

KEYWORD: Financial

DIGEST: Applicant is 47 years old and works for a federal contractor. Beginning in 1999, he accumulated debt that he resolved through a Chapter 7 bankruptcy in 2007, after attempts to manage a repayment plan through a Chapter 13 bankruptcy that was dismissed in 2003. Much of the \$23,000 debt was attributable to matters outside of his control, and he made a good faith effort to resolve it. Applicant mitigated the security concerns raised under the financial considerations guideline. Clearance is granted.

CASENO: 06-25082.h1

DATE: 08/09/2007

DATE: August 9, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-25082
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 47 years old and works for a federal contractor. Beginning in 1999, he accumulated debt that he resolved through a Chapter 7 bankruptcy in 2007, after attempts to manage a repayment plan through a Chapter 13 bankruptcy that was dismissed in 2003. Much of the \$23,000 debt was attributable to matters outside of his control, and he made a good faith effort to resolve it. Applicant mitigated the security concerns raised under the financial considerations guideline. Clearance is granted.

STATEMENT OF THE CASE

On February 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant.¹ The SOR, alleges security concerns under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. The SOR detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On March 21, 2007, Applicant submitted a notarized response to the SOR allegations, and elected to have his case decided at a hearing. On June 21, 2007, the case was transferred to me. A Notice of Hearing was issued on June 28, 2007. At the July 17, 2007 hearing, the Government introduced Government Exhibits (GX) 1 through 8 into evidence without objections. Applicant testified and introduced Applicant Exhibits (AX) A through F into evidence without objections from Department Counsel. DOHA received the transcript on July 27, 2007.

FINDINGS OF FACT

Applicant admitted all factual allegations in his SOR response under Guideline F, subparagraphs 1.a. through 1.j.² The delinquent accounts totaled approximately \$23,000. After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact:

Applicant is a 47-year-old employee of a defense contractor. After completing the 11th grade, he served in the United States Army from April 1977 until his honorable discharge in June 1980. Applicant is single and has one adult child.³ On October 25, 2005, he completed his security clearance (SF 86) application.⁴

Applicant worked as a laborer in construction from 1996 until 2002 for a medium sized company. His work required that he travel great distances between job sites. However, in 1998, Applicant became very ill with pancreatitis and could not work for six weeks. He fell behind in his bills. Again, in 2000, Applicant has an attack of pancreatitis and kidney stones. He lost several weeks of work. He paid his bills when he could, but since he had no health insurance and at times less than 40 hours a week of employment, he filed for Chapter 13 bankruptcy protection in 2001. He wanted

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²(Applicant's Answer to SOR, dated March 21, 2007).

³GX 1 (Application for Security Clearance (SF 86), dated October 25, 2005).

⁴*Id.*

to pay his creditors, and he believed this was the best way to do so. He paid \$75 a week out of his paycheck toward the debt repayment plan. He was not ignoring his creditors.⁵

In 2002, Applicant was laid off from his work. He anticipated that he would be called back to work after a short period of time. He called an attorney for advice because he could not afford the \$75 a week for the repayment plan. His attorney advised him to pay \$55 a week.⁶ This amount came from his unemployment check of \$263. He was never called back to work. Applicant returned to court and the Judge dismissed the Chapter 13 in February 2003.⁷

Applicant had no steady employment from 2002 until 2005. He worked when he could as a handyman for a friend. He had no medical insurance. He could barely pay for his daily necessities. His medical bills continued to mount. He also could not pay his car note and his car was repossessed in 2003.⁸

In October 2005, Applicant applied for his current job. He started as a temporary worker for the company with no health insurance. After completing the security application, he learned that there were some questions about his financial situation and he was not given an interim clearance, rather he received a LAN account. A security investigation revealed that Applicant had filed a Chapter 13 bankruptcy which was dismissed. He also learned from a credit report that he still had several delinquent debts that he thought were taken care of when the Chapter 13 was dismissed in 2003. During the investigative interview, Applicant told the investigator that he believed the Chapter 13 dismissal meant that he did not owe the remaining debt. He was also unaware that he could have filed a Chapter 7 bankruptcy to eliminate his debt. He did not understand the difference between the two types of bankruptcy, nor the difference between dismissal and discharge, until after he applied for a security clearance in October 2005.

In 2006, Applicant learned that he could not re file his Chapter 13 bankruptcy. His attorney advised that his option was filing a Chapter 7. Applicant went to one of the medical centers where he owed money and worked with them on a debt consolidation plan.⁹ He borrowed a small amount from his credit union to pay some of the debts. He made several payments of \$20 to the medical center.¹⁰

⁵Memorandum from Applicant, dated March 21, 2007; Tr.30-33.

⁶Tr.56.

⁷GX 3 (Chapter 13 Dismissal, dated February 10, 2003).

⁸Tr.57-58.

⁹GX 2(Interrogatories and Attachments, dated February 16, 2007).

¹⁰*Id.*

In January 2007, before receiving the SOR, Applicant filed a Chapter 7 bankruptcy. The bankruptcy was discharged in May 2007. The debts alleged in the SOR have been discharged in the Chapter 7 bankruptcy.¹¹ Applicant has no debt at this time.

