

KEYWORD: Financial

DIGEST: Applicant is a 59-year-old employee of a defense contractor. A series of unfortunate events led to Applicant's financial problems, and ultimately to his filing and having his debts discharged in bankruptcy on three occasions. Since his debts were discharged in May 2005, Applicant has been financially responsible. Applicant has mitigated the financial considerations concern. Clearance is granted.

CASENO: 06-24805.h1

DATE: 08/30/2007

DATE: August 30, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-24805
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 59-year-old employee of a defense contractor. A series of unfortunate events led to Applicant's financial problems, and ultimately to his filing and having his debts discharged in bankruptcy on three occasions. Since his debts were discharged in May 2005, Applicant has been financially responsible. Applicant has mitigated the financial considerations concern. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 30, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on April 30, 2007, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s written case on May 31, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on June 7, 2007, and responded on July 1, 2007. Department Counsel did not object to Applicant’s response. The case was assigned to me on August 13, 2007.

FINDINGS OF FACT

Applicant is a 59-year-old employee of a defense contractor. He is married, and has an adult child from a previous marriage. Applicant served in the United States Air Force from 1967 to 1971, and received an Honorable Discharge. He is a college graduate. Applicant has held a security clearance since 1967.²

Applicant petitioned for Chapter 7 bankruptcy, and had his debts discharged on three separate occasions. His debts were discharged on February 13, 1991, July 28, 1997, and May 4, 2005.³

Applicant attributed his first bankruptcy to financial issues incident to an acrimonious divorce. Applicant separated from his then spouse in April 1990. Applicant was paying support to his wife, and had the additional expense of maintaining a separate residence. Applicant’s expenses exceeded his salary, and he began using credit to make up the difference. In August 1990, Applicant was ordered to pay \$600 per month in alimony, and \$500 to their monthly mortgage payment, until the house was sold. His wife informed him that she would take about a year to pull herself together, and work on the house to ready it for sale before listing it with a realtor. Applicant foresaw 18 months to two years before his wife would vacate the house. Applicant’s divorce was final on September 21, 1990. He married his current spouse on September 26, 1990.⁴

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

²Item 1 at 1-4, 6; Applicant’s response to FORM, Appendix 5.

³Item 1 at 6; Items 4-9; Applicant’s response to FORM.

⁴Applicant’s response to FORM; Item 1 at 2.

Applicant stated he filed bankruptcy in November 1990, as a means of forcing the sale of the home, and to free him of his own significant credit obligations, as well as the several joint accounts his former wife opened in his name without his knowledge. The house was sold in December 1990. Applicant's debts were discharged on February 13, 1991.⁵

In June 1991, as a result of down-sizing at his company, Applicant was laid off his job after ten years with the company. Applicant found a lesser paying job, with fewer benefits. Applicant's wife ran a business out of their rented home between 1992 and 1993. Applicant had a dispute with the landlord over the conditions of the house. Applicant stated his wife's health suffered as a result of the conditions, which prevented her from carrying out her business plans. Applicant negotiated a release from the remainder of his two-year lease, in return his landlord would keep their \$700 security deposit and their last month's rent. Applicant and his wife moved much of their belongings out of the house, but planned on returning in a few days to clean the house and remove the rest of their belongings. Applicant stated when they returned, the landlord had removed their belongings, much of which was lost to the trash pick-up. Included were their tax documents for 1991 to 1993.⁶

Applicant and his wife were audited by the IRS. Applicant stated the auditor refused to allow their business deductions because the documentation of their expenses was lost when they moved. A tax lien of \$11,592 was filed in August 1996. After several years of negotiation with the IRS, Applicant and his wife entered into an agreement to pay \$350 per month. Applicant and his wife filed for bankruptcy on April 21, 1997. An IRS statement dated May 7, 1997, shows a payment of \$350, and a total liability for tax years 1992 and 1993, including penalties and interest, of \$18,799. A letter dated June 13, 1997, from the United States Attorney for Applicant's jurisdiction stated that Applicant and his wife's federal taxes for 1992 and 1993, were dischargeable in bankruptcy. Applicant's debts were discharged on July 28, 1997.⁷

Applicant and his wife cared for and supported her partially disabled brother and grandmother on several occasions. Her grandmother last lived with them from October 1998, until her death in late December 1998.⁸

Applicant had surgery in February 1999. He and his wife lived on disability pay of \$451 per week for nine weeks while he recovered. Applicant had a different surgery in April 2002. He was on disability of \$461 per week for five weeks. Applicant had several medical issues in the early part of 2004, which caused him to use his accrued sick leave and vacation time. Applicant had a heart attack in June 2004, by which time he had already used up all his sick leave and vacation time. He was off work and on disability of \$461 per week for about eight weeks. He also incurred medical bills relating to his illnesses. Applicant's wife also has medical problems which have prevented her

⁵Applicant's response to FORM.

⁶Applicant's response to FORM.

⁷Applicant's response to FORM, Appendix 2; Item 1 at 6; Item 5 at 4; Item 6 at 4.

