

DATE: October 15, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25042

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In view of the facts that applicant's financial difficulties were caused in large part by factors beyond his control, he is no longer legally liable for his past-due indebtedness, his current income is sufficient to cover his current expenses, and he has handled his financial obligations in a responsible manner since at least November 2002, I conclude that applicant is now financially stable and likely to remain that way. Clearance is granted.

STATEMENT OF THE CASE

On February 11, 2003, 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 March 10, 2003. The case was assigned to the undersigned on April 10, 2003. A Notice of Hearing was issued on July 2, 2003, and the hearing was held on July 21, 2003. The transcript was received on July 30, 2003.

FINDINGS OF FACT

Applicant is 35 years of age. He received an honorable discharge from the U.S. military in December 1991, and has been employed as an electronics technician by a defense contractor since 1992.

Applicant began experiencing financial difficulties in 1996 (Exhibit 2). He testified that his financial difficulties were caused by a reduction in pay he experienced and an increase in his child support payments (TR at 27-30). This testimony was partially corroborated by a social security document he offered into evidence. This document (Exhibit A)

establishes that applicant did in fact experience a significant reduction in income beginning in 1996. After earning \$30,785.00 in 1993, \$28,531.00 in 1994, and \$29,756.00 in 1995, for a three year average of \$29,690.00, he earned \$25,460.00 in 1996, \$25,722.00 in 1997, and \$25,735.00 in 1998, for a three year average of \$25,639.00.

Applicant ignored most of the debts listed in the SOR⁽¹⁾ until the Government contacted him about his security clearance and told him he had "to do something about these debts" (TR at 66-67). Although most of the debts were relatively small, his debt to American Honda, which resulted from the voluntary repossession of his automobile, was far too large for him to handle in any way other than to file for bankruptcy (TR at 29). Applicant concluded, in essence, that while he was filing for bankruptcy to rid himself of the American Honda debt, he might as well get his other long-standing debts discharged. Accordingly, in November 2002, he filed a Chapter 7 bankruptcy petition, which included all of the debts listed in the SOR (Exhibit 5).⁽²⁾ In February 2003, all of his listed debts were discharged (Exhibit D).

Applicant has not experienced any financial difficulties since he filed for bankruptcy (TR at 29). At the present time, he is current on all of his bill payments, and he has a positive monthly cash flow. In addition, he has about \$1,100.00 in a checking and savings account, and about \$14,000.00 in a 401K account (TR at 60-61, 68-69). He testified that he will not experience similar financial problems in the future because he learned from his mistakes, and now that he sees that the Government takes these matters seriously, he does not want to jeopardize his job and livelihood (TR at 67).

SOR Subparagraph 1j deals with the issue of child support. Although the evidence on this issue is confusing, it is clear that (1) in 2002 applicant and his child's mother reached an agreement outside of the court system which requires applicant to pay the mother \$400.00 per month, (2) applicant has made all of the required payments, and (3) there are no outstanding court orders dealing with the issue of child support (TR at 40-48; Exhibits B, C and E).

A witness who has known and worked with applicant since 1998 appeared at the hearing and testified that applicant is reliable and trustworthy, and that he knows of no reason why applicant is not qualified to hold a security clearance (TR at 70-75).

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

3. The conditions that resulted in the behavior were largely beyond the person's control.

CONCLUSIONS

Between 1996 and November 2002, applicant experienced financial problems, which left him with the large amount of unsecured debt alleged in the SOR. The evidence establishes that applicant's financial difficulties were caused by two factors largely beyond his control: the reduction in income he experienced beginning in 1996 and the increase in his monthly child support payments. After the Government told applicant to "to do something" about his debts, he filed for bankruptcy. In February 2003, all the past-due debts alleged in the SOR were discharged.

Since he filed for bankruptcy in November 2002, applicant's financial condition has stabilized. He has a positive monthly cash flow, he has about \$1,100.00 in savings, and he is current on all of his debt payments. In addition, he has about \$14,000.00 in a 401K account. Given these facts, and the fact that applicant has clearly learned from his mistakes, I conclude that applicant is now financial stable and likely to remain that way. Accordingly, it is now clearly consistent with the national interest to grant him access to classified information.

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. With respect to SOR Allegations 1a, 1e, 1f, 1g, and 1h, there is no credible evidence to support a finding that any of the alleged debts went delinquent prior to 1996. If anything, Exhibit 4 seems to indicate that they went delinquent after 1995.
2. Prior to filing bankruptcy, applicant had reduced his debt to American General Finance to \$155.00 (TR at 52).