

DATE: December 20, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23569

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

SYNOPSIS

While serving on active duty, a mortgage holder foreclosed on a property held in applicant's name. The mortgage holder is claiming applicant still owes it approximately \$36,000.00. Applicant is trying to work out a settlement with the mortgage holder using the mortgage holder's failure to comply with the Soldiers and Sailors Relief Act (SSRA) as leverage. If he is unable to work out a settlement and is forced to pay the debt, applicant is financially able to do so. Clearance is granted.

STATEMENT OF THE CASE

On December 7, 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, 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 21, 2004. The case was assigned to the undersigned on February 25, 2005. A Notice of Hearing was issued on April 7, 2005, and the hearing was held on May 12, 2005. The transcript was received on May 20, 2005.

FINDINGS OF FACT

Applicant is a 31 year old employee of a defense contractor. He served in the Active Duty Navy from 1993 to April 5, 1997, and in the Naval Reserves from June 1997 through 2004.

In the early 1990s, applicant's parents purchased a home. His parents put the mortgage in his name "to help [him] out through college and [to] try to build [his] credit" (TR at 31). Shortly thereafter, applicant joined the Navy, and his parents rented the house out. His parents then experienced marital problems and separated. This caused the parents

financial problems, which eventually led to them not paying the mortgage on the house. In March 1997, the mortgage lender started foreclosure proceedings against applicant. It appears from Exhibit 4 that (1) applicant was the named defendant in the foreclosure proceedings, (2) the mortgage debt claimed by the mortgage holder was about \$36,000.00, and (3) the mortgage holder bought the house back for \$4,600.00 in September 1997. Although applicant was on active duty at the time the foreclosure proceedings were initiated, the mortgage holder did not comply with the SSRA, which in essence protects active duty service personnel from having to defend civil actions filed against them. At present, it is unclear if applicant waived his right to contest the foreclosure based upon the failure of the mortgage holder to comply with the Act. Applicant did not learn about the foreclosure until after he left active duty. At the present time applicant has an attorney trying to work out a settlement with the mortgage holder using the SSRA as leverage in the negotiations (TR at 36, 39-40). If he is forced to pay the judgment as it now stands applicant can and will do so (TR at 45).

At the present time applicant is doing well financially. He has a positive monthly cash flow of about \$3,000.00.

The Security Officer at applicant's place of employment appeared at the hearing and testified that she has known applicant about four years and she considers him a "very trustworthy individual" (TR at 12-13).

Applicant's Division Manager and another individual who has supervised applicant also appeared at the hearing. The Division Manager testified that applicant is "an outstanding individual, a hard worker, one of the hardest workers we have, tremendous initiative, extremely ethical, honest" (TR at 16-17). The second individual testified that applicant is "one of the top employees" he has working for him (TR at 22-23).

CONCLUSIONS

The evidence establishes that in 1993, when applicant was 19 years old, his parents purchased a home and put the title and the mortgage in applicant's name. Apparently there were no problems until after applicant joined the active duty Navy. His parents did not make the required mortgage payments and a foreclosure proceeding was initiated. Through this action, which did not comply with the SSRA, the mortgage holder managed to buy back the property at a fraction of what it was worth. Applicant learned about the foreclosure after he left active duty in 1997. Although he has known about the remaining debt (based on the difference between the mortgage amount and what the house was sold for) for years, he has only recently begun exploring a settlement with the mortgage holder. This debt requires 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*) of the Financial Considerations guideline.

This debt arose as a result of applicant listening to his parents advice, and then after he joined the Navy, relying on his parents to honor their obligation and pay the mortgage. These facts, together with the fact applicant never knew about the default while on active duty (serving 3000 miles away from the house and his parents), requires application of Mitigating Condition E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*). Because this financial fiasco was an isolated incident that occurred years ago, applicant also qualifies for Mitigating Conditions E2.A6.1.3.2 (*it was an isolated incident*) and E2.A6.1.3.1 (*the behavior was not recent*).

At the present time, applicant is financially stable. Although he is trying to work out a settlement with the mortgage holder, if he has to, he is willing and financially able to pay the debt. Given this fact, the Financial Guideline concern expressed in the Directive (E2.A6.1.1.1 - *An individual who is financial overextended is at risk of having to engage in illegal acts to generate funds*) is not present in this case. Based on the foregoing, Guideline F is found for the applicant.

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