

DATE: October 29, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16229

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

William S. Fields, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's long-standing indebtedness precludes a finding that it is clearly consistent with the national interest to grant him access to classified information at the present time. Clearance is denied.

STATEMENT OF THE CASE

On June 3, 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 July 29, 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 August 6, 2002. Applicant filed a response to the FORM on August 15, 2002. Department Counsel did not object to applicant's response. The case was assigned to me on September 9, 2002.

FINDINGS OF FACT

Applicant is a forty-two year old software engineer.

SOR Allegation 1a: Applicant admits that he is indebted to this creditor for an account opened in August 2001. In his response to the SOR, applicant stated that the debt would be satisfied by two payments: the first in the amount of \$67.51 on July 25, 2002, and the second in the amount of \$67.00 by September 1, 2002. Since he offered no proof that either payment was made, I find that applicant is still indebted to this creditor.

SOR Allegation 1b: Applicant claims this debt was paid and attached a document to his SOR response that indicates a

zero balance on a debt to this creditor. Given this evidence, I find that applicant is no longer indebted to this creditor.

SOR Allegation 1c: Applicant admits that he is indebted to this creditor for an account opened in October 2000. He apparently negotiated the debt down to \$55.00, and has until September 1, 2002 to pay it. He states in his response to the SOR that he will satisfy the debt by September 1, 2002.

SOR Allegation 1d: In January 2002, applicant allowed his Mercedes Benz to be voluntarily repossessed because he could no longer afford the \$674.13 monthly payments. After the creditor repossessed and sold the car, applicant was left with a \$20,000.00 debt. Applicant states in his response to the SOR that he made arrangements with the creditor requiring him to make monthly payments of at least \$250.00 until the debt is satisfied.

SOR Allegation 1e: In February 2002, applicant's house was foreclosed upon and auctioned off.

SOR Allegation 1f: Applicant entered into a debt consolidation agreement with a consumer credit counseling service in November 1999 that covered approximately \$7,059.00 in debt.

SOR Allegation 1g: In November 1998, applicant's employer notified DoD that prior to applicant's resignation from the company in October 1998, a report was being prepared concerning applicant's "extreme financial instability and debt" as evidenced by the following:

- Applicant requested a withdrawal of his entire 401K account balance (\$1,285.00) due to extreme financial hardship; namely, his bank was beginning a foreclosure action.
- Applicant requested advance payments from the company medical reimbursement plan claiming that he owed money to doctors and dentists.
- Applicant claimed that he missed work due to illness but did not go to the doctor because he could not afford the co-payment, which was \$10.00.
- Applicant's check to his employer for insurance premiums was returned for insufficient funds.

SOR Allegation 1h: Applicant filed for bankruptcy under Chapter 7 in January 1993. His unsecured debts were discharged in April 1993. Applicant maintains this bankruptcy was caused by his unemployment from September 1992 to January 1993, during which time he supported his family with unemployment compensation from the State.

Applicant continued to have financial problems after the bankruptcy discharge, apparently because he reaffirmed some debts (e.g., mortgage and car payment) which were in arrears. He claims these financial problems were resolved by 1995 or 1996. However, his separation from his wife in 1996, and continuing health problems (that resulted in his employer changing his status from full-time to part-time), eventually led to new financial difficulties in 1998. These financial difficulties led applicant to a consumer counseling agency in 1999 where many of his debts were consolidated and eventually satisfied. This helped applicant keep his financial difficulties somewhat under control until he was laid off from a relatively well paying job in June 2001. His unemployment from June 15 to November 11, 2001 resulted in his most recent financial problems (e.g., car repossession, house foreclosure). Since finding new employment in November 2001, it appears, at least on paper, [\(1\)](#) that applicant has his current financial situation under control.

Letters of support from three of applicant's coworkers were attached to applicant's response to the FORM. These letters establish that applicant is considered to be an excellent employee and a man of integrity.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following conditions are applicable:

Financial Considerations

Disqualifying Conditions:

1. A history of not meeting financial obligations.
3. Inability or unwillingness to satisfy debts.

Mitigating Conditions:

3. The conditions that resulted in the behavior were largely beyond the person's control.
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

CONCLUSIONS

Applicant has a long history of financial difficulties as evidenced by, among other things, a bankruptcy filing in 1993, "bounced" checks in 1998 and 1999, a judgment debt to a furniture store in the 1998-2000 time frame, a car repossession in January 2002, and a house foreclosure in February 2002. Applicant's long history of failing to satisfy his financial obligations reflects adversely on his judgment and reliability, and strongly suggests that he cannot now be relied upon to safeguard classified information.

Applicant presented credible evidence that his financial problems have been caused, in part, by periods of unemployment, which presumably were beyond his control. He also presented credible evidence that when he was financially able to do so, he tried resolving outstanding financial issues, even going so far as to seek help from a consumer credit counseling service. These are factors in applicant's favor. They are, however, insufficient to establish that applicant is currently eligible for a security clearance.

Applicant's latest round of extreme financial difficulties, which have been occurring off and on for at least ten years, occurred less than one year ago. Even if his May 2002 FS statement (which shows a positive monthly cash flow of \$1,105.00) is taken at face value, ⁽²⁾ this evidence falls far short of establishing that applicant's financial condition is currently stable *and will remain so for the foreseeable future.* ⁽³⁾ On a common sense basis, given applicant's ten year history of off and on again financial difficulties, a much longer track record of financial responsibility and stability is required before it can be reasonably concluded applicant's financial difficulties have been resolved and will not recur.

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. A financial statement (FS) he prepared in May 2002 indicates he has a monthly surplus of \$1,105.00.
2. The FS cannot be taken at face value because its accuracy is questionable. At minimum, it does not reference two of the debts identified in the SOR (Paragraphs 1a and 1c).

3. Applicant's March 2000 FS also showed a positive cash flow. Nevertheless, as noted above, he subsequently experienced severe financial problems.