

KEYWORD: Financial

DIGEST: Applicant's financial problems resulted from a factor beyond his control. He satisfied two out of his three past-due debts, and acted reasonably when trying to negotiate with the creditor on the third past-due debt. He is currently financial stable and likely to remain that way. Clearance is granted.

CASENO: 04-09684.h1

DATE: 01/23/2006

DATE: January 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09684

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems resulted from a factor beyond his control. He satisfied two out of his three past-due debts, and acted reasonably when trying to negotiate with the creditor on the third past-due debt. He is currently financial stable and likely to remain that way. Clearance is granted.

STATEMENT OF THE CASE

On July 20, 2005, 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 29, 2005. The case was assigned to the undersigned on November 10, 2005. A Notice of Hearing was issued on November 15, 2005, and the hearing was held on December 7, 2005. The transcript was received on January 18, 2006.

FINDINGS OF FACT

Applicant is a 47 year old employee of a defense contractor.

Applicant was financially stable and gainfully employed when the September 11, 2001 terrorist acts occurred. As a result of 9/11, his employer, a supplier to Boeing, lost business. Applicant was laid off in August 2002. Other than a low paying, part time job at a department store, applicant was unemployed until arch 2003. In March 2003 he was hired as a contract employee by his current employer. He was converted to a regular employee in March 2004.

In 2001, applicant requested and received an early distribution from his employer's stock/savings account. He used the money to make a down payment on a house he purchased. This distribution had significant tax implications, and when it came time for him to pay his 2001 Federal income tax bill, applicant was unprepared. As a result, he became indebted to the IRS for tax year 2001. Applicant's inability to pay his 2001 income tax when due in April 2002 was the result of poor financial planning on his part. It cannot be blamed on 9/11 since he was not laid off until after the income tax was due. However, it is obvious that applicant's loss of employment affected his ability to satisfy the debt any sooner than he did. The debt, which at one point reached approximately \$10,000.00 after penalties and interest were added, was satisfied by applicant in March 2005, before the SOR was issued (Exhibit A).

The debt to Capital One Bank was satisfied by applicant in January 2005, before the SOR was issued (Exhibit B).

The debt to Bank One Acceptance, which arose after applicant voluntarily returned his leased vehicle before the contract allowed, is still outstanding. Applicant does not dispute that he is indebted to this creditor. He does, however, dispute the amount of the debt. He feels he is being "pinched" by the creditor (TR at 16). He testified credibly that he tried dealing with the creditor, but they would not accept anything but the full amount they claimed (approximately \$10,000.00), and they wanted the full amount immediately. Applicant testified that he will pay the debt if he is forced to do so, ⁽¹⁾ but at the present time, given the position the creditor has taken, he plans on taking no further action.

Applicant raised the funds to satisfy the first two debts by refinancing the mortgage on his house in January 2005. At the present time, he is current on all of his debt payments, and his income is more than sufficient to meet his expenses. He is not currently experiencing any financial problems, and does expect to encounter any in the foreseeable future.

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. His unemployment as a result of 9/11 left him unable to keep up with his debt payments to Capital One, and it undoubtedly contributed to his inability to satisfy his 2001 income tax liability any time sooner than he did. 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 three debts alleged in the SOR, applicant satisfied two of them and tried in good faith to settle the third. He therefore 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*).

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

In view of the foregoing, and the fact that applicant's current financial condition is stable and is likely to remain that way for the foreseeable future, 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. Given the \$100,000.00+ equity he has in his house (TR at 39), and his family's combined annual income of approximately \$90,000.00 (TR at 45), applicant has the ability to satisfy this debt.