

DATE: February 13, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-18372

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Henry Lazzaro, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's recent efforts to repay his past-due financial obligations do not constitute a good faith effort to repay creditors. Clearance is denied.

**STATEMENT OF THE CASE**

On August 8, 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, (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 August 20, 2002. The case was assigned to the undersigned on October 24, 2002, and a Notice of Hearing was issued on October 31, 2002. The hearing was held on November 19, 2002. The transcript was received on November 27, 2002.

**FINDINGS OF FACT**

Applicant is a 39 year old aviator.

**SOR Allegation 1a:** Applicant was indebted to this creditor in the approximate amount of \$4,122.00 as a result of an account opened in 1996. He reached a compromise with the creditor and satisfied the debt subsequent to the issuance of the SOR (Exhibit B; TR at 24-25, 42).

**SOR Allegation 1b:** Applicant was indebted to Citi in the approximate amount of \$1,400.00 as a result of an account opened in July 1995. He is currently working with a consumer counseling service in an attempt to satisfy this debt. In

late October 2002 he made a \$50.00 payment, which reduced the debt to \$1,350.00 (Exhibits C and H). Applicant is "very shortly . . . expecting an insurance refund in the amount of 1000 bucks which will allow (him) to pay off this account once and for all" (TR at 25-26).

**SOR Allegations 1c and 1d:** Applicant testified that these two debts are actually one debt owed to the same creditor. As of August 28, 2002, applicant still owed this creditor approximately \$8,200.00 (TR at 28-33; Exhibit E). In late August, after the issuance of the SOR, he reached an agreement with the creditor to repay the debt at the rate of \$206.00 per month. To date, he has made two of the agreed-upon payments (Exhibits F and G; TR at 63).

Applicant and his wife have been separated for many years, and they are currently locked in a bitter divorce. A significant portion of applicant's past-due indebtedness was the result of his wife's actions when she fled the country with their son, which were beyond applicant's control (Exhibit 2).

Applicant testified that he fully intends to pay off the remaining debt to Citi with the insurance refund he expects to receive in the near future, and that he will continue to make the agreed-upon payments on the remaining past-due debt "until its resolution" (TR at 34, 55).

Applicant and his fiancée live, essentially, as husband and wife, sharing income and expenses (TR at 44, 58). Together they bring home approximately \$11,000.00 per month, have \$9,000.00 in checking accounts, and have \$60,000.00 in equity in their house (TR at 53-54, 58).

Applicant was first notified that his financial problems were a security concern when he was interviewed by a Special Agent of the Defense Security Service in November 1998 (Exhibit 3).

A letter from applicant's current manager, a retired Naval Officer, was admitted into evidence (Exhibit I). In it, the manager states that he is confident that applicant will follow through with his plan to satisfy his debts and that "in no way" does he consider applicant a security risk.

## **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

1. E2.A6.1.2.1: A history of not meeting financial obligations.
2. E2.A6.1.2.3: Inability or unwillingness to satisfy debts.

#### Mitigating Factors

1. 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).

## **CONCLUSIONS**

The evidence establishes that at the time the SOR was issued, applicant was indebted to at least three creditors in an amount in excess of \$13,000.00. The evidence further establishes that these debts had been past-due for at least three years, and that even though applicant knew DoD was very concerned about his financial status, he did nothing to address these debts until after the issuance of the SOR. Applicant's longstanding indebtedness, and his unwillingness to address it, reflects adversely on his judgment, reliability and trustworthiness, and strongly suggests that he cannot be relied upon to safeguard classified information.

Following the issuance of the SOR, applicant satisfied one of the debts and began making payments on the other two debts, which now total approximately \$9,000.00. Although applicant's attempts to address these debts subsequent to the issuance of the SOR are positive factors, they are insufficient to qualify for mitigating factor E2.A6.1.3.6.<sup>(1)</sup> With applicant's income, assets and equity in his house, he could have made much more progress in reducing his long-standing, past-due indebtedness than he has made by satisfying just one of the debts and making arrangements to pay off the other two, and he could have done so long before the issuance of the SOR. These facts preclude a finding of a "good faith effort to repay overdue creditors or otherwise resolve debts."

The fact that some of the debt was incurred as of the result of his wife's actions when she fled the country with their son in 1997 - which was beyond applicant's control - is a mitigating factor. However, it is insufficient to overcome the questionable judgment, reliability and trustworthiness applicant exhibited since then by first ignoring these past-due financial obligations until he was issued the SOR and faced with the loss/revocation of his security clearance, and then by failing to take more aggressive steps to resolve these financial delinquencies.

### **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. "The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."