

DATE: January 22, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16504

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant offered no credible evidence from which I can conclude his financial difficulties have been resolved, or are likely to be resolved anytime soon. Clearance is denied.

STATEMENT OF THE CASE

On May 2, 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 June 11, 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 September 8, 2003. Applicant did not file a response to the FORM. The case was assigned to me on October 27, 2003.

FINDINGS OF FACT

Applicant is 46 years of age and is employed as a data control technician by a defense contractor.

SOR Allegation 1a: Applicant filed for bankruptcy protection under Chapter 13 of the Bankruptcy Code in July 2001. His petition listed \$202,263.00 in total assets and \$176,342.00 in total liabilities. The bankruptcy court approved a plan requiring applicant to pay \$390.00 per month for 59 months to the bankruptcy trustee.

In a signed, sworn statement dated December 12, 2001 (Exhibit 5), applicant stated that the bankruptcy filing was

necessitated by (1) previous medical and surgical bills that he and his daughter incurred, (2) a job change which ended up reducing his pay by \$400.00 per pay period, and (3) the purchase of a home which "rapidly became too much" for he and his wife to handle. He further stated that even with the bankruptcy filing and payment plan he and his wife "remain in debt at the end of every month."

There is no evidence in the record concerning the current status of the bankruptcy case.

SOR Allegation 1b: Applicant filed for bankruptcy protection under Chapter 13 of the Bankruptcy Code in 1993. Applicant attributes his financial problems at the time to a reduction in his pay. Neither party offered any evidence concerning the resolution of this bankruptcy case.

SOR Allegation 1c: Applicant's response to this allegation is ambiguous. He appears to be admitting that he once was indebted to this creditor, but claims the debt was satisfied in 2001. The only other evidence in the record is a credit report (Exhibit 6). Because this credit report is not credible, this allegation is found for applicant.

SOR Allegation 1d: The debt to this creditor was made part of applicant's 2001 bankruptcy case. The current status of the debt cannot be determined from the record.

SOR Allegation 1e: This mortgage debt in the amount of \$84,789.00 was settled when applicant sold his previous home (Exhibit 6).⁽¹⁾

SOR Allegation 1f: A Personal Financial Statement (PFS) prepared by applicant on December 12, 2001 indicates he has a **negative** monthly cash flow of \$453.00, not a positive monthly cash flow as alleged.

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

E2.A6.1.2.1: A history of not meeting financial obligations.

E2.A6.1.2.3: Inability or unwillingness to satisfy debts.

Mitigating Factors

None.

CONCLUSIONS

The evidence establishes that applicant has experienced significant financial difficulties since at least 1993, and that these financial difficulties have resulted in applicant filing for bankruptcy protection twice since 1993. Applicant's long-standing financial problems reflect adversely on his judgment and reliability, and suggest he cannot be relied upon to safeguard classified information.

Once the Government met its burden of showing that applicant is experiencing significant financial problems, which is cognizable as a security concern under Guideline F of the Directive, the burden shifted to applicant to show that his financial problems have been resolved. Applicant failed to meet his burden. He offered no credible evidence from which I can conclude his financial difficulties have been resolved, or are likely to be resolved anytime soon. Accordingly, it is not clearly consistent with the national interest to grant him access to classified information at the present time.

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. It appears that the misplaced comma in SOR Allegation 1.e. confused applicant. His response to this allegation was directed toward a credit card debt to the same creditor, which was not alleged in the SOR.