

DATE: May 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30920

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial difficulties were caused in large part by factors beyond his control. However, he has taken little or no meaningful action to address his tens of thousands of dollars in past-due debts during the past several years. This fact, together with the fact his current income, at best, barely meets his current expenses, 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 December 9, 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, (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 26, 2005. The case was assigned to me on March 14, 2005. A Notice of Hearing was issued on April 7, 2005, and the hearing was held on May 11, 2005. The transcript was received on May 18, 2005.

FINDINGS OF FACT

Applicant is a 58 year old employee of a defense contractor.

SOR Allegation 1a: Applicant is indebted to this creditor in the approximate amount of \$10,684.00. Applicant has made no payments on this credit card debt since 1998. It was charged-off as a bad debt in 2002.

SOR Allegation 1b: Applicant became indebted to this creditor as a result of a personal loan he took out. The debt,

which was placed for collection in 2003, stands at about \$10,442.00. The creditor obtained a judgment against applicant in 2002 (TR at 65-66; Exhibit E).

SOR Allegation 1c: Applicant is indebted to this creditor in the approximate amount of \$17,509.00. The debt was placed for collection in 2004.

SOR Allegation 1d: Applicant is indebted to this creditor in the approximate amount of \$14,503.00. The debt was charged off as a bad debt in 2004.

SOR Allegation 1e: Applicant satisfied this debt.

In 1997, applicant's mother was diagnosed with cancer, and he began caring for her. At first, he managed to continue making regular payments on the aforementioned debts, even though he was incurring additional expenses caring for his mother. Eventually, the stress of both caring for his mother and working began to overwhelm applicant, and he was forced to take about a month's leave of absence without pay from his job. Although this helped ease the stress, it pushed him over the edge financially, and he was no longer able to continue making payments on the aforementioned debts (TR at 73-74). Applicant continued to incur expenses related to his mother for a few months after she passed away in 1999.

In February 1999, applicant retained the services of a bankruptcy attorney. However, he never finished filling out the necessary paperwork and a bankruptcy petition was never filed. The attorney sent applicant the paperwork again in 2002, but applicant "didn't deal with it at the time" (TR at 77-78). Applicant didn't deal with the matter at the time even though he had met with a Defense Security Service (DSS) agent in May 2002 to discuss his debts, and told the agent he believed bankruptcy was the only way he could deal with them (Exhibit 2). Applicant had no further contact with the bankruptcy attorney until this week. According to applicant, he now intends to file bankruptcy.

Applicant's current financial condition precludes him from satisfying his delinquent debt. In his words, "I live with my finances right on the edge" (TR at 56).

Four witnesses and documentary evidence offered by applicant establishes that he performs well at his job.

CONCLUSIONS

The evidence establishes that applicant has a history of not meeting his financial obligations, and that at times, he has been unable to satisfy his debts. These facts require application of 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*).

The evidence further establishes that the conditions leading to applicant's financial difficulties were caused, in large part, by factors beyond his control. Applicant had no significant financial problems until his mother became ill and he was put in a position of both caring for her personally and financially. Eventually applicant was unable to service his debts and he stopped making payments. Based on these facts, applicant qualifies for Mitigating Condition 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*).

Although applicant's mother's illness is a mitigating factor, the fact remains applicant has had almost five years to take action to clear up the four remaining debts listed in the SOR, and except for contacting a bankruptcy attorney on two or three occasions since 1999, he has done little or nothing to address this indebtedness. This fact precludes application of Mitigating Condition E2.A6.1.3.6 (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant testified that he recently met with his bankruptcy attorney and now intends to file bankruptcy. Although his testimony seemed sincere, given applicant's prior failure to follow through with the actual filing of a bankruptcy petition, it is far from a sure thing he will actually follow through and file for bankruptcy protection. In any event, this case must be decided on the facts that exist at the close of the record, not on what may or may not happen in the future. Unfortunately, based on the facts as they now exist, applicant is under extreme financial duress. His tens of thousands of dollars in old, unsecured debt, together with an income that, at best, barely meets his expenses, makes it impossible to

conclude that it is now clearly consistent with the national interest for him to have access to classified information.

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