# In the United States Bankruptcy Court

## for the Northern District of Iowa

TERRI A. McINROY
*Debtor(s).*

Bankruptcy No. 92-11929LC
Chapter 7

### ORDER RE: MOTION TO DISMISS

The matter before the court is the U. S. Trustee's motion to dismiss the case for "substantial abuse" under 11 U.S.C. § 707(b). Hearing was held in Cedar Rapids, Iowa on April 7, 1993.

Terri A. McInroy filed her chapter 7 petition on October 22, 1992. Her secured debts consist of a car loan and a credit union loan. Exhibit 1, p. 3. She intends to reaffirm the car loan. Exhibit 2, p. 2. The credit union closed McInroy's account, and she is no longer making payments on that debt. McInroy's unsecured debts are primarily credit card purchases made over a number of years. The total unsecured debt is $8,946.15. Exhibit 2, pp. 9-10.

McInroy's schedules show a current net income of $1,931.31 per month and monthly expenses of $1,657.18. Exhibit 1, pp. 45. McInroy testified that $194.00 listed on her schedule of monthly expenses for "other" would not be paid since that was for the credit union account that is now closed. She also testified that she has a higher utility bill. Therefore, her current monthly expenses are approximately $1,483.18. This leaves a current monthly surplus of $448.13.

McInroy works at Rockwell International in Cedar Rapids as a quality assurance worker in the General Aviation Division. She has been employed there for approximately 18 years. At a meeting on February 23, 1993, McInroy's employer gave her six months' notice to find a new job. She was told there was an irreconcilable personality conflict between her and other employees. She believes the conflict began with an incident in October, 1992. McInroy has made efforts to find new employment but thus far has been unsuccessful.

The court may dismiss a case filed by an individual debtor under chapter 7 whose debts are primarily consumer debts if the court finds that the granting of relief would be a "substantial abuse" of the provisions of chapter 7. 11 U.S.C. § 707(b). "There shall be a presumption in favor of granting the relief requested by the debtor." Id.

The Eighth Circuit established the standard for dismissal for substantial abuse in In re Walton, 866 F.2d 981 (8th Cir. 1989) and further refined the standard in U. S. Trustee v.Harris, 960 F.2d 74 (8th Cir. 1992). See also Fonder v. United States, 974 F.2d 996 (8th Cir. 1992).

> The debtor's ability to pay his debts when due as determined by his ability to fund a chapter 13 plan is the primary factor to be considered in determining whether granting relief would be substantial abuse. . . . This is not to say that inability to pay will shield a debtor from section 707(b) dismissal where bad faith is otherwise shown. But a finding

> that a debtor is able to pay his debts, standing alone, supports a conclusion of substantial abuse.

Walton, 866 F.2d at 984-85; Harris, 960 F.2d at 76. The Walton standard is not a "totality of the circumstances" test. Id. at 76-77. Unless there is evidence of the debtor's bad faith, the court's primary inquiry is whether the debtor has the ability to fund a chapter 13 plan out of future income.

There is no question of the debtor's good faith. The only issue is whether McInroy has the ability to fund a chapter 13 plan out of her future income.

The only evidence of McInroy's ability to fund a chapter 13 plan is her current surplus. The underlying assumption in decisions finding an ability to fund a chapter 13 plan is that the debtor's income will likely continue at the same rate for 36 to 60 months. The preponderance of the evidence shows that McInroy will not have her present job for more than a few more months. Her job prospects are uncertain. There is no evidence that McInroy is voluntarily reducing her income. Cf. Matter of Dubberke, 119 B.R. 677 (Bankr. S.D. Iowa, 1990) (among other indicators of bad faith, debtor voluntarily left part-time employment; motive for doing so was implausible); Matter of Woodhall, 104 B.R. 544 (Bankr. M.D. Ga. 1989) (debtor emergency room physician wanted to change specialties which would reduce annual income from $115,000.00 to $30,000.00).

The trustee has shown no evidence that McInroy has filed her chapter 7 petition in bad faith or that she has the ability to fund a chapter 13 plan. The trustee has failed to meet his burden of proof that McInroy's case should be dismissed for substantial abuse.

**ORDER**

IT IS ORDERED that the U. S. Trustee's motion to dismiss is denied.

SO ORDERED ON THIS 20th DAY OF APRIL, 1993.

William L. Edmonds
Chief Bankruptcy Judge