Applicant still occasionally suffers from his pancreatitis and is a diabetic. When the attack occurs, Applicant has severe pain, chills and he cannot breathe. He has medication to help him digest his food, but this does not affect the pain. The problem can flare up at any time. He also has had chest pains and went to the emergency room in 2006. This resulted in more emergency room bills to the medical center.¹²

Applicant now earns \$2,300.80 net a month. He has a net monthly remainder of \$428. His position with the contractor is full time with health benefits. He is guaranteed 40 hours a week. He budgets and received counseling through his bankruptcy. He has a certificate of debtor education and completed a course on financial management. Applicant has no credit cards and has some savings. He owns his car and has no car payments.¹³

Applicant's current supervisor and facility security office wrote that Applicant is trustworthy and very dependable. He is a valuable team member who approaches each task without frustration or hesitation. He is willing to work on anything and is very helpful.¹⁴ He has a calm demeanor and is very flexible. In addition, he is very reliable and requires little supervision. Applicant performed his job without any attendance or performance issues.¹⁵ They both recommend Applicant as a solid employee. His latest performance reviews are fully satisfactory.¹⁶ A former supervisor who has known Applicant for 30 years regards him as respectable, dignified and trustworthy.¹⁷ Applicant is an ex-military man who is a hard worker and is proud of his country.

POLICIES

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."¹⁸ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and

¹¹GX 4 (Chapter 7 Filing January 16, 2007); GX 9 (Chapter 7 Bankruptcy Petition Discharge, dated May 10, 2007).

¹²Tr.65.

¹³Applicant's Financial Statement, dated February 2007.

¹⁴AX B (Recommendation Letter from Supervisor).

¹⁵AX F (Recommendation Letter from Manager).

¹⁶AX E and F (Performance Review for 2006 and 2007).

¹⁷AX D and E (Letters of Recommendation)

¹⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security 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 ¶ 6.3 of the Directive, and AG ¶ 2(a).

“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.”¹⁹ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.²⁰ An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.²¹

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.²² Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.²³ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁴ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²⁵

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determinations as to Applicant’s allegiance, loyalty, or patriotism.

CONCLUSIONS

¹⁹ Directive, ¶ E2.2.1.

²⁰ Directive, Revised Adjudicative Guidelines (AG) 2 (a)(1)-(9).

²¹ *Id.*

²² Directive, ¶ E3.1.14.

²³ Directive, ¶ E3.1.15.

²⁴ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁵ Directive, ¶ E2.2.2.

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.²⁶

Based on the evidence, including Applicant's admissions and credit reports, 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*), apply in this case. Applicant had delinquent accounts in the amount of approximately \$23,000. His inability to meet his financial obligations dates back to 2001 when he filed his Chapter 13 Bankruptcy Petition in 2001 and Chapter 7 Bankruptcy in January 2007.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered all the Financial Considerations Mitigating Conditions and found some of them to apply. (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 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) and the individual acted responsibly under the circumstances*), FC MC 20 (c) (*the person has received or is receiving counseling for the problem and/ or there are clear indications that the problem is being resolved or under control*), FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and FC MC 20(e) (*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*).

Applicant's financial problems are attributable to his illness in 1998 and subsequent loss of employment in 2000. He continued to work in low paying jobs with no health insurance. His medical bills were significant. Thus, 20 (b) applies. He tried to resolve his debt in 2001 by filing for Chapter 13 bankruptcy. He was paying \$75 a week under that plan. That was a sizeable amount given his paycheck. However, he could not continue this amount when he became unemployed in 2002. He then lowered the amount to \$55 from his unemployment check. He was forced to abandon this plan in 2003. When the court dismissed the Chapter 13 bankruptcy, Applicant believed that the debts were discharged.

Applicant learned that his debt was not discharged after he applied for a security clearance. He received advice from his attorney to file for Chapter 7 bankruptcy. Bankruptcy is a legal and legitimate means to resolve debt. Since Applicant did not have a permanent position, he opted to file for Chapter

²⁶AG ¶ 18.

7 in January 2007. Until that time, he paid small amounts to the medical center toward his bills. His actions constitute a good-faith effort to repay or resolve debts, as required under 20(d).

As a requirement for the Chapter 7 bankruptcy, Applicant completed a financial management class and financial counseling. He learned how to budget. He has no credit cards and now has steady employment. With the permanent status, he will have health insurance. Thus 20(c) applies in this case.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's security clearance determination. Applicant is a 47-year-old hard-working man, who performs well on his job, such that his immediate supervisor believes he is a candidate for a security clearance.

He is a mature individual with an extensive personnel support system. The financial problems at issue arose largely from circumstances beyond his control, rather than his own negligence or misconduct. Significantly, he took action to resolve these debts before the initiation of this action. Under Applicant's current circumstances, the likelihood of a continuation or recurrence of his previous financial problems is remote.

Applicant was completely cooperative and responsive through out this process. It is clear from Applicant's demeanor and actions that he takes this matter seriously and strongly desires to put this behind him. Applicant has demonstrated his determination to achieve financial stability. He has gained control of his finances.

Applicant presented substantial extenuating and mitigating evidence. His forthright and candid statements at this hearing and his evident sincerity about avoiding future financial problems all weigh in his favor. His effort to pay his delinquent debt (mainly medical) through the Chapter 13 plan rather than ignoring creditors or filing Chapter 7, speak to his reliability and good judgment. Although he experienced numerous medical and employment problems, he accepts responsibility for his situation and has worked to resolve it. He has demonstrated a mature and responsible approach to his finances and is living within his means, has learned to manage his money, does not use credit cards, and has incurred no new debt. Applicant has mitigated the security concerns.

In sum, the likelihood of recurrence of similar financial difficulties is low because sufficient evidence was presented about the resolution of the debts and current fiscal responsibility. It must be emphasized that Applicant's financial difficulties were in large measure a product of his illness, unemployment and low paying jobs. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the

security concerns pertaining to financial considerations. The evidence leaves me with no doubts as to Applicant's security eligibility and suitability.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"²⁷ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guideline. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph 1.a - 1.j:	For Applicant

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 eligibility for a security clearance for Applicant. Clearance is granted.

Noreen A. Lynch
Administrative Judge

²⁷See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).