

DATE: November 7, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21939

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is currently under severe financial duress, and he is likely to remain so for the foreseeable future. Clearance is denied.

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 4, 2002. The case was assigned to the undersigned on October 16, 2002, and a Notice of Hearing was issued on the same date. The hearing was held on October 23, 2002. The transcript was received on October 31, 2002.

RULINGS ON PROCEDURE

At the hearing, SOR Paragraph 1.m. was amended. As amended, it is as follows:

1.m. You had a judgment against you from the State of California on March 30, 1999, in the amount of approximately \$6,457.09 for overpayment of unemployment benefits. As of December 21, 2000, this debt had not been satisfied.

FINDINGS OF FACT

Applicant is forty-nine years of age. He recently lost his defense-related job, allegedly as a result of the issuance of the

SOR.

SOR Allegation 1.a. Applicant was employed as a customer engineer by a firm. He used an American Express (AE) corporate credit card issued to him through his employer for business-related expenses. When the company continued to refuse to pay off the card, applicant gave the card back to the company and quit his job. He called AE and told them that they should pursue his employer for the debt. Although applicant has not heard from AE since he made the call, AE reported to at least one credit reporting agency that he owes them \$4,670.00 (Exhibit 4).

SOR Allegation 1.b. Exhibit 4 establishes that applicant was indebted to this city as a result of receiving a traffic ticket. He satisfied this \$311.00 debt.

SOR Allegation 1.c. Exhibit 4 establishes that applicant was indebted to this creditor in the amount of \$116.00. He presented proof, however, that the creditor is no longer claiming applicant is indebted to them (Exhibit A).

SOR Allegation 1.d. Exhibit 4 establishes that applicant owed this creditor \$114.00, part of which was 90 days past due. This creditor is no longer in business, and the company that purchased the original creditor has no record of applicant (Exhibit C).

SOR Allegation 1.e. This debt is somehow related to the debts alleged in SOR Paragraphs 1j and 1k as they are all connected with either a Toyota dealership or a Toyota financing company. The exact status of all of these alleged debts cannot be determined; however, it is clear that (1) applicant had purchased a car from Toyota that was repossessed and eventually "redeemed" by applicant after he made a \$2,500.00 payment to Toyota (TR at 52-63), and (2) according to a letter from "Toyota Financial Services," applicant paid his account in full in September 2001 (Exhibit A).

SOR Allegation 1.f. Applicant is indebted to this creditor in the amount of \$712.00. [\(1\)](#)

SOR Allegation 1.g. Applicant had a secured credit card with this company, and he eventually stopped making payments after accruing a debt of \$233.27. Applicant settled this debt with the creditor for \$93.31 in September/October 2002 (Exhibit B).

SOR Allegation 1.h. Applicant was indebted to this hospital in the amount of \$339.00. Applicant presented proof that he paid the hospital \$200.00 in August 2002 (Exhibit A), and he testified that this partial payment satisfied the debt in full (TR at 69).

SOR Allegation 1.i. Applicant is indebted to this creditor in the amount of \$251.00 (TR at 69-70).

SOR Allegations 1.j. and 1.k. These are part of the group of Toyota debts referred to above in connection with SOR Allegation 1e.

SOR Allegation 1.l. As of June 2001, applicant was indebted to the IRS for tax years 1995 and 1996 in the total amount of \$7,543.79 (Exhibit 6). It is reasonable to assume that with additional interest and penalties, the debt has grown since then. Applicant is also indebted to the IRS for tax year 2001 in the amount of \$4,537.53 (Exhibit A). He is also indebted to the IRS for tax years 1997, 1999, and 2000, although the amount of this additional indebtedness cannot be determined from the record. Exhibit A establishes that applicant reached an agreement with the IRS which requires him to make monthly payments of \$295.00 until his entire tax debt is paid in full. His first payment is due in November 2002. While he is making these payments, interest and penalties will continue to accrue. It is obvious from applicant's testimony that he is not really sure what he owes the IRS, or when he first reached the agreement with them (TR at 76-79).

SOR Allegation 1.m. Applicant owes California at least \$6,457.09 as a result of a judgment entered against him in 1999. The judgment was based on applicant receiving unemployment benefits he was not entitled to receive (Exhibit 2). Applicant has not paid the judgment (TR at 85).

SOR Allegation 1.n. A \$4,040.00 state tax lien was filed against applicant in February 1998 (Exhibit 1). This tax debt has not been paid.

SOR Allegation 1.o. A Personal Financial Statement that applicant completed in May 2001 indicates that he had a monthly cash flow of \$3,173.00 (Exhibit 5). This information is clearly outdated. At the present time, it is unlikely that applicant has a positive monthly cash flow.

In Exhibit 5, applicant stated the following about the origin of his financial difficulties: "In 1990, after my divorce, my finances began to suffer from job losses, child support, failed business and some financial mismanagement." In his response to the SOR, he stated the following about the difficulties he has faced trying to satisfy his debts: "The reason that it is taking me so long (to pay his creditors) is due to several divorces, loss of job, loss of residence, complete loss of earnings and transportation."

During his testimony applicant mentioned that he is utilizing the services of a consumer credit counseling service to help him deal with his various debts (TR at 42-43, 63-64). However, he offered no credible evidence that they have provided him with any meaningful assistance.

Applicant completed and executed a Security Clearance Application (SCA) on December 13, 2000. In response to Question 38 of the SCA which asked, "In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?" applicant stated "no." In response to Question 39 of the SCA which asked, "Are you currently over 90 days delinquent on any debt(s)?" applicant stated "no." These responses were obviously false. However, given applicant's disclosure of the vehicle repossession and tax lien in response to two other questions on the SCA, I find that applicant was not trying to mislead the Government about his financial condition when he responded "no" to questions 38 and 39. By disclosing the repossession and tax lien on the same SCA, he had to know his financial history would be investigated. Accordingly, Guideline E is found for applicant.

No evidence was offered in support of SOR Allegation 3a. Guideline J is therefore found for applicant.

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

None.

CONCLUSIONS

Even if the questionable debts⁽²⁾ are not held against applicant, the evidence establishes that (1) applicant is indebted to at least four different creditors in the total amount of at least \$23,500.00, (2) most of these debts have been past-due for years, and (3) interest and penalties continue to accrue on the tax debts, which represent the bulk of applicant's indebtedness. Applicant's inability or unwillingness to pay his taxes and to honor his other financial commitments reflects adversely on his judgment, reliability and trustworthiness, and strongly suggests that he cannot be relied upon to safeguard classified information.

The fact that applicant's financial difficulties were caused in part by factors beyond his control is a mitigating factor, as is the fact he has settled and/or paid off a number of his smaller past-due debts. The fact remains, however, that applicant has been under severe financial duress for many years, and in all likelihood he will continue to be under severe

financial duress for the foreseeable future. Under the "clearly consistent with the national interest" standard that must be followed in DOHA proceedings, applicant's current financial condition precludes a finding that he is currently eligible for access to classified information. For this reason, Guideline F is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: FOR THE APPLICANT

PARAGRAPH 3: FOR 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. Exhibit 7 seems to indicate that applicant is indebted to this creditor in the amount of \$4,842.00. Exhibit 7, however, is not credible evidence.
2. The debts alleged in SOR Paragraphs 1a, 1d, 1e, 1j and 1k.