KEYWORD: Financial

DIGEST: Applicant's history of financial difficulties makes him unsuitable for a security clearance. Clearance denied.

CASE NO: 04-01154.h1

DATE: 05/26/2006

DATE: May 26, 2006

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 04-01154

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of financial difficulties makes him unsuitable for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 31 March 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial considerations.[(1)] Applicant answered the SOR on 21 April 2005 and requested a decision on the record. He responded to DOHA's 21 June 2005 File of Relevant Material (FORM) on 16 October 2005. DOHA assigned the case to me 24 October 2005.

FINDINGS OF FACT

Applicant admitted the allegations of subparagraphs 1.b., 1.c., 1.j.,1.k., 1.q., 1.r., and 1.s.; he denied the remaining allegations of the SOR. He is a 43-year-old division director employed by a defense contractor since June 2001. He seeks to retain the clearance he has held since approximately March 1989. He submitted his clearance application for periodic reinvestigation in August 2002.

Applicant has a history of financial difficulties demonstrated by a Chapter 7 bankruptcy filing in March 1988 and a Chapter 13 bankruptcy filing in February 1998. He attributes the March 1988 bankruptcy filing to his separation and divorce from his second wife.[(2)] He attributes the February 1998 bankruptcy filing to his wedding, separation, and divorce from his third wife.[(3)]

When Applicant filed for Chapter 7 bankruptcy protection in March 1988, he listed nearly $53,000 in liabilities and

assets just over $19,000.00. He received a discharge of dischargeable debts in July 1988. When he filed for Chapter 13 bankruptcy protection in February 1998,[(4)] he listed assets of nearly $24,000 and liabilities of over $73,000. His confirmed plan required him to pay $17,190 in 36 monthly installments beginning in March 1998,[(5)] plus any refunds from income tax returns received during the life of the plan (February 2001). The plan further committed Applicant to pay $1,700 in attorneys fees (to be paid from funds received during the first four months of the plan), $2,637 for an IRS priority claim(1.h.)(paid pro rata over months 5-36), $10,534 for a secured auto loan (1.i.)(paid pro rata over months 5-36) and $513 for a secured furniture loan (1.j)(paid pro rata over months 5-36). If Applicant paid according to plan, he would have approximately $1,800 (plus any income tax returns) for unsecured creditors.

It appears that Applicant made the required payments through wage order from March 1998 until approximately November 1999, when he changed employers and the wage order stopped.[(6)] By April 2000, Applicant was over $1,700 in arrears and the Chapter 13 bankruptcy trustee filed to dismiss the chapter 13 for failure to make plan payments. The motion was served on both Applicant and his attorneys, and was ultimately granted and confirmed in June 2000. The trustee's July 2000 final report and account reflected that Applicant paid $10,173.66, of which $2,260.87 went to his attorneys and the trustee and $7,912.79 went to secured and priority creditors.[(7)] None of the other creditors received any payment.[(8)]

The SOR alleges seventeen delinquent accounts totaling over $63,000.00, falling delinquent between 1998 and 2000. The record reflects that the debts at 1.j.,[(9)] 1.n., and 1.p. were consolidated when purchased by the creditor at 1.e.[(10)] Applicant's October 2005 FORM response claims that he entered into a repayment plan with the creditor to pay $150 per month and will pay the account in full with his March 2006 bonus, but provided no corroboration of either the agreement or any payments made on the plan. Including the three accounts consolidated at 1.e., the trustee's July 2000 accounting confirms Applicant's judicial acknowledgment of all but two of the debts alleged in the SOR: 1.c. and 1.g. Applicant's FORM response claims that the creditor at 1.l. and 1.m. (the same creditor) is the successor in interest to the creditor at 1.c. However, the trustee's July 2000 accounting reflects the creditor's unsecured and unpaid claims for 1.l. and 1.m., which suggests that those claims existed in February 1998 when Applicant filed his Chapter 13 petition. The February and June 2005 credit reports that show the debt at 1.c., show the account falling past due in June 1999. Applicant has provide no evidence to corroborate his claim that the debts at 1.c. were subsumed by the creditor at 1.l. and 1.m. The February and June 2005 credit reports reflect the debt at 1.g. falling past due in July 2000, after Applicant's Chapter 13 case was dismissed.

In his FORM response, Applicant claims that he was not aware that his wage order had been terminated when he changed employers in November 1999. I find this claim unbelievable because he knew his plan payments were to run for three years and he had not yet been paying even two years on the plan when he changed jobs. In addition, I do not believe he would fail to notice that his earnings statements from his new employer contained no deductions for plan payments.

In similar fashion, Applicant claims that he did not understand that dismissal of his Chapter 13 bankruptcy meant that his debts were not discharged. However, both Applicant and his attorneys received the motion for dismissal and the order of dismissal, as well as the accounting that showed only partial payment to the secured creditors. The plain language of both the motion to dismiss and the dismissal states that the case is being dismissed for Applicant's failure to

make plan payments.

