

DATE: November 4, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06806

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's current unwillingness to acknowledge and seek resolution of most of his remaining past-due debts precludes a finding that he currently possesses the good judgment, reliability, and trustworthiness required of individuals with access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On April 1, 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, 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 May 1, 2002, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about June 21, 2002. Applicant filed a response to the FORM on July 25, 2002. By memorandum dated July 31, 2002, Department Counsel indicated that she had no objection to applicant's response. The case was assigned to me on August 13, 2002.

FINDINGS OF FACT

Applicant is a forty-one year old engineer.

SOR Allegation 1a: Applicant is indebted to First USA in the approximate amount of \$5,767.23. In a signed, sworn statement that he gave to the Defense Security Service (DSS) in January 2000 (Exhibit 5), he stated that he planned "to settle this account by lump sum payment in Feb 03." In his February 2002 response to interrogatories propounded by the Government (Exhibit 10), applicant still considered himself indebted to this creditor. In his response to the SOR, applicant denied that he was indebted to this creditor, apparently because the creditor had written off the debt. Based on

applicant's denial and new found belief that he is not responsible for this debt, it is reasonable to assume that he does not intend to follow through with his previous statement and satisfy this debt in February 2003.

SOR Allegation 1b: Applicant is indebted to Security Pacific in the approximate amount of \$5,947.44. In Exhibit 5 he stated that he planned "to try to contact them again and settle the account with lump sum payment in Sep 02." In Exhibit 10 he reiterated that he was indebted to this creditor. In his response to the SOR, he denied that he was indebted to this creditor because (1) the creditor wrote off the debt in 1998, (2) the creditor has not tried contacting him since then, (3) attempts to locate the company have been unsuccessful, and (4) a February 2002 credit report does not mention this debt. Based on applicant's denial and new found belief that he is not responsible for this debt, it is reasonable to assume that he does not intend to follow through with his previous statement and satisfy this debt.

SOR Allegations 1c and 1d: Applicant is indebted to Bank of America in the approximate amount of \$10,381.82, and is indebted to Citibank in the approximate amount of \$12,386.00. As with the two previous debts, he admitted being indebted to these creditors in Exhibits 5 and 10, but denies these debts in his response to the SOR because they were written off. Based on applicant's denials, it is reasonable to assume that he has no intention of satisfying these debts.

SOR Allegation 1e: Applicant is indebted to Direct Merchant Bank in the approximate amount of \$3,204.00. In Exhibits 5 and 10 he admitted being indebted to this creditor, and in Exhibit 5, he stated that he planned to "contact (the creditor) in Aug 02 and at that time pay them the lump sum owed." In his response to the SOR, he denied the debt because it had been written off by the creditor. Given his recent denial, it is reasonable to assume he has not, and will not, satisfy this debt.

SOR Allegation 1f: Applicant is indebted to this creditor in the approximate amount of \$4,784.00.

SOR Allegation 1g: Applicant is indebted to this creditor in the approximate amount of \$2,966.00. In Exhibits 5 and 10 he admitted the existence of the debt, and that it was past-due. In his response to the SOR, however, he denied the debt, apparently because the creditor has not actively sought to collect it.

SOR Allegation 1h: Applicant presented proof that he reached a settlement with this creditor in 2001 which reduced the \$7,268.64 debt to \$1,453.73, and that as of July 2002, he had made enough payments to the creditor to further reduce the debt to \$121.19. Pursuant to the agreement, applicant's last payment of \$121.19 is due on August 5, 2002.

SOR Allegation 1i: Applicant presented proof that he reached a settlement with this creditor in 2001 which reduced the debt from \$9,865.40 to \$1,973.08, and that as of July 2002, he had made enough payments to further reduce the debt to \$165.30. Pursuant to the agreement, applicant's last payment of \$165.30 is due on August 5, 2002.

SOR Allegation 1j: In November 1998 applicant and his wife filed bankruptcy under Chapter 13. The case was dismissed in June 1999 because the Trustee objected to applicant's payment plan on the ground it did not treat unsecured creditors fairly.

SOR Allegation 1k: A Personal Financial Statement (PFS) dated February 18, 2002 (Exhibit 10) indicates that applicant has a positive monthly cash flow of \$85.06. Although this cash flow is insufficient to allow him to make any meaningful progress toward repaying his past-due debts, applicant stated in his response to the SOR that he has other options available to him, including selling a rental property, which would allow him to satisfy all of his remaining unsecured debt. He further stated that he "would rather not (exercise any of these options) unless forced to do so."

The evidence establishes that applicant's indebtedness was caused, in large part, by his attempt to keep one or two retail businesses, owned by his mother-in-law and managed by his wife, afloat. He did so by obtaining cash advances of \$30,000.00 to \$45,000.00 and by accruing \$20,000.00 in credit card debt. His mother-in-law's illness and subsequent death in November 1997, together with declining sales at the store(s), eventually made it impossible for applicant to make his debt payments, and in November 1998, on an advice of his attorney, he filed for bankruptcy.

As noted above, the bankruptcy was dismissed in June 1999. Upon dismissal, applicant once again was personally liable for the various debts he incurred. The evidence establishes that through settlements with various creditors and some payments, applicant has significantly reduced the amount of his indebtedness. Nevertheless, as discussed above, he still

owes over \$45,000.00⁽¹⁾ in past-due debt to various unsecured creditors.

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 (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).

CONCLUSIONS

The evidence establishes that for the past several years, applicant has been indebted to various unsecured creditors in an amount in excess of \$45,000.00. The evidence further establishes that after years of acknowledging these various debts, and his obligation to satisfy them, applicant has recently decided that he has no obligation to satisfy most of them because the creditors have either written off the debts or have not contacted him seeking payment. Applicant's longstanding indebtedness, and his recent repudiation of most of these lawfully incurred debts, reflects adversely on his judgment, reliability and trustworthiness, and strongly suggest that he cannot be relied upon to safeguard classified information.

As noted in the Findings of Fact section of this Decision, applicant's indebtedness was caused in large part by factors beyond his control; namely, a business downturn and the illness and death of his mother-in-law. This is a mitigating factor. The fact that applicant initially successfully negotiated settlements with some of his creditors, and by so doing significantly reduced his overall outstanding indebtedness, is a factor in his favor, and had he continued with his "Plan to Get Current" (Exhibit 5) and not repudiated his remaining debts, he may have qualified for mitigating factor E2.A6.1.3.6. However, his current position that he is not indebted to the creditors identified in SOR Paragraphs 1a, 1b, 1c, 1d, 1e and 1g precludes a finding of "a good-faith effort to repay overdue creditors or otherwise resolve debts" on the part of applicant, particularly when, by his own admission, he has the ability to satisfy all of his past-due indebtedness if he chose to do so.

Given applicant's current unwillingness to acknowledge and seek resolution of most of his remaining past-due debts, I cannot conclude that he currently possesses the good judgment, reliability and trustworthiness required of individuals with access to classified information. For this reason, Guideline F is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST 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. Applicant claims that he is no longer liable for most of the \$45,000.00 in unsecured debt because the debtors wrote off his debts. I do not agree with his interpretation of the statute he cites in his SOR response. However, even if the actions of the creditors somehow relieved applicant of his legal obligation to satisfy these debts, his refusal to honor his financial commitments, even though by his own admission he has the financial wherewithal to do so, strongly suggests that he is unreliable and untrustworthy.