

DATE: April 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31506

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's long-standing financial difficulties, and his failure to execute releases when requested to do so by a Special Agent of the Defense Security Service (DSS), preclude a finding that it is clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On October 16, 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, 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 November 6, 2003, 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 April 12, 2004. Applicant filed a response to the FORM on June 1, 2004. The case was assigned to me on June 15, 2004.

FINDINGS OF FACT

Applicant is a 45 year old employee of a defense contractor.

SOR Allegation 1a: Applicant filed a Chapter 13 Bankruptcy petition in early 1991. He filed it after he had relocated to a different State and found it difficult finding employment. He believed at the time that a Chapter 13 Bankruptcy was his only option "due to excessive debt at that time."⁽¹⁾ It appears that applicant made all the payments required by the Bankruptcy Trustee, and he received a Discharge from the Bankruptcy Court in 1994 (Exhibit 10).

SOR Allegations 1b and 1c: Applicant filed a Chapter 13 Bankruptcy petition in May 1998 "in an honest effort to pay

[his] debt after 6 months of unemployment."⁽²⁾ In December 1998, the Court dismissed the case without prejudice after applicant "failed to make plan payments as ordered" (Exhibit 11). In 1999, a Chapter 7 Bankruptcy Petition was filed. It is unclear if this was a new action or a "conversion" of applicant's Chapter 13 case. In any event, he received a Discharge in September 1999 (Exhibit 12).

SOR Allegation 1d: Applicant is indebted to GMAC in the approximate amount of \$8,945.64. Applicant claims he became indebted to this creditor due to a 2001 layoff. When he was unable to renegotiate the loan with the creditor both before and after the layoff, he turned the truck over to the creditor. GMAC sold it at auction, and then worked out a payment plan with applicant for the difference. Applicant has made the plan payments as agreed (Exhibit 3).

SOR Allegations 1e, 1f, 1g and 1i: In his response to the SOR, applicant denied that he is indebted as alleged. The Government's evidence, consisting of a 2002 credit report, is insufficient to prove applicant is currently indebted to these four creditors in the total amount of \$641.00 as alleged.

SOR Allegation 1h: Applicant admits he is indebted to this creditor in the amount of \$609.00. In his response to the SOR, he stated he contacted the collection agency handling the debt, and although they would not agree to a payment plan, they would accept monthly payments from him. He further stated he "will be making monthly payments now." In his response to the FORM, provided about seven months later, applicant offered proof that he has been making payments on the GMAC debt, but offered no proof he began making payments to this creditor. I find applicant has not made any payments to this creditor.

SOR Allegation 1j: This debt was discharged by the Bankruptcy Court in 1999.

SOR Allegation 2a: Applicant was interviewed by a Special Agent of the DSS in June 2002. At the time, applicant refused to sign releases to allow DSS to obtain his credit records from five of his creditors.⁽³⁾ His stated reason for refusing to sign the releases for two creditors was: [I]f they are not pursuing collection against me, I am not going to contact them." As to the other three creditors, he merely stated he did not want them to be contacted (Exhibit 5).

In his response to the SOR, applicant denied that he refused to sign releases. He stated that he did tell the investigator he would prefer that the creditors he was unsure of not be contacted. In his response to the FORM, he stated that he "did not feel [he] was refusing to sign releases - but rather wanted the chance to verify it [himself] which [he] did do."

There are a number of financial statements prepared by applicant in the FORM. The most recent indicates applicant has a positive monthly cash flow of \$801.00 and assets of \$1,300.00.

CONCLUSIONS

With respect to Guideline F, the evidence establishes that applicant has a long history of not meeting his financial obligations. Applicant's failure to honor his financial obligations reflects adversely on his judgment and reliability, 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.

Once the Government established a *prima facie* case under Guideline F, the burden shifted to applicant to show he has reformed. Applicant failed to meet his burden. He does not qualify for any Mitigating Condition. His financial irresponsibility is recent, as evidenced by his long-standing failure to address the debt alleged in SOR Paragraph 1h in any meaningful way; it certainly is not an isolated incident, as evidenced by his need to file Bankruptcy in 1991 and 1998; his uncorroborated statements concerning unemployment as the cause of his recurring financial difficulties, even if accepted as true, do not establish that this unemployment was largely beyond his control; and, although Bankruptcy is a legal way to avoid paying just debts, in this case it does not constitute a good-faith effort to repay overdue creditors or otherwise resolve debts.⁽⁴⁾

With respect to Guideline E, applicant certainly has the legal right to refuse to sign a release. However, such a refusal by someone seeking a security clearance is unacceptable. In this case, it may very well have prevented the Government

from discovering the truth about the debts alleged in SOR Paragraphs 1g, 1h, 1i, and 1j. Disqualifying Condition E2.A5.1.1.2 (*refusal to complete required security forms, releases . . . in connection with a personnel security determination*) is applicable. No Mitigating Conditions apply. Based on the foregoing, Guideline E is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: 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. Exhibit 3.

2. Response to FORM.

3. These include the creditors identified in SOR allegations 1g, 1h, 1i and 1j.

4. His good-faith effort to satisfy the GMAC debt does not overcome his failure to honor his other debts.