

KEYWORD: Financial

DIGEST: Applicant's failure to explain the reasons for his 7+ years of financial mismanagement precludes a finding that it is clearly consistent with the national interest to grant him access to classified information. Clearance denied.

CASENO: 01-11012.h1

DATE: 04/15/2002

DATE: April 15, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-11012

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On December 26, 2001, 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 January 8, 2002. The case was assigned to the undersigned on February 25, 2002. A Notice of Hearing was issued on March 11, 2002, and the hearing was held on March 26, 2002. The transcript was received on April 8, 2002.

RULINGS ON PROCEDURE

At the hearing, Department Counsel moved to amend SOR Allegation 1a by changing the amount of unsecured debt discharged by the Bankruptcy Court from \$6,525.00 to \$63,337.04. With no objection by applicant, the motion was granted and the SOR was amended.

FINDINGS OF FACT

Applicant is a sixty-two year old mechanic.

In 1993, applicant suffered a heart attack which left him unable to work for three months. His inability to work, together with his large medical bills, [\(1\)](#) left him in such poor financial shape that he felt the need to sell his house. After renting for an unknown period of time, applicant purchased a mobile home. The home had some water problems, which resulted in a mold problem. Applicant was advised by his doctor to leave the home. Applicant tried but was unable to get the seller or the bank that financed his purchase to fix the mobile home. When he was threatened with a lawsuit by the bank, he filed a Chapter 7 bankruptcy petition. On March 3, 1997, applicant converted the Chapter 7 proceeding to a Chapter 13 proceeding and began making payments to the bankruptcy trustee (Exhibit 4). According to applicant, he filed the

Chapter 7 bankruptcy petition and converted it to a Chapter 13 on the bad advice he received from an attorney (TR at 24).

Applicant moved to a different State where he had been offered a "dream job," but the job "didn't pan out," and he eventually fell behind on his payments to the bankruptcy trustee (TR at 24-25). In December 1997, the court dismissed his Chapter 13 bankruptcy petition (Exhibit 4). Applicant hired a different attorney who advised him to file another Chapter 13 bankruptcy petition. Applicant followed the advice and filed a second Chapter 13 petition in January 1998. Applicant again failed to make the payments to the bankruptcy trustee, and the second Chapter 13 proceedings were dismissed in May 1999 (Exhibit 3).⁽²⁾

On the advice of the same attorney, applicant filed a third Chapter 13 bankruptcy petition in June 1999. Although the payment plan set up was significantly lower than his previous payment plan, applicant was not happy with it, and when he couldn't locate the attorney who had filed the June 1999 bankruptcy petition, he went to a different attorney (TR at 32-34). The new attorney advised applicant to stop making payments to the trustee, and after the case was dismissed for failure to make the required payments, the lawyer would file a Chapter 7 petition and finally get rid of applicant's debts. Applicant followed the advice, and in September 2001, following the dismissal of his third Chapter 13 bankruptcy petition, he filed a Chapter 7 bankruptcy petition. In December 2001, all but one of his debts, totaling over \$63,000.00, were discharged (Exhibits A and B). The only remaining debt was a \$4,000.00 student loan debt that has been delinquent since the 1980s. With interest, the debt now stands at about \$6,700.00, and applicant testified that he just received notice that he must now begin to pay \$84.00 or \$85.00 a month toward the debt (TR at 39). Applicant testified that since he filed the Chapter 7, he has had no problems meeting his financial obligations (TR at 41).

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by

the Administrative Judge. Based on the foregoing Findings of Fact, the following conditions are applicable:

Financial Considerations

Disqualifying Conditions:

1. E2.A6.1.2.1: A history of not meeting financial obligations.

2. E2.A6.1.2.3: Inability or unwillingness to satisfy debts.

Mitigating Conditions:

1. E2.A6.1.3.3: The conditions that resulted in the behavior were largely beyond the person's control.

CONCLUSIONS

The evidence establishes that from the time he suffered a heart attack in 1993 until he filed a Chapter 7 bankruptcy petition in September 2001, applicant experienced serious financial difficulties. Although I cannot determine from the record the exact nature of all of the debt he accumulated during this period, (3) it is clear from the amount of debt discharged in December 2001 that his overall indebtedness (over \$60,000.00) was substantial. This of course raises concerns about applicant's judgment, reliability, and trustworthiness, and thus his suitability for access to classified information.

The fact that applicant's financial difficulties began after he suffered a heart attack, a factor clearly beyond his control, is a mitigating factor. However, applicant's financial difficulties continued for over seven years after he returned to work following the heart attack. His excuse for not effectively dealing with his past-due indebtedness during this time - his first two lawyers gave him bad advice - does not credibly explain **his** failure to properly manage **his** financial affairs during this time. Without a reasonable explanation for his seven plus years of financial mismanagement, I am unable to determine if the bankruptcy discharge he received a mere three months ago is likely to permanently solve his financial difficulties. In short, without a clearer picture of what transpired from 1993 to September 2001, an insufficient period of time has elapsed since the bankruptcy discharge to confidently conclude that his financial difficulties will not recur. Under the "clearly consistent with the national interest" standard that must be followed in DOHA proceedings, this

uncertainty precludes a finding that applicant is currently eligible for 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

1. His medical insurance covered only \$25,000.00 of the \$100,000.00 in medical bills.
2. According to applicant, this attorney "didn't give (him) any good advice either" (TR at 26, 34).
3. What can be gleaned from the record is that prior to his December 2001 discharge, applicant had at least two judgments entered against him, and was behind on his debt payments to at least two banks, a department store, a telephone company, and more than one check cashing company (Exhibits 3 and 5).