

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:	)	
	)	
DEREK PULLAM,	)	Case No. 16-02377
	)	
Debtor.	)	Chapter 13

ORDER DECLARING DEBTOR INELIGIBLE FOR DISCHARGE

Individual bankruptcy debtors sometimes convert their cases from one chapter to another--most commonly from Chapter 13 to Chapter 7. The question here is, when a Chapter 13 case converts to Chapter 7, should the time period for determining the debtor's eligibility for discharge in a later Chapter 13 case be the one applicable to Chapter 13 or Chapter 7? For the reasons stated below, the Court finds that the chapter in which the first discharge was received--not the chapter under which the first case was filed--determines the applicable ineligibility period.

Debtor Derek Pullam filed a Chapter 13 petition in Case No. 13-00584 on February 22, 2013, and converted the case to a Chapter 7 proceeding on March 5, 2014. He received a Chapter 7 discharge on June 16, 2014. The debtor filed his current Chapter 13 case on July 16, 2016, about three years and five months after his previous filing.

Under 11 U.S.C. §1328(f), the court shall not grant a discharge in a Chapter 13 to a debtor who has received a discharge (1) "in a case filed under chapter 7, 11 or 12 during the 4-year period preceding the date of the order for relief under this chapter" or (2) "in a case filed under chapter 13 during the 2-year period preceding the date of such order." In other words, the discharge ineligibility period is four years if the first case was a Chapter 7 but only two if the first case was a Chapter 13. The debtor contends he is entitled to a discharge under §1328(f)(2)

because his previous case was “filed” under Chapter 13 (although later converted to a 7) more than two years before he filed the second case. The debtor advocates the “plain meaning” approach to §1328(f) followed in In re Hamilton, 383 B.R. 469, 472 (Bankr. W.D. Ark. 2008) and In re Wilkinson, 507 B.R. 742, 752 (Bank. D Kan. 2014).

However, the debtor’s approach ignores Bankruptcy Code §348, which governs the effect of conversion on a bankruptcy case. Section 348(a) provides: “Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the title to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.” 11 U.S.C. §348(a). Thus, once a case is converted, it becomes a case under the new chapter but keeps the original filing date. See In re Capers, 347 B.R. 169 (Bankr. D. S.C. 2006); In re Sours, 350 B.R. 261 (Bankr. E.D. Va. 2006); In re Grydzuk, 353 B.R. 564 (Bankr. N.D. Ind. 2006). “Section 1328(f) cannot be read in a vacuum; it must be read in conjunction with §348(a), which ‘mandates that a case which has been converted [from Chapter 13 to Chapter 7] . . . is deemed to be “filed under” Chapter 7 on the date on which the Chapter 13 was filed.’” In re Knighton, 335 B.R. 922, 924-25 (Bankr. M.D. Ga. 2006) quoting Sours, 350 B.R. at 267-68. This interpretation is also consistent with the legislative intent behind §1328(f):

It is clear that in legislating the disability periods in §1328(f) Congress sought to advantage a chapter 13 over the other chapters of the Code by singling it out for the shorter two year disability period. In a situation such as the one here where the prior case started as a chapter 13 but was converted, interpreting §1328(f) through the prism of §348(a) is the only way to maintain a principled consistency with this legislative purpose. . . . When a case starts as a chapter 13 (even with the best intentions) but is unsuccessful and converts to chapter 7, the debtor must endure a 4-year discharge disability.

In re Johnson, 488 B.R. 46, 49-50 (Bankr. D. Mass. 2014). The majority of courts considering the issue has adopted this interpretation of §1328(f)(1) with its application of §348(a). See In re Finney, 486 B.R. 177, 181 (9<sup>th</sup> Cir. BAP 2013) (listing cases).

Here, the debtor filed his Chapter 13 case in February 2013. When he converted his case to Chapter 7 in 2014, it became a Chapter 7 case with an effective filing date of February 2013 pursuant to Code §348(a). Therefore, §1328(f)(1) applies in the debtor's current Chapter 13 case, and he is subject to a four year period of ineligibility for a Chapter 13 discharge. Since this case was filed before the four year period expired, the debtor is not eligible for a discharge.

Dated: September 6, 2016

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE

# United States Bankruptcy Court

Southern District of Alabama

**Case No. 16-02377**  
**Chapter 13**

In re:

Derek Pullam  
aka Derek L. Pullum  
81 Brownwood Ave.  
Bay Minette, AL 36507

Social Security No.:  
xxx-xx-3100

## **ORDER DETERMINING DISCHARGE ELIGIBILITY OF CHAPTER 13 DEBTOR**

The Court conducted a hearing to determine whether the debtor is eligible for a discharge in this case pursuant to Bankruptcy Code § 1328(f). Based upon the evidence presented, the Court finds that the debtor is not eligible for a discharge in this case.

Dated: 9/6/16

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE