

DATE: June 23, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-22015

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial difficulties have been caused, in part, by factors beyond his control. He has initiated a good-faith effort to resolve his financial obligations. His current financial condition is stable and is likely to remain that way. Clearance is granted.

**STATEMENT OF THE CASE**

On November 3, 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 December 8, 2003. The case was assigned to the undersigned on February 2, 2004. A Notice of Hearing was issued on March 17, 2004, and the hearing was held on April 21, 2004. Following the hearing, applicant submitted 11 pages of documents. These documents, and Department Counsel's letter indicating she has no objection to the documents, were marked as Exhibit M and admitted into evidence. The transcript was received on May 7, 2004.

**FINDINGS OF FACT**

Applicant is a 37 year old Infrastructure Protection Administrator.

**SOR Allegation 1.a.** Applicant testified that after he received the credit card in question in the mail, he called the company to activate it and was informed for the first time that there was a \$300.00 charge for the card. He further testified that because of this "hidden" charge, he never used the card. In view of (1) applicant's credible testimony, (2) Exhibit E, which corroborates applicant's testimony that this company engages in questionable/fraudulent practices, and

(3) Exhibit A, which is a July 2003 Experian credit report that indicates this debt was deleted from applicant's credit report after he contacted the creditor and the various credit reporting bureaus to complain, I find that applicant is not indebted to this creditor.

**SOR Allegation 1.b.** Applicant admits that he owed Verizon \$700.00. He denies that he owed them \$1767.00, the amount referenced in the April 2003 credit report (Exhibit 5) as being "charged off." He claims that Verizon added the debt of a different individual with the same name to his account (TR at 30-31). In his answer to the SOR, applicant stated that "we paid Verizon what we owed them." Based on this statement, and the fact this alleged debt is shown as "deleted" on his July 2003 Experian credit report, I find that applicant is no longer indebted to Verizon.

**SOR Allegation 1.c.** In 2002, applicant was traveling and needed medical care. He did not have his HMO (Pacificare) card with him. In July 2003, he sent a letter to the health care provider giving him his Pacificare information (Exhibit D). The health care provider apparently contacted Pacificare, but did not submit all of the required information (i.e., itemized statement) to Pacificare for reimbursement. <sup>(1)</sup> Pursuant to a May 2004 letter from Pacificare (Exhibit M), as soon as the health care provider submits the proper information to Pacificare, they will "review the claim for payment." Based on the evidence presented, I find that this debt will most likely be paid in full by Pacificare.

**SOR Allegation 1.d.** Applicant is indebted to this creditor in the approximate amount of \$4,544.00. Applicant signed an apartment lease with the intention of sharing it with a friend. Applicant never moved in but the friend did. Apparently the friend, who did not sign the lease, never paid any rent. Applicant testified that when he found out about the debt (which at the time the creditor claimed was \$4,544.00), he contacted the creditor and tried to make payment arrangements, but was told he had to pay the entire debt at once, something he was unable to do. Applicant further testified that when he was unable to resolve the matter with the creditor, the creditor "doubled" the amount of the claimed debt. Applicant is willing to pay the \$4,544.00 that the creditor originally claimed, but is unwilling to pay the \$8,283.00 now claimed by the creditor (TR at 38-43). If applicant cannot reach some arrangement with the creditor, and has to pay the entire debt claimed by the creditor, he plans on utilizing the \$10,000.00 in his union pension plan to do so (TR at 52-53).

**SOR Allegation 1.e.** Applicant satisfied this past-due \$164.00 debt (Exhibit B).

**SOR Allegation 1.f.** Applicant filed a Chapter 7 bankruptcy petition in February 1998. Applicant's unsecured debts, in the amount of \$11,733.00, were discharged by the bankruptcy court in June 1998. Applicant testified that he was forced to file bankruptcy following his (August 1997) divorce because his income was insufficient to satisfy the numerous debts which, although incurred during the marriage, were still his responsibility (TR at 13).

Applicant's current financial difficulties have been caused in part by health issues affecting both applicant and his wife, which have resulted in periods of unemployment, and a serious illness suffered by applicant's mother-in-law, which required applicant's wife to leave her job to care full time for her mother. Applicant's mother-in-law has recovered, and applicant's wife just returned to work, <sup>(2)</sup> which should go a long way toward easing applicant's financial stress.

Letters from various friends of applicant were admitted into evidence. Applicant is described in these letters as a man with strong family values. A letter from the man who has supervised applicant at his place of employment the past 16 months was also admitted into evidence. The supervisor states that applicant is an honest and trustworthy employee who is a "great asset" to the company.

### 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 some of the conditions leading to applicant's financial difficulties were beyond his control. His 1997 divorce left him with too much debt to handle on his relatively low income, which necessitated his 1998 bankruptcy filing. Following the bankruptcy discharge, and his marriage to his current wife in 2000, applicant and

his current wife have each experienced medical problems, which resulted in each of them being unable to work for significant periods of time. Despite these setbacks, applicant has initiated a good-faith effort to resolve his debts. With respect to the debts alleged in the SOR, he has taken affirmative action to deal with all of them. Two debts (SOR Allegations 1b and 1e) have been satisfied, one (SOR Allegation 1c) is in the process of being satisfied, and one (SOR Allegation 1a) has been shown not to be valid. With respect to the one remaining debt, applicant has tried to work out a settlement with the creditor, but has been unable to do so. He is willing to pay what he feels he owes, but is unwilling to pay what the creditor is now claiming he owes. If applicant is somehow forced to pay this creditor the \$8,283.00 the creditor claims is owed, then he has a plan for doing so; namely, taking the money out of his union pension plan. Based on these facts, applicant qualifies for Mitigating Conditions 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*) and E2.A6.1.3.6 (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant's current financial condition is stable. The fact that his wife has returned to work will have a significant, positive impact on his ability to meet his current financial obligations. Based on these facts, and applicant's reputation as an honest and trustworthy individual, Guideline F is found for him.

### **FORMAL FINDINGS**

#### PARAGRAPH 1: FOR THE APPLICANT

Subparagraph 1a: for the applicant

Subparagraph 1b: for the applicant

Subparagraph 1c: for the applicant

Subparagraph 1d: for the applicant

Subparagraph 1e: for the applicant

Subparagraph 1f: for the applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for applicant.

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Joseph Testan

Administrative Judge

1. To date, the only documentation the health care provider has submitted to Pacificare is a balance-due statement.
2. *See*, Exhibit M, pages 6 and 7.