

DATE: November 30, 2006

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

CR Case No. 05-02336

**DECISION OF ADMINISTRATIVE JUDGE**

**CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Candace L. Le'i, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a special operations representative, level I, of a defense contractor. He encountered financial difficulties leading to filing a Chapter 7 bankruptcy petition in 2004. He did not provide sufficient information about his debts discharged in bankruptcy to determine if he has resolved his financial delinquencies. He failed to successfully mitigate the security concerns about financial considerations. 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. As required by Department of Defense Directive 5220.6, ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on October 12, 2005, detailing the basis for its decision - security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on June 1, 2006, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on July 21, 2006. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by August 21, 2006. Applicant filed no response. The case was assigned to me on August 29, 2006.

**FINDINGS OF FACT**

Applicant admitted the allegations contained in SOR subparagraph 1.c., and denied the allegations in subparagraphs 1.a. and 1.b. The admission is incorporated herein as a finding of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 57-year-old special operations representative, level I, of a defense contractor. <sup>(1)</sup> He is not married. <sup>(2)</sup> He served four years as an enlisted member of the U.S. Merchant Marines. <sup>(3)</sup>

Applicant's financial problems grew to a point that he filed a Chapter 7 bankruptcy petition in March 2004. He was discharged in bankruptcy on June 16, 2004.<sup>(4)</sup> The SOR identified two unpaid debts, one to the Veterans Administration (VA) in the amount of \$37,586, the other to a state revenue department for state income taxes in the amount of \$910.<sup>(5)</sup> In his answer to the SOR, Applicant denied owing the debts and claimed they were discharged in his bankruptcy petition in 2004.<sup>(6)</sup> State tax debts are normally non-dischargeable in bankruptcy.<sup>(7)</sup> Applicant did not list this debt in his bankruptcy petition,<sup>(8)</sup> and it appears on his latest credit report.<sup>(9)</sup> The record is devoid of evidence establishing the subject of the Veterans Administration debt. The bankruptcy records reflect an amount owing of \$48,110<sup>(10)</sup> to the U.S. Treasury, the normal collection agent for the Veterans Administration. The bankruptcy discharge order does not state that the obligation to the U.S. Treasury is not discharged.<sup>(11)</sup>

## POLICIES

"No one has a 'right' to a security clearance."<sup>(12)</sup> As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."<sup>(13)</sup> The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>(14)</sup> Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy."<sup>(15)</sup>

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(16)</sup>

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(17)</sup> It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

The government established its case under Guideline F. 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*) are applicable. The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on several accounts, finally resulting in his filing a Chapter 7 bankruptcy petition.

Various conditions can mitigate the security concerns arising from financial difficulties. The Directive sets out Financial Considerations Mitigating Condition (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)*). Applicant provided no evidence as to the cause or causes of his bankruptcy. This mitigating condition is not applicable.

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*) does not apply as there is no evidence of Applicant seeking financial counseling.

FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad*

*debts*) is applicable. Notwithstanding his past history, Applicant has used Chapter 7 bankruptcy to resolve his financial problems. The 2004 discharge in bankruptcy absolved him of past due obligations. If he still owes the state income tax, he will have to pay the \$910. The remaining issue is the Veterans Administration debt. We don't know whether it is a defaulted housing loan, a student loan, or a bill for medical services. The bankruptcy order of discharges is silent as to whether or not the VA debt was discharged. He was given an opportunity to provide additional documentation that would help clarify resolution of these questions. He chose not to respond. Therefore, I cannot conclude that he has resolved his indebtedness. I conclude Guideline F against Applicant.

### **Whole Person Analysis**

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." [\(18\)](#)

"Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." [\(19\)](#)

In evaluating Applicant's case, in addition to the disqualifying and mitigating conditions, I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. [\(20\)](#)

I considered his age (57), his employment, and what might cause him to be in continual financial distress. He has had a three-year history of financial delinquencies ending in Chapter 7 bankruptcy. He has used the bankruptcy protection to resolve some of his indebtedness. While this may not be the preferred method of working with one's creditors, it is an acceptable method of resolving one's financial problems. Why the debt to the U.S. Government listed on his bankruptcy petition is about \$9,000 more than the debt owed the VA is unknown. The \$910 state tax debt remaining, by itself, is an insignificant amount to deny a security clearance. However, Applicant created the problem by not providing a detailed analysis of his debts discharged in bankruptcy. The totality of the record leads me to conclude that Applicant does not have the ability to protect classified information and cannot exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is not clearly consistent with the national interest to grant or continue Applicant's security clearance.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Christopher Graham

Administrative Judge

1. Item 6 (Security Clearance Application (SF 86), dated August 21, 2005) at 1-2.

2. *Id.* at 3.

3. *Id.* at 4.

4. Item 10 (Records, U.S. Bankruptcy Court, dated June 16, 2004) at 1-28.

5. Item 1 (Statement of Reasons, dated October 12, 2005) at 1; Item 11 (State Tax Warrant, dated January 11, 2001) at 1.

6. Item 5 (Applicant's Second Answer, undated, received June 1, 2006) at 1; Item 7 (Applicant's Sworn Statement, dated February 12, 2004) at 1; and Item 8 (Answers to Interrogatories, dated July 21, 2005 at 6-8.

7. Item 10, *supra*, note 4, at 2.

8. *Id.* at 1-28.

9. Item 9 (Credit Report, dated June 13, 2006) at 1.

10. *Id.* at 23.

11. *Id.* at 1-4.

12. <sup>0</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

13. <sup>0</sup>*Id.* at 527.

14. <sup>0</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

15. <sup>0</sup>Directive ¶6.2.

16. <sup>0</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

17. <sup>0</sup>*See* Exec. Or. 10865 § 7.

18. Directive ¶ E.2.2.1.

19. *Id.*

20. *Id.*