

KEYWORD: Financial

DIGEST: Applicant has shown a good faith effort to resolve his financial problems totaling about \$28,500 in debts to several creditors. He chose to file bankruptcy under Chapter 13 and to make monthly payments over five years to resolve all his debts. The court approved the plan and monthly payments will be made electronically from his salary. He has a stable job and is highly regarded for his excellent work ethic. Overall he has demonstrated his commitment to overcoming the financial difficulties from his business downturn and divorce. He has taken steps to establish he is now financially responsible. Clearance is granted.

CASENO: 03-17479.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. 03-17479

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Marc Curry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has shown a good faith effort to resolve his financial problems totaling about \$28,500 in debts to several creditors. He chose to file bankruptcy under Chapter 13 and to make monthly payments over five years to resolve all his debts. The court approved the plan and monthly payments will be made electronically from his salary. He has a stable job and is highly regarded for his excellent work ethic. Overall he has demonstrated his commitment to overcoming the financial difficulties from his business downturn and divorce. He has taken steps to establish he is now financially responsible. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on March 15, 2004. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.<sup>(1)</sup> The SOR alleges specific concerns over finances (Guideline F). Applicant responded to these SOR allegations in April 12, 2004 and May 17, 2004, notarized Answers and requested a hearing. (Answer)

After Department Counsel stated the case was ready to proceed, on July 19, 2004, the case was assigned to me. A mutually convenient date for hearing was identified; and a Notice of Hearing issued on July 22, 2004, set the matter for August 9, 2004, at a location near where Applicant works and lives. At the hearing the Department Counsel offered the Government's four exhibits (Exhibits 1-4) which were admitted into evidence. The Applicant offered ten exhibits, which were admitted into evidence (Exhibits A-J), and testified himself. He also offered a copy of Guideline F, Financial Considerations, for Official Notice. (ON I; TR 22) As the Government did not object to leaving the record open, Applicant was given until an additional ten days until August 19, 2004, to submit additional evidence. Department Counsel was given additional time until September 1, 2004, to review the documents he submitted. (TR 68) On August

10, 2004, Applicant forwarded an additional exhibit of three pages. (Exhibit K) Department Counsel did not object. Exhibit K was admitted into evidence, and the record then closed. DOHA received the transcript (TR) on August 17, 2004.

## FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 45 years old, has been employed by a defense contractor in State #1 since February 2002. (Exhibit 2) He completed a Security Clearance Application (SF 86) in February 2002. (Exhibit 1) He was self-employed from July 1996 to February 2002. He served in the military reserve from 1977 to 1981. He previously received a Top Secret clearance in September 1977. (Exhibit 1; Exhibit E; TR 25-26) He has been working with an interim secret clearance for three years. (Exhibit A)

Applicant attended college in 1984 in State #2. He was married in 1980 and has four children born in 1980, 1985, 1992, and 2000. (Exhibit 1) His wife filed for divorce in November 2002. (Exhibit 2; TR 25) His oldest child is now in college and his 19-year old son lives with him full-time; his 12-year-old and 4-year-old children are with him 35-40 per cent of the time as he has joint custody. (TR 51)

## **Finances**

At the time he completed his Security Questionnaire in February 2002, Applicant did not disclose any debts as he did not believe any of his debts were delinquent at that point. (Exhibit 2 at 7) When interviewed by the Defense Security Service (DSS) in June 2003, Applicant admitted that the Credit Bureau Report accurately reported his delinquent debts which were still delinquent in June 2003. He explained that the delinquencies occurred as a direct result of his business problems as his business dropped off sharply after the September 11, 2001, terrorist attacks; he had almost no steady income until he went to work for his current company in February 2002. (Exhibit 2 at 4)

In October 2002 Applicant and his wife had entered into an agreement with a debt solutions company to resolve several of his debts by paying \$529 monthly which included an \$85 service fee and \$443 to settle his delinquent debts; they paid \$644 in November 2002, December 2002, and January 2003 as a down payment. Beginning in February 2003 he only paid them \$85 per month which went solely for their fee and was to save money to resolve the debts. As of June

2003, he could not afford to make these payments. (Exhibits 2, 3; TR 38, 40-43) After his wife left him, the court initially ordered him to pay her \$1,000 per month, so he could not afford to make these payments. Also he found problems in contacting the debt solutions company and began to explore other solutions. (TR 23-24, 38-39, 43-44)

Applicant's net income in June 2003 was \$3,120 per month; he had monthly expenses of \$2,680 and was current in his monthly payments of \$332. He had a net remainder of \$118. (Exhibit 2; TR 44-45) His landlord reduced his rent in August 2003 to \$1,250; and in July 2004 he moved to a smaller place where he only paid \$1,000 for rent. He drives a 2000 car with 125,000 miles on it. (TR 24, 45-51)

Later under a revised support agreement as of June 2003, he was to pay \$200 per month in alimony and \$300 in child support. He was to assume the entire family debt if he did not file bankruptcy as his wife intended to do. In June 2003, he did not intend to file for bankruptcy. (Exhibit 2 at 7; Exhibit J; TR 51-53) However, later he decided he had no option but to consult a bankruptcy attorney and did so in the period from February to June 2004. (TR 58-59)

