

DATE: June 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25068

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Bruce M. Kaufman, Esq.

SYNOPSIS

Applicant's financial problems have been resolved and are unlikely to recur. Clearance is granted.

STATEMENT OF THE CASE

On December 13, 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 January 14, 2003. The case was assigned to the undersigned on February 11, 2003. Notices of Hearing were issued on March 3 and March 17, 2003. The hearing was held on April 7, 2003. The transcript was received on April 21, 2003.

FINDINGS OF FACT

Applicant is a 49 year old employee of a defense contractor.

Applicant had worked for a defense contractor for about ten years when, in 1996 or 1997, the company decided to close the plant where applicant worked. As a result, applicant was transferred to another plant, located approximately 79 miles from the closed plant. To avoid a very long commute to the new plant, applicant decided to move closer to the new plant. He put up his house for sale, but because the housing market was so poor, he was unable to sell it. As a result, he decided to rent it to his nephew at a reduced rate of \$500.00 per month. While the house was being rented to the nephew, applicant purchased a new home near the new plant. Unfortunately for applicant, his nephew never paid him the rent that was due, and moved out of the old house after only a few months. Applicant could not afford both homes,

and in July 1997, the old house was foreclosed upon. Apparently the mortgage holder was made whole by the foreclosure, and applicant's financial obligation to the mortgage holder was satisfied.

Applicant lived in the new home for about three years before it too went into foreclosure. Applicant testified that he was unaware the mortgage payments were not being made on the house until he received a letter in the mail from the lender telling him that they were going to begin foreclosure proceedings. He further testified, in essence, that his wife had been lying to him by telling him she had been making the house payments (TR at 28-29). After receiving the letter, applicant contacted the lender to try to stop the foreclosure. Because he could not come up with the \$10,000.00 the lender required, in March 2000 the house was foreclosed upon. Apparently the lender was made whole by the foreclosure, and applicant's financial obligation to the lender has been satisfied.

Applicant testified that he was unaware of the other delinquent debts listed in the SOR (Allegations 1c through 1g) until a DSS agent showed him a credit report (TR at 32,34). Apparently his ignorance was the result of giving his wife sole responsibility for paying the bills (TR at 28), and then failing to monitor his wife's performance. When he found out about these past-due financial obligations, he immediately took action to resolve them (TR at 34-35). The evidence establishes that all but one of these debts were satisfied on or before May 18, 2000. ⁽¹⁾

At the present time, applicant is current on all of his debt payments (TR at 43). To ensure that his wife continues to pay the bills on time, applicant now reviews them on a regular basis (TR at 43). Applicant's current financial situation is fair. He and his wife earn enough to pay their bills (TR at 64-65). Applicant has a total of over \$30,000.00 in two retirement accounts, and if he has to use this money to pay his bills on time, he will do so (TR at 65-66).

Applicant completed a Questionnaire for National Security Positions (QNSP) on January 5, 2000 (Exhibit 1). The Government alleges that applicant intentionally lied in response to two questions on the QNSP when he denied that during the previous seven years (1) he had been arrested, charged or convicted of any offenses (Question 23f), and (2) his wages had been garnished (Question 27b).

With respect to Question 23f, applicant's "no" response was incorrect because he had received a traffic ticket for having an expired registration and not having proof of insurance, and was found guilty and fined over \$600.00. However, based on applicant's credible testimony that, because the ticket did not involve an actual traffic violation he didn't think it had to be disclosed on the QNSP (TR at 66-70), I find that he did not intend to conceal this relatively minor offense from the Government. With respect to Question 27b, although applicant's employer did receive an order to begin withholding applicant's wages to satisfy a tax lien, when applicant found out about the order, he immediately paid the debt, and his wages were never garnished. Given these facts, I find that applicant's response to this question was accurate. Based on the foregoing, Guideline E is found for applicant.

Letters from seven of applicant's friends and/or coworkers were admitted into evidence (Exhibit D). Applicant is described by these individuals as a reliable, thoughtful and honest individual. A performance appraisal covering the year 2002 indicates applicant performs well at his job (Exhibit C).

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. A history of not meeting financial obligations.
2. Inability or unwillingness to satisfy debts.

Mitigating Factors

1. The behavior was not recent.
3. The conditions that resulted in the behavior were largely beyond the person's control.
6. The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

CONCLUSIONS

The evidence establishes that the main causes of applicant's past financial difficulties were (1) the closing of the plant where he worked and his transfer to a different plant, which left him with a house he was unable to sell, and (2) his wife's inability or unwillingness to pay their bills on time. Although these two factors were, to a certain extent, beyond applicant's control, he is not without fault. Purchasing a new house before he sold the old house, or at least rented it to a responsible tenant, was not a prudent decision. And, although his wife misled him about paying their bills, completely dissociating himself from the financial affairs of his household was not the wisest course of conduct.

Although applicant's past financial difficulties raise legitimate security concerns, the evidence establishes that these financial difficulties have been resolved. The two mortgage debts were apparently satisfied by foreclosure, and when applicant learned about his other past-due debts from the DSS agent, he promptly satisfied them. The fact that there is no evidence of any additional financial problems since 2000 leads me to conclude that applicant has learned from his past mistakes, and is unlikely to repeat them. These facts, together with the fact applicant's income is sufficient to meet his financial obligations, and the fact he now takes an active role in managing his financial affairs, lead me to believe that applicant's financial difficulties are unlikely to recur. For this reason, Guideline F is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

PARAGRAPH 2: FOR THE APPLICANT

DETERMINATION

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. The GTE debt (SOR Allegation 1d) was satisfied later in 2000.