⁸Applicant's response to FORM.

from working. Applicant and his wife filed for bankruptcy on December 17, 2004. Their debts were discharged on May 4, 2005.⁹

Applicant was delinquent in his mortgage payments from August 2004 through September 2005. After being delinquent for a period, Applicant's bankruptcy attorney advised them not to make any additional mortgage payments, and to let their house go to foreclosure. Applicant decided that was an unacceptable option, and began working with the mortgage company in October 2005, to bring the mortgage current. He started putting an extra \$700 per month in escrow. In February 2006, Applicant reached an agreement with the mortgage company. Applicant paid \$3,700 to establish a hardship program. All back mortgage payments, taxes, and interest were added to the principal of the mortgage, and the \$3,700 was used to pay the mortgage company for their costs incurred by their foreclosure actions.¹⁰

Since his debts were discharged in May 2005, Applicant's finances have stabilized. After entering the agreement with the mortgage company, Applicant's mortgage payments have been made on time every month. With the amounts added to the mortgage principal, the balance owed on the mortgage was \$87,960 in March 2007. The assessed value of his property was \$114,130, so Applicant has equity in his home. A review of Applicant's credit reports from December 5, 2006, February 8, 2007, and March 14, 2007, reveals his up-to-date mortgage, and only one credit card debt, with a balance of \$136. His wife had three credit cards with a total balance of \$1,860, and minimum monthly payments totaling \$45. He and his wife own two American made compact cars, a 1994 sedan, and a 1998 wagon. The car loans on both cars are paid. Applicant had \$24,848 in his 401(k) on December 31, 2006. He had \$1,134 in the bank on February 28, 2007.¹¹

Applicant discussed an intention to obtain credit counseling when he submitted his security clearance application in December 2004, but did not submit additional evidence that he ever actually received counseling. A character letter describes Applicant as honest, reliable, and trustworthy.¹²

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹³ 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.”¹⁴ 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

⁹Applicant's response to FORM.

¹⁰Applicant's response to FORM; Item 4.

¹¹Applicant's response to FORM; Item 7.

¹²Applicant's response to FORM, Appendix 5; Item 1 at 9.

¹³*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁴*Id.* at 527.

consistent with the national interest to do so.”¹⁵ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.¹⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁷ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.¹⁸

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each 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 adjudicative process factors listed in the Directive and AG ¶ 2(a).

Conditions 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 section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline F: Financial Considerations

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s history of delinquent debts, resulting in three bankruptcies, establishes Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*).

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment*), FC MC 20(b) (*the conditions*

¹⁵Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁶ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁷*Id.*; Directive, ¶ E2.2.2.

¹⁸Exec. Or. 10865 § 7.

that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances), FC MC 20(c) (the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control), and FC MC 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

Applicant had three bankruptcies, and only resolved his mortgage problems in February 2006. Applicant's financial problems resulted from an acrimonious divorce, his layoff from a ten-year job, his tax issues from 1992 and 1993, and both his and his wife's numerous medical problems. Applicant states his tax problems resulted from the loss of paperwork to document his wife's business expenses. I do not find that constitutes a condition that was largely beyond his control. I do find the other factors were largely beyond his control. I further find that under the circumstances, the utilization of bankruptcy, a legally available option, was a responsible means of addressing those debts that arose from conditions that were largely beyond Applicant's control. I find that FC MC 20(a) is partially applicable because Applicant's behavior occurred under such circumstances that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. FC MC 20(b) is applicable to SOR ¶¶ 1.a, 1.c, and 1.d, and partially applicable to SOR ¶ 1.b.

There is no evidence that Applicant followed up on his stated intention to receive counseling. Therefore, the first part of FC MC 20(c) has not been established. Unlike the previous version, this mitigating condition under the revised AG, contains the language, "and/or there are clear indications that the problem is being resolved or is under control." Applicant has resolved his mortgage issues. He and his wife have accrued a minimal amount of new debt since the bankruptcy. They own two older, paid-off compact cars. He has money in the bank, a 401(k), and equity in his house. I find Applicant's financial problems have been resolved and are under control. The second part of FC MC 20(c) has been established.

FC MC 20(d) does not fully apply because there is insufficient information to establish that Applicant showed good faith in the resolution of his debts.¹⁹ He does however merit partial credit for using bankruptcy, which is a legal means for resolving his debts.²⁰ Bankruptcy substantially

¹⁹The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

²⁰See ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FC MC 6 for debts being resolved through garnishment).

reduced his debts, and accordingly reduced his potential vulnerability to improper financial inducements.

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 an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

A series of unfortunate events led to Applicant's financial problems, and ultimately to his filing three bankruptcies. While I do not find that his tax debt was beyond his control, the liability for that debt arose in 1992 and 1993, fifteen and fourteen years ago, and there is no evidence of recurrence of tax issues. Applicant used a legally available option to address his debts. As stated above, bankruptcy eliminated Applicant's debts, and accordingly reduced his potential vulnerability to improper financial inducements. Applicant is now in financially sound shape. He has assets and minimal liabilities.

Department Counsel argues that Applicant's three bankruptcies since 1990, evidences "either an inability to manage his finances and control his spending or is abusing the bankruptcy system to his benefit."²¹ Applicant filed for bankruptcy essentially every seven years. That evidence in a vacuum would very easily lead to Department Counsel's argument. However, this is not a case in which Applicant used bankruptcy to erase his debts, then ran up more debts knowing that he would eventually discharge them in bankruptcy. I very carefully reviewed Applicant's finances since his last bankruptcy to see if there was any hint of that behavior. There was not. In assessing Applicant, I also considered his military service, and the favorable character evidence.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on his financial issues.

FORMAL FINDINGS

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

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

²¹FORM at 5.

DECISION

In light of all of 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 Applicant. Clearance is granted.

Edward W. Loughran
Administrative Judge