

DATE: October 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00894

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Robert J. Tuider, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of financial problems is partially explained and mitigated by his layoff from work and his wife's medical problems. He obtained a discharge in bankruptcy in 1997 in an effort to resolve his indebtedness. However, Applicant incurred most of the delinquent debts that are listed in the SOR within a year after obtaining his bankruptcy discharge. With one exception, Applicant is delinquent in his payments of these debts. With regard to half of them, he has not made any payment in four or five years. Clearance is denied.

STATEMENT OF THE CASE

On November 26, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement Reasons (SOR) to Applicant. The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On January 6, 2003, DOHA received a response to the SOR from Applicant, in which he requested a hearing. The case was assigned to me on January 31, 2003. A notice of hearing was issued on March 21, 2003, and the hearing was held on April 7, 2003. During the hearing, four Government exhibits, five Applicant exhibits, and the testimony of Applicant were received. The transcript (Tr) was received on April 14, 2003.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admission to all the allegations in the SOR except for SOR ¶ 1.b, I make the following findings of fact:

Applicant is a 30-year-old assembler employed by a defense contractor and is seeking a security clearance. He is a

hardworking and highly regarded employee.

Applicant was married in 1994. He and his wife purchased a double-wide trailer and land for their home. They incurred the cost of having the land leveled, water run to their property, a septic tank installed, and a driveway added.⁽¹⁾ His wife was out of work for three or four months in 1995.⁽²⁾ She was also in and out of the hospital, having suffered attacks of bronchitis.⁽³⁾ Applicant had medical insurance, but still incurred the portion of her medical expenses that his insurance did not pay.⁽⁴⁾

To help pay expenses, Applicant's wife went to work in 1996. She left her job in 1997. In late 1997, Applicant was also laid off from work for approximately eight months and drew \$164.00 per week in unemployment.⁽⁵⁾ Because of their mounting debts, Applicant and his wife filed for Chapter 7 bankruptcy in February 1997. Although they obtained a discharge in bankruptcy as to their non-secured debts in June 1997, they failed to include all of their debts.⁽⁶⁾

In March 1999, Applicant obtained a consolidation loan in the amount of \$7,409.00 from a local bank in order to pay off other loans with the bank.⁽⁷⁾ He paid off the loan for his truck as well as some credit card debts.⁽⁸⁾ The loans that he paid off include the \$7,697.00 debt referred to SOR ¶ 1.a.⁽⁹⁾ By September 12, 2002, Applicant had reduced the balance on his consolidation loan to \$3,930.47 and had agreed to make monthly payments of \$50.00.⁽¹⁰⁾ Applicant still owes \$3,880.00 on that account.⁽¹¹⁾

In February 1999, Applicant incurred a debt to an appliance store in the amount of \$156.00 on a rent-to-own account for a freezer, which he returned to the store.⁽¹²⁾ He has paid off the account.⁽¹³⁾

Applicant has owed \$98.00 to an electric utility company since June 1998.⁽¹⁴⁾ This delinquent debt has been turned over to a collection agency. Applicant still received electricity from the same company because his wife opened an account in her name.⁽¹⁵⁾

In September 1998, Applicant incurred a debt in the amount of \$294.00 for cable television service.⁽¹⁶⁾ Since March 1999, he has still owed that creditor a delinquent debt of \$144.00.⁽¹⁷⁾

Since January 1998, Applicant has had a debt to an insurance company in the amount of \$54.00.⁽¹⁸⁾ This debt remains delinquent and has not been paid.

In June 1998, a hardware store obtained a judgment against Applicant in the amount of \$622.00 for a gun.⁽¹⁹⁾ Applicant has reduced the debt to \$545.00.⁽²⁰⁾

POLICIES

The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion to demonstrate that it is clearly consistent with the national interest to grant or continue a security clearance. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security.

Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying , as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline F - Financial Considerations: the concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern and may be disqualifying include:

A history of not meeting financial obligations (Disqualifying Condition 1);

Inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include:

The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) (Mitigating Condition 3);

The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

CONCLUSIONS

Within a year after obtaining a discharge in bankruptcy, Applicant began to incur most of the debts referenced in the SOR. With limited exception, after five years, Applicant has been unable to resolve these debts, which long ago became delinquent. This history of not satisfying debts, as well as the inability to do so, establishes both Disqualifying Condition 1 and Disqualifying Condition 3.

Applicant's past financial problems are partially explained and mitigated by his eight month layoff from work and his wife's medical problems. These were conditions that were beyond his control that establish Mitigating Condition 3. Although those conditions mitigate existing debts and debts incurred at that those times for necessities, that mitigation does not continue in perpetuity to excuse his financial difficulties. This is particularly the case when Applicant was able to wipe the slate clean.

In an effort to resolve his financial problems, Applicant filed for bankruptcy in 1997. This might have established Mitigating Condition 6 for resolving his debts had he remained free of delinquent debts. However, the record establishes that he incurred the most of the delinquent debts that are the basis for the SOR within a year after obtaining his bankruptcy discharge.

To resolve the debt to a local bank, referenced in SOR ¶ 1.a, Applicant obtained a consolidation loan from the same bank. He was able to reduce the balance on that loan from \$7,409.00 in March 1999 to \$3,930.47 by September 2002. However, he appears to have made only one further payment of \$50.00 on that loan since September 2002. Based on his inability to meet the requirements of his agreement in September 2002 for paying off this delinquent debt, I find against applicant with regard to SOR ¶ 1.a.

Applicant testified that he paid off the account to the appliance store, referenced in SOR ¶ 1.b, and included his original receipt with his response to the SOR. Although such a receipt is not in the record and he has failed to resolve all of the other debts listed in the SOR, several of which are smaller, Applicant acknowledges that he still owes the remaining debts. Finding him to be a credible witness, I accept that he paid this debt. Therefore, I find in his favor with respect to SOR ¶ 1.b.

For five years, Applicant has failed to pay off the \$98.00 debt to an electrical utility company, referenced in SOR ¶ 1.c. Despite his financial problems, five years would appear to be ample time to retire this debt. Therefore, I find against

Applicant as to SOR ¶ 1.c.

The same is true with regard Applicant's debt for cable television service, referenced in SOR ¶ 1.d. Four years would appear to be sufficient time to satisfy this debt. Again, I find against Applicant with regard to SOR ¶ 1.d.

Applicant testified that he is not aware of the basis for the \$54.00 delinquent debt to an insurance company, referenced in SOR ¶ 1.e. In September 2002, however, he stated that he would pay it off by December or January. The record fails to establish that he has done so. After more than five years, he should have been able to resolve this matter. Based on his failure to address it, I find against Applicant.

After five years, Applicant has only been able to reduce a \$622.00 judgment against him, referenced in SOR ¶ 1.f, by \$77.00. It would appear that in five years he could have made far more progress to satisfy this debt. Therefore, I find against Applicant with respect to SOR ¶ 1.f.

Although filing for bankruptcy may be a means of resolving indebtedness so as to mitigate financial considerations, it has failed to do so in the case of Applicant. Within a year after his bankruptcy discharge, he incurred most of the debts that are the basis for the SOR. Applicant's inability to resolve all but one in more than five years does not demonstrate the level of financial responsibility required for a security clearance. Therefore, my overall finding is against Applicant.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

DECISION

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Govt Ex 2 at 1.

2. Tr 48.

3. Tr 17-18.

4. Tr 18.

5. Tr 47, 44-45.

6. Govt Ex 2 at 1.

7. Govt Ex 2 at 1.

8. Tr 25.

9. Govt Ex 3 at 7.

10. Ap Ex D.

11. Tr 25.

12. Govt Ex 3 at 9, Govt Ex 2 at 2.

13. Tr. 26.

14. Govt Ex 3 at 11.

15. Tr 27-29.

16. Govt Ex 3 at 11.

17. Govt Ex 3 at 11, Tr 29-30.

18. Govt Ex 3 at 11.

19. Govt Ex 3 at 12, Tr 32.

20. Tr 33.