 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. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F (Financial Considerations). The Regulation sets out several potentially disqualifying conditions under this guideline.

For various reasons, Appellant accrued at least 10 debts amounting to almost \$48,000 that were charged off or turned over for collection between 1997 and 2003. Under these facts, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.2 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) apply.

I considered all the Financial Considerations Mitigating Conditions (FC MC). In December 2004, the bankruptcy court issued an amended order confirming a final chapter 13 bankruptcy plan for payment of Applicant's and her husband's multiple debts. Under that plan, they will make payments on the bankruptcy for five years. Inasmuch as the debts at issue are multiple and less than one-third of the required payments to the bankruptcy court have thus far been made, neither FC MC E2.A6.1.3.1 (*the behavior was not recent*) nor FC MC E2.A6.1.3.2 (*it was an isolated incident*) applies.

The first phase of Applicant's debt accrual occurred around 1993-1994, when her former husband was laid off from work. This led to their joint petition for bankruptcy in July 1995. The couple was divorced in 1999. With custody of five children, and the cost of finishing the construction on their family home, debt began to accrue. In September 2001, back surgery was required and debts arose from that incident, as did loss of income from her two months off as a contractor. Given these circumstances, 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.

At no point in the case file is there an indication that Applicant received much needed financial counseling, either before or after the filing of her bankruptcies. Therefore, I cannot find that FC MC 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*) applies.

In October 2002, Applicant noted how she and her then-fiancee had devised and were living under a viable budget through which they hoped to avoid bankruptcy. ⁽¹⁶⁾ The plan implemented revealed that a great deal of thought went into it. They apparently struggled for at least a year before they turned, in August 2003, to bankruptcy. To their credit, they tried to resolve their debts on their own. Also to their credit, they chose making protracted payments toward their debt through Chapter 13 bankruptcy, rather than seeking the more immediate discharge available through Chapter 7. Finally, Applicant eventually addressed her debts directly through bankruptcy, ⁽¹⁷⁾ demonstrated her desire to repay her obligations, and established a track record of repayment through an automatic draw-down from her employer to the bankruptcy trustee. ⁽¹⁸⁾ Taken together, I find all of Appellant's efforts demonstrate that FC MC E2.A6.1.3.6 (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

I have reviewed the record as a whole and considered Applicant under the "whole person" concept. Applicant is a mature professional woman with an Associate's degree and experience as an accounting assistant and in cost analysis. She therefore has more familiarity with finance than most individuals of similar age, education, and experience. The decision to declare bankruptcy in 1995 was not illogical inasmuch as she was unemployed from 1994 through 1998 and her husband was laid off in either 1993 or 1994. With no adult wage earner in the household and five children to manage, the debt accrued would prove challenging.

The debt subsequently accrued after the 1995 bankruptcy, however, is unsettling. It seemed to go unaddressed from 1995 until sometime prior to August 2002, when Applicant met her current husband, and the two worked out various methods and strategies for satisfying her debts. That plan, however, was apparently abandoned in favor of bankruptcy in under two years. However, she did choose Chapter 13 bankruptcy over Chapter 7, and she is making regular payments to the bankruptcy trustees. Moreover, she currently follows a budget. Consequently, she is no longer overextended and her finances are presently in order. Therefore, I find that Applicant has mitigated security concerns. Clearance is granted.

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. Guideline F (Financial Considerations) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For 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: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Arthur E. Marshall, Jr.

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Government Item 8 (Applicant's unsigned statement of October 2002).
3. Of those debts, four were for approximately \$50, one was for \$77, three were in the \$500-\$650 range, one was for \$1,774, and one was a \$44,010 mortgage that, at one point prior to foreclosure proceedings, was past due in the amount of \$477.
4. Applicant's Response to the SOR, dated August 29, 2004, Attachment 2.
5. A credit bureau report, dated July 2004, indicated that the foreclosure process had been initiated. Government Item 14.
6. *Id.*
7. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
8. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
9. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
12. *Egan*, 484 U.S. at 531.
13. *Id.*
14. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
15. Executive Order 10865 § 7.
16. Government Item 8, noted, *supra*, footnote 2.
17. Although bankruptcy is not the preferred method for resolving debt, it is a legally available option.
18. The record includes evidence that regular payments were made for 11 of the 60 months contemplated by the bankruptcy.