

KEYWORD: Financial

DIGEST: Applicant is indebted to at least five creditors in the past-due amount of at least \$17,000.00, and there is little or no chance he will be able to satisfy these debts anytime soon. Clearance is denied.CASENO: 03-25086.h1

DATE: 01/25/2005

DATE: January 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25086

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is indebted to at least five creditors in the past-due amount of at least \$17,000.00, and there is little or no chance he will be able to satisfy these debts anytime soon. Clearance is denied.

STATEMENT OF THE CASE

On June 8, 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 July 2, 2004. The case was assigned to the undersigned on August 9, 2004. A Notice of Hearing was issued on October 6, 2004, and the hearing was held on November 10, 2004. The transcript was received on November 30, 2004.

FINDINGS OF FACT

Applicant is a 56 year old employee of a defense contractor.

Applicant was indebted to all of the creditors as alleged in SOR Allegations 1a, 1b, 1c, 1d, 1e, 1f, 1g, and 1h. These allegations are therefore incorporated by reference as Findings of Fact.

In April 2004, applicant filed a Chapter 7 Bankruptcy petition. In August 2004, all of the debts alleged in the SOR, except his debts to the IRS and California Franchise Tax Board (CFTB), were discharged.

At the present time, applicant is still indebted to the IRS in the approximate amount of \$13,000.00 for back taxes, penalties, and/or interest for tax years 2000, 2001 and 2002 (TR at 18).

This debt arose in part because applicant did not file his income tax returns on time. Applicant had an agreement with the IRS to pay this past-due tax debt by making monthly payments. Although the IRS suspended the agreement after applicant filed his bankruptcy petition, applicant has continued to make the monthly payments.

As of May 2004, applicant had reduced his CFTB debt to \$38.00.

Despite his bankruptcy discharge, applicant is still experiencing severe financial difficulties. He is behind about \$4,000.00 in his rent payments, and if he doesn't pay his landlord \$500.00 per month toward this past-due rent, he is subject to being locked out of his house, which would leave not only applicant, but his children and grandchildren on the street. In addition, he currently owes two food stores for checks he wrote that bounced. Applicant summed up his current financial status by stating, "Yes, I am still robbing Peter to pay Paul" (TR at 23).

Applicant testified credibly that his financial difficulties arose in part because (1) his wife refused to have enough income tax withheld from her paycheck and (2) he had been laid off from his job.

CONCLUSIONS

The evidence establishes that despite receiving a Bankruptcy Discharge in August 2004, applicant is indebted to at least five different creditors for past-due debts in the total amount of at least \$17,000.00. Applicant's failure to honor his financial obligations reflects adversely on his judgment and reliability, and suggests he cannot be relied upon to safeguard classified information. With respect to the Financial Considerations guideline, 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*) are applicable.

The evidence establishes that applicant is a decent man who is trying his best to take care of his family. For this, he deserves credit. However, the fact remains that at the present time, he owes at least \$17,000.00 in past-due debts, debts he has little or no chance of satisfying anytime soon. In addition, his current expenses exceed his current income, or as he put it, he is currently "robbing Peter to pay Paul." This unfortunate situation, which stands little chance of being reversed anytime soon, means applicant will likely be behind on other debt payments in the near future.

In view of applicant's attempts to satisfy his IRS debt and his debt to his landlord, 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*). He does not qualify for Mitigating Condition E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*)

because, by his own admission, his IRS debt, by far his largest past-due debt, arose in part because he didn't file his income tax returns on time.

Based on the foregoing, it is not now clearly consistent with the national interest for applicant to have access to classified information.

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

