

KEYWORD: Financial

DIGEST: Applicant has approximately \$30,000.00 in unsecured debt that has been past-due for many years. He has taken little action to address this debt. Clearance is denied.

CASENO: 06-09462.h1

DATE: 01/03/2007

DATE: January 3, 2007

In Re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-09462
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Goldstein, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_Applicant has approximately \$30,000.00 in unsecured debt that has been past-due for many years. He has taken little action to address this debt. Clearance is denied.

## STATEMENT OF THE CASE

On July 24, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on August 23, 2006. The case was assigned to the undersigned on October 6, 2006. A Notice of Hearing was issued on October 16, 2006, and the hearing was held on November 7, 2006. The transcript was received on November 28, 2006.

## FINDINGS OF FACT

Applicant is 37 years of age. He has been employed by the same defense contractor since August 2004.

**SOR Allegation 1a:** In December 2003, a State tax lien in the amount of \$1,575.00 was filed against applicant. This tax debt arose from tax year 2001. Applicant testified that he incurred this debt because he misfiled his return as “Head of Household” instead of “Married with One Child.” He further testified that although he probably first learned of the debt in the summer of 2004, he did not contact the creditor until the summer of 2005. He further testified that after a series of conversations with the creditor, he was advised that he could still file an amended tax return. He intends to file the amended tax return, and according to his calculations, when he does, the debt will disappear and he will be due a refund (Exhibit B; TR at 64-67).

**SOR Allegation 1b:** In his response to the SOR, applicant admitted that he had been indebted to this creditor in the amount of \$76.00, and stated that the debt “has been paid in full” and that it was “an oversight.” At the hearing he testified that he did not know what the debt was for, but if he said in his response to the SOR that he paid it, then he paid it. He offered no documentation to corroborate his testimony that the debt was paid.

**SOR Allegation 1c:** Applicant has been indebted to this creditor in the approximate amount of \$348.00 since 2001. In his response to the SOR, he stated, “I intend to pay this account in full within the next 90 days.” At the hearing, he testified that the debt has not been paid, and that he has not had any recent communications with the creditor (TR at 75).

**SOR Allegation 1d:** Applicant denies this \$585.00 debt. Although the current creditor is listed as Certified Recovery Systems, a collection agency, the debt originated with Ameriloan,<sup>1</sup> which according to applicant is a check cashing company that he never did business with. Applicant’s testimony was credible and worthy of belief.

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<sup>1</sup>Exhibit 2, page 9.

**SOR Allegation 1e:** In 2001, applicant had an automobile repossessed. As a result, he became indebted to the creditor in the amount of approximately \$7,022.00. In August 2006, he wrote a letter to the current creditor requesting an opportunity to discuss his “options regarding the debt”

(Exhibit E). At the hearing, he testified that he intends to get to the bottom of the debt and take care of it (TR at 83).

**SOR Allegations 1f, 1g, 1i, 1p, 1q and 1r:** In his response to the SOR, applicant admitted he is indebted to these creditors in the total amount of approximately \$21,610.00, and stated these debts arose from an eye surgery he had in 2003 because of complications from diabetes. He further stated that because the insurance company initially approved the surgery and then denied reimbursement after the fact, he does not feel responsible for these debts, all of which have been placed for collection. Less than a week before the hearing, applicant wrote a letter to a couple of the creditors asking for information about the debts (Exhibits F and G). These debts have been delinquent for at least a couple of years.

**SOR Allegation 1h:** This debt appears to be a duplicate of the debt alleged in SOR Paragraph 1d.

**SOR Allegation 1j:** Applicant does not believe he should have to pay this \$158.00 debt because he did not get the service he contracted for with DirecTV.

**SOR Allegations 1k, 1l and 1m:** These three debts were medical-related co-payments applicant never made. He satisfied the three debts, totaling \$207.21, in August 2006 (Exhibit A; TR at 97-98).

**SOR Allegation 1n:** Applicant is indebted to this creditor for a judgment debt in the approximate amount of \$2,449.00. Applicant admits he is indebted as alleged, but states the creditor is a con artist and liar who took advantage of him. In June 2006, he stated he did not intend to pay the debt. However, now that he realizes it could affect his security clearance request, he may pay it. Less than a week before the hearing he wrote a letter to the creditor asking for information about the debt (Exhibit H).

**SOR Allegation 1o:** Applicant testified that this debt is either the same debt as alleged in SOR Paragraph 1d, or a similar debt in that it is from a check cashing company that he has never done business with (TR at 103-104).

Applicant testified that his financial problems started in 2001. He had been a senior executive at a large company that began experiencing financial problems. These problems were compounded by the fact the chief executive officer started stealing from the company. Applicant eventually lost his health insurance and then his paychecks started bouncing. He lost his job in July or August 2001, and remained unemployed until July 2002 (TR at 58-61; Exhibit 1). He has been trying to make ends meet since then. At the present time, his monthly income is roughly equivalent to his monthly expenses. Some months he has a positive cash flow, other months he does not (TR at 115-116).

Applicant testified, and stated in Exhibit P, that he comes from a wealthy family and that, although he does not have the money to pay all of his delinquent debts at once, if it came down to

losing his job, he would “get the money” (TR at 96, 121-122).

Three military officers who work with applicant, including the Deputy Commander at applicant’s place of employment, appeared at the hearing. These witnesses testified that applicant is reliable and trustworthy. One of these witnesses described the questioning of applicant’s security-worthiness as “ridiculous,” and another described it as “silly” (TR at 41 and 47).

Numerous letters offering support for applicant were admitted into evidence.

### CONCLUSIONS

The evidence establishes that (1) applicant has been experiencing significant financial difficulties since 2001, (2) he is still indebted to numerous creditors for past-due debts in the approximate total amount of \$30,000.00 (after giving him the benefit of the doubt on debts alleged in SOR Paragraphs 1a, 1b, 1d, 1h, 1j, and 1o), and (3) except for satisfying three small debts to the same creditor totaling \$207.21 in August 2006, and writing letters to some of his creditors after the issuance of the SOR, he has done little or nothing to address this approximately \$30,000.00 in past-due indebtedness. Applicant’s failure to honor his financial obligations reflects adversely on his judgment and reliability, and suggests he cannot be relied upon to safeguard classified information. With respect to the Financial Considerations guideline, Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) are applicable.

Applicant offered credible evidence that his financial problems were caused by the loss of his employment, which was largely beyond his control. He therefore qualifies for Mitigating Condition 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*). Based on his long-standing failure to address the bulk of his indebtedness in any meaningful way, he clearly does not qualify for Mitigating Condition E2.A6.1.3.6 (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

At the present time, applicant is getting by financially, but not by much. He testified that some months he has a positive cash flow, and other months he does not. In this regard, he is no different than many people holding security clearances. What makes applicant’s situation different is that he also has approximately \$30,000.00 in unsecured debt that has been past-due for years. He testified that he could get the money to satisfy this debt from wealthy family members if necessary to save his job. If true, the time to do that was before the hearing. A decision in this case cannot be based on speculation that applicant may be bailed out by family members in the future.

Given the amount of unsecured past-due debt applicant has been carrying for years, the lack of any real effort to address it, and the lack of any credible, definitive plan to reduce this debt anytime soon, it is not now clearly consistent with the national interest for applicant to have access to classified information.

**FORMAL FINDINGS**

PARAGRAPH 1: AGAINST THE APPLICANT

**DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan  
Administrative Judge