

DATE: March 2, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23877

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial difficulties were clearly caused by factors beyond his control. He is now financially stable, and is likely to remain that way. Clearance is granted.

STATEMENT OF THE CASE

On May 26, 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 June 24, 2004. The case was assigned to me on August 27, 2004. A Notice of Hearing was issued on October 27, 2004, and the hearing was held on December 1, 2004. Following the hearing, applicant submitted 13 pages of documents. These 13 pages, and Department Counsel's written two page response indicating he has no objection to them, were marked as Exhibit N and admitted into evidence. The transcript was received on December 16, 2004.

FINDINGS OF FACT

Applicant is a 58 year old employee of a defense contractor.

Prior to 1994, applicant was a successful businessman in State A with no financial problems. In August 1994, his wife collapsed and developed significant medical problems that left her in a coma for about five months. Although applicant and his wife had medical insurance, applicant's share of the medical bills, which he paid out of pocket, was \$75,000.00 to \$80,000.00.⁽¹⁾ In addition to his wife's medical bills, at about the same time applicant was paying for nursing care for

his elderly mother, who was left homeless following the 1994 Northridge earthquake.⁽²⁾ To meet these unexpected expenses, applicant borrowed money from his business. Unfortunately, the money eventually ran out, and he lost his business. As a result, he developed significant financial problems, which will be discussed in the order they were alleged in the SOR.

SOR Allegation 1a: Applicant satisfied this debt in June 2004 (TR at 41-43; Exhibit N).

SOR Allegation 1b: After applicant's wife became ill, he contacted GMAC and told them he could no longer afford the car. When he voluntarily returned the car, he was told he still owed about \$2,000.00. Over the years, the debt grew from about \$2,000.00 to over \$7,000.00. In August 2004, applicant and GMAC's representative entered into an agreement requiring applicant to make monthly \$200.00 payments until the debt is paid in full. He has made all the required payments through December 2004 (TR at 44-45; Exhibits K and L).

SOR Allegation 1c: This was a business debt that applicant became liable for because he guaranteed it. In 1995, a judgment was entered against him. The State where the judgment was entered requires the judgment creditor to do one of the following within six years of obtaining the judgment in order to keep it legally enforceable: (1) take action to collect the judgment, or (2) renew

the judgment. Because the creditor failed to take any action within the required time, applicant is no longer legally liable for this debt.

SOR Allegation 1d: Applicant satisfied this \$849.00 debt (TR at 47).

SOR Allegation 1e: This \$228.00 debt was satisfied in 2003 (TR at 47; Exhibit N).

SOR Allegation 1f: Applicant's wife obtained this department store credit card and used it without his knowledge. The debt is no longer collectable due to the State's Statute of Limitations.

SOR Allegation 1g: This debt was incurred by applicant's son and mistakenly placed on applicant's credit report. He complained and the debt was deleted from his credit report.

SOR Allegation 1h: This debt was satisfied in 2003.

SOR Allegation 1i: This was a business debt. As with the debt alleged in SOR Paragraph 1c, this 1996 judgment debt became legally unenforceable after six years because the creditor did not take the required action within the time required by the Statute of Limitations.

SOR Allegations 1j and 1k: Applicant filed Chapter 13 bankruptcies in 1995 and 1996 in order to save his house from foreclosure.

Since moving to State B in August 2002, applicant's financial condition has greatly improved. At present, he has a positive cash flow of about \$400.00 per month (including his \$200.00 payment to GMAC), about \$2,500.00 in a checking account, and about \$10,000.00 in various retirement plans.

Documentary evidence offered by applicant establishes he performs well at his job.

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 beyond his control. As indicated in the Findings of Fact, prior to 1994, applicant was a successful businessman with no financial problems. Then disaster struck. As a result of a freak occurrence, applicant's wife was injured and spent six months in the hospital,

most of the time in a coma. After "robbing" his business to pay the mounting medical bills incurred by his wife and mother, the inevitable occurred: applicant ran out of money and was unable to pay his bills. 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 satisfied four of them, entered into an agreement with the creditor to repay another, and is no longer legally liable for three others due to the running of the Statute of Limitations. Given applicant's payment of four debts and his agreement to pay a fifth, which he has honored so far, he qualifies for Mitigating Condition E2.A6.1.3.6 (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). I reach this conclusion notwithstanding the fact applicant has not repaid three debts because he is no longer legally liable for them. Given the unique circumstances of this case, utilizing the Statute of Limitations to relieve himself of these debts is no worse than if he filed a Chapter 7 bankruptcy to relieve himself of the debts, a course of action that in this case would be legal, completely understandable, and unlikely to raise a security concern.

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

1. Applicant's wife passed away in 2000.
2. Applicant's mother passed away in 2003.