

November 21, 1996

In RE:

Applicant for Security Clearance

ISCR Case No. 96-0544

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

Appearances

FOR THE GOVERNMENT

Melvin Howry

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On August 6, 1996, 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) (copy appended) 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.

The applicant responded to the SOR in writing on August 30, 1996. The case was received by the undersigned on October 7, 1996, and a Notice of Hearing was issued on October 11, 1996. A hearing was held on November 5, 1996.

FINDINGS OF FACT

Applicant is a thirty-four year old married man.

SOR Allegation 1a

Applicant is currently indebted to this creditor in the approximate amount of \$6,300.00. He has not made any payment to the creditor since October 1991. When asked why he hadn't made any payment since October 1991, applicant replied, "no money" (TR at 102).

Applicant testified that he intends to satisfy this debt when he has the funds to do so. He offered evidence establishing that in August 1996, after he received the SOR, he contacted the creditor and reached an agreement to settle the debt for \$4,500.00. However, since the agreement required applicant to make the full payment by September 30, 1996 (Exhibit J), and he failed to do so, applicant is still indebted in the original amount, i.e., approximately \$6,300.00.

SOR Allegation 1b

Applicant received a car loan from this creditor in approximately 1990. In approximately April 1993, he voluntarily returned the car to the creditor because he could no longer afford the payments. The creditor subsequently notified applicant that he still owed approximately \$3,000.00 on the car loan. Applicant does not believe he owes the creditor \$3,000.00. According to applicant's testimony, at the time he returned the car he owed approximately \$7,626.00 to the creditor, and since the creditor sold the car for \$6,500.00, he should only be liable for the approximately \$1,100.00 difference. Applicant does not believe he should be held liable for other charges associated with the return and subsequent sale of the car. For this reason, he does not intend to pay this creditor the amount they are demanding. He will, however, pay them the approximately \$1,100.00 he admits he owes when he has the funds to do so. He has not made any payments to this creditor since he returned the car.

SOR Allegation 1c

Applicant is currently indebted to this creditor in the approximate amount of \$4,300.00. He has not made any payment to this creditor since October 1992 (Exhibit O). He intends to satisfy the debt, but at the present time does not have the funds to do so.

In August 1996, after he received the SOR, applicant contacted the creditor. He was able to get the creditor to agree to accept \$3,000.00 to settle the debt as long as applicant's payment was received by September 30, 1993 (Exhibit I). Since applicant did not make the agreed-upon payment, he is still indebted in the original amount, i.e., approximately \$4,300.00.

SOR Allegation 1d

Applicant was indebted to this creditor in the approximate amount of \$585.00 for telephone services provided to him in 1994. In August 1996 the creditor accepted a \$352.00 payment from applicant to settle the debt (Exhibit A).

SOR Allegation 1e

Applicant is indebted to this creditor in the approximate amount of \$440.00 for telephone services provided to him in 1994. Although he has not made any payments to this creditor since 1994, he was in contact with this creditor "days ago" in an effort "to clarify" what he owes (TR at 85, 116). He intends to satisfy this debt when he can afford it.

SOR Allegation 1f

Applicant admits that he was indebted to this creditor, but not in the amount claimed. Applicant states that he owes this creditor just two or three days rent, not an entire month's rent as the creditor claims. Applicant was able to persuade the creditor to drop some of the charges, and in September 1996, he settled the debt for \$231.64 (Exhibits B and Q).

Applicant's Testimony

Applicant testified that while he was employed as an engineer from 1988 to June 1991, he was current on his debt payments. However, after he was laid off in June 1991, he incurred additional debts and fell behind on some of his debt payments. His financial condition remained poor for several years thereafter as he and his wife went through periods of unemployment and underemployment.

Applicant further testified that to date he has done what he can do to satisfy his past-due financial obligations, as evidenced by the fact he has satisfied some of the smaller debts. With respect to the remaining past-due financial obligations, applicant testified that he "accrued them over five years and it's going to take some time" to satisfy them. He further testified, however, that he has a plan to satisfy them which, in essence, consists of applicant saving \$200.00 per month and borrowing money from his 401K plan until he has sufficient funds to satisfy the debts. Applicant further testified that he feels responsible for the debts and will pay them off.

POLICIES

Enclosure 2 of the Directive sets forth the Adjudication Policy (divided into Disqualifying Factors and Mitigating

Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

FINANCIAL CONSIDERATIONS

Disqualifying Factors:

1. A history of not meeting financial obligations.
3. Inability or unwillingness to satisfy debts.

Mitigating Factors:

3. The conditions that resulted in the behavior were largely beyond the person's control (e. g., loss of employment).

CONCLUSIONS

The evidence establishes that applicant has been indebted to (1) ----- for two separate credit card accounts in the approximate amount of \$10,500.00 since at least 1992, (2) ----- for a car loan in the approximate amount of \$3,000.00 since at least 1993, and (3) ----- for telephone services in the approximate amount of \$440.00 since 1994. The evidence further establishes that, although applicant testified he intends to satisfy these debts, he has not made **any** payment to ----- since 1992, **any** payment to ----- since 1993, or **any** payment to ----- since 1994, notwithstanding the fact that he and his wife have been fully employed the past eighteen months. These long-standing debts, and applicant's inability or unwillingness to make **any** payment on them, raise serious and substantial doubts about his suitability for access to classified information.

There is no doubt that applicant's financial difficulties were caused, in large part, by his several years of unemployment and underemployment. For this reason, the fact that he fell behind on his debt payments is understandable, and had he taken real and substantial steps to resolve his debts after he and his wife were hired by their current employer eighteen months ago, his financial difficulties might not now be a security concern. However, to date, applicant has not taken any meaningful action to satisfy four of his long-standing debts, which represent the bulk of the indebtedness alleged in the SOR. The fact that he contacted ----- and reached a settlement with them is not very persuasive evidence that applicant is willing and able to effectively deal with his financial problems in view of his inability or unwillingness to honor the terms of the settlement. And, the fact that he contacted the phone company "days ago" to clarify what he owes is not very persuasive evidence of financial responsibility given the fact applicant took no action to satisfy this relatively minor debt during the previous two years.

Applicant testified that he has a plan to satisfy these debts. Regardless of applicant's sincerity, his plan does not constitute credible evidence that his financial difficulties have been resolved, or are likely to be resolved. There are simply too many variables involved to conclude with any certainty that applicant will be able to follow through with his plan.

Given applicant's inability or unwillingness to take any meaningful steps to satisfy the four long-standing debts referred to above, and the lack of any evidence that reasonably suggests applicant's financial condition is likely to significantly improve anytime soon, it is not clearly consistent with the national interest to grant him access to classified information at this time. For this reason, Criterion F is found against applicant.

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

Administrative Judge