

DATE: October 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30783

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is indebted to numerous creditors in an amount in excess of \$100,000.00. He intends to file for bankruptcy, but even if he does so, at least \$100,000.00 of his debt, which is for past-due child support, is not dischargeable. Based on the evidence presented, there is little or no chance applicant will ever be able to satisfy this debt. He is, and will most likely remain, under severe financial duress. This fact precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On March 26, 2004, 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 April 28, 2004. The case was assigned to the undersigned on June 22, 2004. A Notice of Hearing was issued on July 8, 2004, and the hearing was held on August 17, 2004. The transcript was received on August 31, 2004.

RULING ON PROCEDURE

At the hearing, SOR Allegation 1c was amended. As amended, SOR Allegation 1c is as follows:

You are indebted to the Internal Revenue Service, Los Angeles, California in the amount of about \$4,000.00 in taxes, penalties, and interest. As of August 17, 2004, this debt has not been satisfied.

FINDINGS OF FACT

Applicant is a 50 year old employee of a defense contractor.

Applicant admits SOR Allegations 1b, 1d, 1g, 1i, 1j, 1k, 1m, 1n, and 1p without qualification. These allegations are therefore incorporated by reference as Findings of Fact. Applicant has not paid these debts because he intends to include them in the bankruptcy petition he is in the process of filing. He is planning to file bankruptcy because he realizes he is not in a position to "pay off all [his] debts with everything that [he has] run up" (TR at 20, 25).

SOR Allegation 1a: Applicant denies this allegation. He testified that he has "no idea what [this debt] is." He further testified, in essence, that he has not disputed it with the credit reporting agencies because he intends to include it in his bankruptcy filing (TR at 27). I find that the Government's evidence is insufficient to support this allegation.

SOR Allegation 1c: Applicant is currently indebted to the IRS in the approximate amount of \$4,000.00. The IRS has been garnishing his wages in the amount of \$250.00 per month to satisfy this tax debt (TR at 31-34; Exhibit D). Applicant's tax debt is due, in part, to his failure to file his tax returns on a timely basis (TR at 21).

SOR Allegation 1e: Applicant is currently paying \$1,000.00 per month in child support. Of the \$1,000.00, \$950.00 goes toward his current support obligation and \$50.00 is applied to his past-due support obligation, which currently stands at approximately \$100,000.00 (TR at 34-35). With interest and/or penalties being applied to the past-due balance, the debt continues to grow, notwithstanding the \$50.00 payments. This debt will not be discharged in bankruptcy. Applicant began accruing this child support debt in 1997 or 1998 (TR at 56).

SOR Allegation 1f: Applicant testified that this debt was a corporate credit card debt that was paid by having the amount of the debt taken out of his severance pay which he received in 1999 after his employer was bought out by another company. Since his employer is no longer in existence, he cannot get any documentation to support his testimony (TR at 38-42). Based on applicant's credible testimony, I find that he is not indebted as alleged.

SOR Allegation 1h: The evidence presented does not support this allegation.

SOR Allegation 1i: Applicant is indebted to this creditor in the approximate amount of \$2,922.00.

SOR Allegation 1o: This debt was for a towing and/or storage charge on a car that applicant had sold prior to the towing (TR at 47; Exhibit 3). Based on this fact, I find that applicant is not indebted to this creditor.

SOR Allegation 1q: The evidence is insufficient to establish that applicant is indebted as alleged.

SOR Allegation 1r: Applicant claims that his current financial condition is much better than what was portrayed in his July 18, 2002 financial statement. ⁽¹⁾ In his April 28, 2004 response to the SOR, he made the following statement:

Yes, I admit, I have a history of financial difficulties, some due to issues beyond my control and some due to personal mismanagement, bad judgment and ignorance. I also had a period of a year ⁽²⁾ where I cared for an uncle I thought was going to die, he is alive. I believe in no small part to my sacrifices.

Currently, I am moving into a house, renting 2 rooms; this will put me in a situation where I am living well within my means and able to pay my bills. At the end of May I will be filing for bankruptcy, while I know this is a red flag, it will enable me to start clean, and build a reputation of financial responsibility. My work ethic and dedication to my job is above reproach, my major character flaw has been my financial management.

Applicant testified that he feels he has financially "turned the corner." He has made a commitment to himself to change his lifestyle and has taken positive steps, such as moving to a cheaper residence in April 2004, to help him better manage his finances. Although he has thought about filing for bankruptcy since at least 2002, he has been reluctant to take that step until he feels confident he can properly manage his financial affairs after he files. He believes that he has now capable of doing so, and intends to file for bankruptcy in September 2004 (TR at 49-50, 53-54, 58).

CONCLUSIONS

The evidence establishes that applicant is indebted to more than ten different creditors in the total amount of approximately \$109,000.00. All of these debts are past-due. Applicant's failure to honor his financial obligations reflects adversely on his judgment, reliability and trustworthiness, and suggests he cannot be relied upon to safeguard classified information. With respect to the Financial Considerations guideline, Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) are applicable.

The evidence establishes that applicant has apparently tired of walking a financial tightrope and has taken concrete steps to begin to live within his means. For this, he deserves credit. However, the fact remains that even if he follows through with his plan to file bankruptcy, he will still be liable for a past-due child support debt in the approximate amount of \$100,000.00, a debt he has little or no chance of satisfying. As applicant testified, "unless I win the lotto or something, that won't be taken care of" (TR at 20). This overwhelming financial obligation precludes a finding that it is now clearly consistent with the national interest for applicant to have access to classified information.

Applicant does not qualify for any of the formal mitigating factors under Guideline F. I have considered applicant's testimony that he spent "almost eight, nine months" caring for an uncle instead of working. However, viewing the evidence as a whole, I cannot conclude that his failure to honor his financial obligations to so many creditors over such a long period of time is largely the result of this fact. Significantly, by his own admission, his financial difficulties began before he started caring for his uncle. Accordingly, Mitigating Condition E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*) is not applicable.

Nor does applicant qualify for Mitigating Condition E2.A6.1.3.6 (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's plan to rid himself of most of his past-due debts by filing bankruptcy is certainly legal. However, under the facts of this case, it does not constitute a good-faith effort to resolve debts.

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 offered into evidence a budget he prepared in August 2004 that shows a monthly surplus of \$350.00 (Exhibit B). Even if I accepted this budget as accurate, applicant has not yet proven he has the discipline to live within it.
2. Applicant testified he cared for his uncle "almost eight, nine months" (TR at 46). The care began in 2000 (Exhibit 3).