

KEYWORD: Financial

DIGEST: While Applicant's past financial problems raised security concerns because of his choice to file for protection under Chapter 7 of the bankruptcy laws in 1996 and again in 2004, he has now demonstrated he has made a good-faith effort to reform his financial practices. In addition, Applicant has a stable job where he is highly regarded. He has demonstrated he has now changed for the better and is able to live within his means. Clearance is granted.

CASE NO: 05-02307.h1

DATE: 05/19/2006

DATE: May 19, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-02307

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

While Applicant's past financial problems raised security concerns because of his choice to file for protection under Chapter 7 of the bankruptcy laws in 1996 and again in 2004, he has now demonstrated he has made a good-faith effort to reform his financial practices. In addition, Applicant has a stable job where he is highly regarded. He has demonstrated he has now changed for the better and is able to live within his means. 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 October 28, 2005. 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 a notarized Answer dated November 5, 2005, where he admitted all the allegations but denied the overall conclusion. He requested a decision be made without a hearing.

After Department Counsel prepared a File of Relevant Material (FORM) on November 23, 2005. The FORM was forwarded to Applicant; he was advised he had 30 days from the date of receipt to respond to the FORM. He received the documents on January 26, 2006. He submitted a timely response. Exhibits A, B, C, D, and E were forwarded to Department Counsel who indicated he did not object to them being admitted into evidence. Subsequently, the case was assigned to me on March 28, 2006. Applicant's five exhibits (Exhibits A-E) were admitted into evidence.

### 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, 46 years old, has been employed by Defense Contractor #1 in State #1 since October 2004. He initially completed a Security Clearance Application (SF 86) in March 2002 when he worked for Employer #2 from 2002 to 2004. He served in the military from August 1977 to August 1997. He was granted a Top Secret security clearance in January 1978. (Exhibit 4; Exhibit A)

Applicant was married in 1989 and has five children born in 1990, 1991, 1993, 1995, and 1999. He attended a vocational school in 2000 and received a certificate. (Exhibit 4)

### **Finances**

In his SF 86 Applicant disclosed his debts to his creditors and his 1997 bankruptcy. (Exhibit 4) In response to Financial Interrogatories sent to him in June 2005, he provided a Personal Financial Statement where he showed net monthly income of \$4,698, monthly expenses of \$1,663, debt payments of \$2,165 (which are current), and a net remainder of \$869. He explained that his financial problems resulted from the period when he was out of work without any unemployment insurance and from his wife's gambling issues. Another contributing factor was that his wife was in an auto accident and wrecked their car which had to be replaced. Insurance did not cover the cost of the old car. He explained the returned checks on his credit report were from his wife's writing them at the casino. When alerted to a debt from a collection agency, he paid it on July 20, 2005. He now has a good financial situation as he has his own checking account pays his bills in a timely fashion. Applicant chose bankruptcy as a course of last resort. (Exhibit A)

SOR 1.a. Applicant's bankruptcy lawyer advised that he filed the pleadings on their behalf in February 2004; most of their debt was unsecured. Their assets were \$12,000 and liabilities \$30,000; the bankruptcy was discharged in June 2004. (Exhibits 3, 7)

SOR 1.b. In December 1996 Applicant filed for Chapter 7 bankruptcy and the debts were discharged in April 1997. Factors contributing to his financial problems were the higher cost of living in State #1 when he moved there after he left State #2. His wife was not working as their children were small. (Exhibits 3, 4)

To control the finances only his name is on his account, so his wife does not have access to the current checking

account. He reports this system is working well. (Exhibit 7) Applicant attests he has changed his financial habits and now makes all his payments on time. (Exhibit A)

### **References**

Applicant's supervisor reported that his performance and reliability have been very good and his work ethic is impressive. He works hard and gets along very well with his colleagues. He has displayed nothing that would cause this manager to question his ability to hold or maintain a security clearance. (Exhibit C)

Applicant's co-worker who has known him for fourteen months has found him to be ambitious, trustworthy, and loyal. He has good work habits and experience in the duties required of him. (Exhibit D)

A senior support mechanic reports he has worked with Applicant for 14 months and finds him loyal, reliable, conscientious, hard working and a valuable asset. He recommended him for a security clearance and wants him to remain at the company. (Exhibit E)

### **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**

***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.***

The responsibility for producing evidence initially falls on the Government to demonstrate that 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 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 the 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**

The Government established disqualifying conditions that could raise a security concern and may be disqualifying including Applicant's (1) history of financial problems and his (3) inability or unwillingness to satisfy all of three debts which led him twice to file for discharge under Chapter 7 of the bankruptcy laws.

Now Applicant's financial circumstances have improved. He now has mitigated<sup>(2)</sup> these financial concerns. Applicant has demonstrated that he is now financially responsible and living within his means. While Applicant did not show that he has received or is receiving counseling for the problem, he has developed a plan himself; under MC 4 there are now clear indications that the problem is being resolved or is under control. Also, under MC 6 Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Bankruptcy is a legally permissible means for him to resolve these debts especially in the light of his special circumstances when he was unemployed and his wife had a car accident which worsened their financial situation. While her gambling debts have created financial problems for the family, Applicant assures that he now has a method of controlling his finances as he has a checking account that only he accesses to pay the family bills. He has a mortgage and is now handling his finances responsibly.

Also, the record evidence as a whole must be considered to determine whether Applicant's overall conduct can be mitigated. Thus, I have evaluated his conduct and considered the whole person<sup>(3)</sup>

factors: To his credit he has three references who attest to his performance and reliability in his current position. His supervisor and co-workers find him trustworthy, reliable and conscientious. A senior support mechanic recommends him for a security clearance. Applicant took action to address his debts both in 1996 and in 2004 to find a legal way to resolve his debts. Since then Applicant has demonstrated he is implementing responsible financial practices. His Personal Financial Statement shows he is now able to live within his means. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under SOR Paragraph 1 as he mitigated the allegations in SOR subparagraphs 1.a. and 1.b..

### **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

### **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.

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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:** E2.A6.1.3. 4. . . . there are clear indications that the problem is being resolved or is under control; and E2.A6.1.3. 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

3. E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence.  
(E.2.2. Adjudication Process)