Applicant filed for bankruptcy under Chapter 13 in June 2004 with a plan to make payments of \$545 to the Chapter 13 Trustee to resolve \$34,000 in debt over a five year period. He was asked to make one payment directly; subsequently, in July 2004 the bankruptcy court issued an Order Requiring Employer of the Debtor to Pay a Portion of the Debtor's Wages or Earnings to the Trustee in the sum of \$545 monthly beginning in August 2004. The plan includes a tax debt of \$26,250 from 2000 when his business was not doing well. (Exhibits A, H, I; TR 53-55, 57) He also has arranged for automatic deductions of his child support payment and his rent from his salary. He has provided a budget to show how he has lowered his expenses to live within his means. (Exhibits A, G)

In August 2004 his net salary had risen to \$3,625, his expenses had been reduced to \$2,155, and his monthly debt payments were \$788, including his \$545 monthly bankruptcy payment. He had a net remainder of \$682. (Exhibit G)

Applicant reported the basis for the following debts to creditors:

SOR 1.a.. His debt to Creditor #1 for \$5,661, was a business related debt that was placed for collection in November 2000. He stated he paid off that loan but entered into another loan with Creditor #1. He had included it in the debt solutions plan. It is now included in the Chapter 13 plan. (Answer; Exhibit 3, Exhibit I; TR 27-30)

SOR 1.b, 1.f., 1.g. His debt to Creditor #2 for \$2,476 was a delinquent account charged off as a bad debt in February 2002. He stated it was a commercial credit card, but that he also had a personal credit card that his wife used with Creditor #2. He had included it in the debt solutions plan. It is now included in the Chapter 13 plan. (Answer, Exhibit 3, Exhibit I; TR 30; 36)

SOR 1.c. His debt to Creditor #3, a credit card, of \$8,839, was charged off as a bad debt in November 2001. It was a personal credit card that his wife used. He had included it in the debt solutions plan. It is now included in the Chapter 13 plan. (Answer; Exhibit 3, Exhibit I; TR 33-34)

SOR 1.d., 1.e. His debt to Creditor #4, a credit card, of \$4,063, was charged off as a bad debt in September 2002. It was a personal credit card that his wife used to finance an air conditioner installation in 2001. He had included it in the debt solutions plan. It is now included in the Chapter 13 plan. (Answer; Exhibit 3, Exhibit I; TR 33-35)

### **References**

Current and former co-workers attest to his good character. One stated Applicant is "dependable, reliable and has a strong work ethic." (Exhibit B, C, D)

The branch manager who has supervised Applicant for over two years attested that Applicant has always been "dependable, trustworthy, honest, and has continually worked towards the customer's best interests." (Exhibit B) Applicant has excellent performance evaluations. (Exhibit F)

Site managers where Applicant has provided service praised his professionalism and his conscientious performance. An overseas site manager stated Applicant has complied with all local security requirements and that he trusted Applicant's integrity on any security issues. (Exhibit K)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security

eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

### **Guideline F - Financial Considerations**

**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.**

Initially, the Government has the responsibility to present evidence under the disqualifying conditions that demonstrate it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate allegations in the SOR in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching a fair and impartial overall common sense determination, the administrative judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## **CONCLUSIONS**

### **Financial Considerations**

During the 2001 period after the impact of the September 11, 2001, terrorist attacks on his business, Applicant developed financial conditions that could disqualify him for a security clearance: (1) a history of financial problems; subsequently he demonstrated (3) an inability or unwillingness to satisfy all of his debts. In October 2002 he and his wife had entered an agreement with a debt solutions company to resolve several of his debts; but when she filed for divorce in November 2002, he was not able to implement this plan as he had substantial additional expenses with reduced income. Thus the debts were not resolved by that strategy and persisted. Initially, he was not willing to file for bankruptcy protection even though his wife planned to do so.

Applicant has now established that he has mitigated <sup>(2)</sup> these concerns. First, conditions that resulted in this behavior were largely beyond his control (e.g., a business downturn after September 11, 200, and a divorce action in 2002).

While Applicant could have acted more quickly to address these concerns, he has now mitigated these financial concerns as he has made it a priority to resolve these business and personal debts that resulted from this business downturn. He showed a good-faith effort to resolve his debts by avoiding a Chapter 7 filing to liquidate all of his debts. Instead in 2004 he filing under Chapter 13 in June 2004 in order to establish a plan to resolve all of his debts over a five year period. These arrangements include a July 2004 court order that monthly payments are electronically transferred to the trustee in bankruptcy.

In addition, Applicant has reduced his other expenses and now has enough income to handle his current financial obligations. He is moderate in his spending, and there is no evidence that he developed new debts. Thus, Applicant has sufficiently demonstrated he is now financially responsible as he is following through on his plan to resolve these debts and has begun making payments under the plan. Given his substantial salary and the fact that the payments will be electronically deducted, there is little risk of him failing to complete this Chapter 13 plan.

Thus, he has effectively mitigated security concerns over his debts alleged in SOR 1.a. through 1.i. In addition, he is in a very stable position at his job where he is highly regarded by his supervisor, his co-workers, and customers who all praise him as an outstanding employee. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under SOR Paragraph 1: I conclude that he has mitigated the allegations in SOR subparagraphs 1.a. through 1.i.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: 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

### 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 the Applicant. Clearance is granted.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. **Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 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); 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; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.