

KEYWORD: Financial

DIGEST: Applicant's financial difficulties were caused, in part, by factors beyond his control. He made a good faith effort to resolve all of his past-due debts and succeeded in resolving the vast majority of them. He is now financially stable, and likely to remain that way. Clearance is granted.

CASENO: 03-22775.h1

DATE: 03/29/2005

DATE: March 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22775

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial difficulties were caused, in part, by factors beyond his control. He made a good faith effort to resolve all of his past-due debts and succeeded in resolving the vast majority of them. He is now financially stable, and likely to remain that way. Clearance is granted.

STATEMENT OF THE CASE

On October 5, 2004, 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 October 16, October 25, October 30, and November 8, 2004. The case was assigned to me on January 18, 2005. A Notice of Hearing was issued on February 10, 2005, and the hearing was held on March 4, 2005. The transcript was received on March 14, 2005.

FINDINGS OF FACT

Applicant is a 58 year old employee of a defense contractor. He began his current employment in 1987 after serving honorably in the U.S. Army for 21 years.

SOR Allegation 1a: Applicant's financial problems began in 1995 after his two sons were arrested in another State. Applicant paid their attorney fees in an effort to keep them out of jail, and by 1996, he was having difficulty paying his own bills. In 1997, he consulted with a lawyer about consolidating his debts. The lawyer suggested he file for bankruptcy. Applicant filed a Chapter 13 petition in October 1997. He chose to file a Chapter 13 instead of a Chapter 7 because he wanted to repay his creditors as much as he could. In late 1997, the Bankruptcy Court approved a repayment plan requiring applicant to make monthly payments of \$1,192.00 to the Bankruptcy Trustee. In August 2002, after applicant had paid \$44,055.00 to the Trustee, his case was dismissed for failing to make payments demanded by the Trustee. Applicant testified credibly that after he made the payments he had agreed to, the Trustee demanded he pay even more. Because he thought he was being treated unfairly by the Trustee, he decided not to contest the dismissal. He decided that he would rather deal directly with his remaining creditors.

SOR Allegation 1b: Applicant became indebted to this creditor for income tax he owed as a result of working TDY in another State. He satisfied this debt in 2004 (TR at 22-24; Exhibit A).

SOR Allegation 1c: Applicant satisfied this debt in 2004 (TR at 24-25; Exhibit B).

SOR Allegations 1d and 1e: These are the same debt. Applicant testified that he contacted the creditor and was informed the debt was transferred to a collection agency. However, he further testified that he is not really sure what the current status of the debt is (TR at 26-28).

SOR Allegation 1f: This debt was written off by the creditor a long time ago. This same creditor recently financed applicant's purchase of a new vehicle (TR at 29-30; Exhibit H).

SOR Allegation 1g: This debt was satisfied in 2004 (TR at 30-31; Exhibit C).

SOR Allegation 1h: This debt was satisfied in 2004 (TR at 31-33; Exhibit B).

SOR Allegation 1i: This debt was satisfied in 2004 (TR at 34; Exhibit D).

SOR Allegation 1j: Applicant is not sure what the current status of this debt is. The creditor listed in the SOR is a collection agency and it is quite possible applicant satisfied the underlying debt with his payments to the bankruptcy trustee.

SOR Allegation 1k: Applicant satisfied this debt in 2004 (TR at 38; Exhibit E).

SOR Allegation 1l: Applicant satisfied this debt in 2004 (TR at 39; Exhibit D).

SOR Allegation 1m: Applicant satisfied this debt in 2004 (TR at 39-40; Exhibit F).

SOR Allegation 1n: Applicant testified credibly that this debt was not his (TR at 41-42).

SOR Allegation 1o: Applicant satisfied this debt in 2004 (TR at 42; Exhibit F).

SOR Allegation 1p: Applicant does not believe this is his debt because when he went to the creditor for information about the alleged debt they had no record of him or the debt (TR at 43-44). Based on this fact, and the fact the only evidence of this debt is a credit report, this allegation is found for applicant.

SOR Allegation 1q: Applicant testified credibly that his old debt to QVC was rolled into a new QVC account, he paid off the old debt with monthly payments, and his current QVC account balance of around \$140.00 (which resulted from a new purchase) is in good standing (TR at 44-46).

SOR Allegation 1r: Applicant satisfied this debt (TR at 46-47).

SOR Allegation 1s: Applicant satisfied this debt in 2004 (TR at 47-48; Exhibit F).

As the foregoing indicates, applicant satisfied most of the debts listed in the SOR. As to the unresolved debts, applicant testified he tried contacting the creditors in question, but has been unsuccessful in getting any meaningful responses. He further testified credibly that if any of these creditors send him a bill for a past-due debt, he will pay it (TR at 55).

Applicant's financial condition has greatly improved. At present, he has a positive monthly cash flow of about \$600.00. He testified credibly that his financial difficulties will not recur because he learned his lesson. The only significant debts he currently has, a car loan and two credit cards, are current. Two relatively recent credit reports offered by applicant indicate he has a recent history of paying his debts in a timely manner (Exhibits G and H).

Documentary evidence offered by applicant establishes he performs well at his job (Exhibit I).

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 the conditions leading to applicant's financial difficulties were caused, in large part, by factors beyond his control. As indicated in the Findings of Fact, prior to 1995, applicant had no significant financial problems. Then his two sons got into legal trouble, which caused applicant to spend large amounts of money to help them. Eventually applicant was unable to satisfy his debts and he filed for Chapter 13 Bankruptcy. Based on these facts, applicant qualifies for Mitigating Condition 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*).

With respect to the debts alleged in the SOR, applicant has tried to satisfy all of them. When he was able to get cooperation from the creditor, he satisfied the debt. This led him to satisfy the vast majority of the debts listed in the SOR. This fact, and the fact he completely satisfied at least four other past-due debts by making payments to the

Bankruptcy Trustee (Exhibit 6), qualifies him for Mitigating Condition E2.A6.1.3.6 (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Lastly, all of applicant's past-due debts were incurred many years ago. He has no recently acquired debts that have gone delinquent. As a result, he qualifies for Mitigation Condition E2.A6.1.3.1 (*the behavior was not recent*).

Given the fact that applicant's current financial condition is stable and is likely to remain that way for the foreseeable future, and the fact that the unusual circumstances leading to his previous financial difficulties are unlikely to recur, Guideline F is found for him.

FORMAL FINDINGS

PARAGRAPH 1: 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.

Joseph Testan

Administrative Judge