

DATE: August 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12150

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Lynette Andresen, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's failure to address the bulk of his past-due indebtedness precludes a finding that he has reformed. Clearance is denied.

STATEMENT OF THE CASE

On October 27, 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 November 28, 2005, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel (DC) submitted the Government's written case (FORM) on or about May 5, 2006. Applicant did not file a response to the FORM. The case was assigned to me on July 25, 2006.

FINDINGS OF FACT

Applicant is a 52 year old employee of a defense contractor.

Guideline F

SOR Allegation 1a: Applicant filed a Chapter 7 bankruptcy petition in 1995. His \$25,200.00 in debts were discharged in June 1995. Applicant states "the bankruptcy was caused by over extension of [his] credit which began during the Christmas season in '94" (Exhibit 17).

SOR Allegation 1b: Applicant was indebted to this creditor in the approximate amount of \$964.00. The debt had gone

delinquent and had been placed for collection sometime prior to October 28, 2002. Applicant satisfied the debt in October 2005.

SOR Allegation 1c: Applicant issued a "bad" check to a store in 2002. Law enforcement became involved, but the extent of the involvement is unclear. Applicant states he subsequently made good on the check.

SOR Allegations 1d and 1g: Applicant had two accounts with Capital One, and both went delinquent. Applicant satisfied both debts in October 2005.

SOR Allegation 1e: Applicant disputes this \$2,995.00 T-Mobile debt. In a February 2004 signed, sworn statement that he gave to the Defense Security Service (DSS), applicant stated that he had a T-Mobil account but that it was current. He then speculated that this may be a former Verizon account that he had previously disputed with Verizon and refused to pay. In his response to the SOR, applicant denied this debt, explaining, "I had reported it lost." Applicant's reference to Verizon is nothing more than speculation, and as such, is not credible evidence. His explanation that he had "reported it lost" is confusing. However, even if it is taken to mean he reported the phone lost and therefore should not have been liable for the debt, this statement does not help applicant. This debt had gone delinquent in or before October 2002; applicant's statement that he "reported it lost," made for the first time three years after the debt had gone delinquent, is not credible. ⁽¹⁾ I find that applicant is indebted as alleged.

SOR Allegations 1f and 1h: These are the same debt. Applicant leased a vehicle from GMAC that was eventually repossessed. Following the repossession, applicant became indebted to GMAC in the amount of \$8,482.00. Applicant has provided different, confusing statements concerning this account, none of which is credible.

SOR Allegation 1i: In a February 2004 Personal Financial Statement, applicant indicated he had a positive monthly cash flow of \$1,847.00.

After applicant's bankruptcy discharge in 1995, he apparently had no further financial difficulties until 2002. Applicant blames these subsequent financial difficulties on two factors. In 1999 or 2000, he was laid off, and although he was rehired, his monthly income declined by at least \$800.00. Second, his wife experienced severe medical problems in 2003 and was unable to work for about eight months (Exhibit 7).

Guideline E

The Government alleges that on a Security Clearance Application (SCA) he caused to be electronically submitted on or about October 21, 2002, applicant lied about his financial history in response to three questions.

SOR Allegation 2a: In response to Question 35, applicant denied having any property repossessed during the previous seven years. The Government alleges this response was false because his GMAC financed vehicle had been repossessed. Since it is unclear from the evidence if the vehicle was repossessed before or after applicant completed the SCA, this allegation is found for applicant.

SOR Allegations 2b and 2c: In response to Question 38, which asked, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and Question 39, which asked, "Are you currently over 90 days delinquent on any debt(s)?" applicant stated "no." Applicant denies that his responses were false. There is no definitive evidence that applicant had been over 180 days delinquent on any debt during the seven years prior to his completion of the SCA. Accordingly, SOR Allegation 2b is found for applicant. With respect to SOR Allegation 2c, although it is unclear from the evidence if his debts to Fingerhut (SOR Allegation 1b) and T-Mobil (SOR Allegation 1e) were over 90 days delinquent when he completed the SCA, ⁽²⁾ the evidence establishes that one of his debts to Capital One was more than 90 days delinquent when he completed the SCA. Accordingly, the proper response to Question 39 was "yes." However, based on the evidence in the record, I cannot conclude that applicant knew that one of the Capital One debts was more than 90 days delinquent when he completed the SCA. Accordingly, the evidence does not support a finding that applicant intentionally provided the false response to Question 39.

CONCLUSIONS

With respect to Guideline F, the evidence establishes that (1) applicant has a history of financial difficulties and (2) at the present time he is still indebted to two creditors listed in the SOR for past-due debts in the total amount of approximately \$11,400.00. 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. 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.

Applicant's first wave of financial difficulties, which started in 1994, were caused by overspending, not by factors beyond his control. However, his second wave of financial difficulties, which started in 2002, were caused by at least one factor beyond his control; namely, his significant reduction in income. And, although applicant's second wave of financial difficulties began before his wife's illness and unemployment, and thus did not cause his financial delinquencies, this unfortunate situation undoubtedly affected his ability to address his financial delinquencies any time sooner. Accordingly, mitigating Condition E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*) applies.

Mitigating Condition E2.A6.1.3.6 (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. Although he offered credible evidence that he satisfied four of the debts alleged in the SOR (totaling approximately \$2,335.00 plus the unknown amount of the bad check he made good on), he has not satisfied the two largest debts alleged in the SOR, totaling approximately \$11,400.00. Applicant's failure to repay or to even address the vast amount of his past-due indebtedness, even though according to his Personal Financial Statement he has the ability to do so, precludes a finding that he has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Having failed to provide a reasonable explanation for ignoring these debts, and having failed to offer any credible evidence that he intends to satisfy these debts any time soon, it is impossible to conclude he has reformed. Accordingly, Guideline F is found against applicant.

With respect to Guidelines E and J, as noted above, the evidence does not support a finding that applicant intentionally provided false, material information to the Government. Accordingly, these guidelines are found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: FOR THE APPLICANT

PARAGRAPH 3: FOR 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

Administrative Judge

1. Applicant made no such claim when he was interviewed by DSS in February 2004.
2. Although the October 2002 credit report indicates that both of these debts were "bad," the credit report does not state when they went delinquent.