Applicant has succeeded in getting the debts at 1.a., 1.b., 1.d., and 1.f.--each of which was more than seven years old at the time--removed from his credit report. He claims the debt at 1.g. was removed from his September 2005 credit report because the creditor could not tell him who purchased the delinquent account. Applicant provided no corroboration of this claim, for a debt he now acknowledges he owes. He also claims, without corroboration, that the IRS can find no record of the debts alleged at 1.h. and 1.o.[(11)] He admits to owing the debts at 1.k. and 1.q., but asserts, again without corroboration, that he is unable to find the successor creditor. He also admits to the debt at 1.c., claiming that it was assumed into the debts at 1.l. and 1.m. However, he claims, without corroboration, that the creditor at 1.l. and 1.m. won't take his proffered payment and the creditor at 1.c. can't take his proffered payment because they sold the account.

With the exception of the accounts alleged in the SOR, Applicant's recent credit reports show that the overwhelming majority of his accounts are reported as current.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.[(12)]

CONCLUSIONS

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant experienced financial difficulties in 1988 with the dissolution of his second marriage, which resulted in a Chapter 7 discharge of his joint and individual debt.[(13)] Despite this experience, Applicant appears to have taken on a substantial amount of individual debt in approximately 1996 or 1997 to establish a household with his fiancé and pay for their wedding--which was then as short-lived as his first two. His plan for repaying this debt, particularly given that it was not jointly held with his fiance/wife, turned out to be no plan at all.

Applicant's Chapter 13 filing in February 1998 was not an unreasonable response to his difficulties, although those difficulties were not truly due to circumstances beyond his control. However, his handling of the Chapter 13 plan was not reasonable. Even if he did not know that his wage order would terminate in November 1999, he could not have failed to notice that his new paycheck did not include a deduction for his bankruptcy payments. Nor could he, knowing that his plan payments were to run three years (until February 2001), have failed to notice that the April 2000 motion to dismiss alleged non-payment of plan payments and the May 2000 order of dismissal determined that Applicant had failed to make plan payments. Through his failure to make plan payments as required or to follow-up on the dismissal of his plan, Applicant has successfully evaded payment on a number of accounts, and may yet evade payment on several others because the original creditors cannot identify the successor creditors. This does not constitute a valid plan to address his debts. Further, he has not corroborated his claims of payment or other resolution of numerous accounts whose validity he concedes.

Overall, Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent[(14)] and not isolated.[(15)] Although the 1988 bankruptcy may have been due somewhat to circumstances beyond his control,[(16)] the same cannot be said for the 1998 bankruptcy. Taking on that much individual debt was irresponsible, even assuming the best possible outcome of his third marriage. While a successfully completed Chapter 13 plan might have been viewed as credit counseling or otherwise bringing the problem under control,[(17)] his failure to complete the plan or follow-up once it was dismissed deprives him of this mitigating condition. Finally, Applicant provided no evidence to support his assertions that these accounts were either paid or that he had been relieved of the legal obligation for the accounts.[(18)] I conclude Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: For Applicant

Subparagraph j: For Applicant

Subparagraph k: Against Applicant

Subparagraph l: Against Applicant

Subparagraph m: For Applicant

Subparagraph n: Against Applicant

Subparagraph o: Against Applicant

Subparagraph p: For Applicant

Subparagraph q: Against Applicant

Subparagraph r: Against Applicant

Subparagraph s: Against 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. Clearance denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).

2. Applicant was first married in September 1982 (age 20) and divorced less than a year later. He married again in September 1986 (age 24), and at the time he filed for bankruptcy protection in March 1988 was separated from his wife and unable to keep up with the payments. They divorced in August 1989.

3. Applicant moved in with his girlfriend in 1996 and married her in January 1997. She was a college student who was graduating in early 1997. They accumulated debt to establish and furnish their household and pay wedding expenses. They planned to use the majority of her income after graduation to pay off the debt. However, the marriage did not last. They separated in summer 1998 and were divorced in February 1999.

4. His 1988 Chapter 7 filing was a joint filing. However, his 1998 Chapter 7 filing was an individual filing and occurred several months before he and his wife separated.

5. At the rate of $465 for six months and $480 for 30 months.

6. Although Applicant's December 2003 sworn statement (Item 5) claimed he "satisfied the agreement about one year later, but I need to refer to documents."

7. The IRS (1.h.) received $1,526.59. The auto creditor (1.i) received $6,098.18. The furniture creditor (1.j.) received $288.02.

8. The trustee's accounting reflects one secured credit card account that appears in the SOR (1.k) and in Applicant's February 2005 credit report as a charged-off account, and a secured credit union auto loan for nearly $27,000 that does

not appear in the SOR, but does appear in the February and June 2005 credit reports as a paid account that was never past due.

9. Less the amount paid by the bankruptcy trustee.

10. Accordingly, I find 1.j., 1.n., and 1.p. for Applicant for the limited purpose of not including those amounts in Applicant's total indebtedness as it would be a duplication of 1.e.

11. Which, given the age of the two debts, could easily have been paid to the IRS by attachment of his federal tax refunds in subsequent years.

12. *See*, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

13. E2.A6.1.2.1 A history of not meeting financial obligations; E2.A6.1.2.3 Inability or unwillingness to satisfy debts;

14. E2.A6.1.3.1 The behavior was not recent;

15. E2.A6.1.3.2 It was an isolated incident;

16. E2.A6.1.3.3 The conditions that resulted n the behavior were largely beyond the person's control. . .;

17. 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;

18. E2.A6.1.3.6 The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.