

DATE: December 5, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-14359

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Henry Lazzaro, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In view of applicant's credible testimony that he will satisfy the two debts in question, his clear ability to do so, and his otherwise responsible handling of his personal and professional financial responsibilities, he has overcome the Government's case under Guideline F. Clearance is granted.

STATEMENT OF THE CASE

On August 8, 2002, 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, (as administratively reissued on April 20, 1999), 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 September 5, 2002. The case was assigned to the undersigned on October 24, 2002, and a Notice of Hearing was issued on October 31, 2002. The hearing was held on November 20, 2002. The transcript was received on November 27, 2002.

FINDINGS OF FACT

Applicant is forty-five years of age. He has been employed as a captain of a merchant ship for fifteen years. As the captain, he is responsible for his eighteen man crew, millions of dollars of cargo, and tens of thousands of dollars in cash.

Applicant and his first wife divorced in 1996. Prior to the divorce, and while applicant was on duty at sea, his wife ran up debts on two credit cards⁽¹⁾ that were in his name, and emptied his savings account of at least \$28,000.00 (Exhibit

2). The two credit card debts, a Citibank debt in the total amount of approximately \$4,338.00, and an MBNA America Bank debt in the total amount of approximately \$5,900.00, remain unpaid.

Applicant recognizes that he is legally liable for these debts, but has not taken any action to satisfy them. He has held out the hope that his former wife would satisfy, or help satisfy, the debts because she is the one who incurred them. After finally acknowledging that there is little likelihood his former wife will come through, he testified that he will wait until the end of the year, and if his wife is not forthcoming by then, he will make arrangements to satisfy the two debts (TR at 31). He clearly has the income and assets to satisfy the two debts if he chooses to do so (Exhibits C and D; TR at 21-22).

Except for the two debts in question, applicant has a long history of satisfying his debts in a timely manner (Exhibit F).

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Financial Considerations

Disqualifying Factors

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 Factors

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 prior to divorcing his first wife, the wife ran up a total of approximately ten thousand dollars worth of charges on two credit cards held in applicant's name. Although the wife incurred the charges, applicant is legally liable for the debts, a fact that applicant has always acknowledged. Despite recognizing his liability for the debts, applicant has not taken any action to satisfy them since they were incurred. Instead, he has, over the years, tried to persuade his former wife to satisfy, or at least help him satisfy, the debts in question.

At the hearing applicant finally articulated what has become fairly obvious: it is unlikely his former wife is going to help him satisfy the debts. He then testified, credibly, that he will wait until the end of the year and if the wife is not forthcoming by then, he will contact the creditors and satisfy the debts.

Although applicant's failure to address these two debts since at least 1996 is not condoned, it is to a certain extent understandable given the way they were incurred. In any event, applicant has reaffirmed the fact that he is legally liable for the debts, and testified that he will satisfy them. These facts, together with the fact that applicant has a long track record of handling his other personal and professional financial responsibilities in a responsible manner, lead me to conclude that he can now be relied upon to safeguard classified information. For this reason, Guideline F is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to

grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge

1. In SOR Paragraph 1c, the Government alleges that applicant has a third credit card debt in the amount of \$3,205.00. Applicant has consistently denied this allegation. The Government's only evidence on this point - a two and one-half year old credit report (Exhibit 3; TR at 18) - is insufficient to establish that applicant is indebted as alleged.