

DATE: July 9, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0602

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Richard Murray, Esquire

SYNOPSIS

Applicant has mitigated security concerns over his finances as he has initiated a good faith effort to resolve his debts to one creditor and has paid off the other four creditors in full. He is now in a favorable financial position and is committed to a responsible life style. To his credit he is highly regarded as competent and trustworthy at his place of employment. According to a financial expert, Applicant's level of savings is admirable: his debt to earnings ratio is well within the acceptable range. He is not financially over-extended and he has met and is meeting all of his obligations. Applicant is in "good shape financially." Applicant is an acceptable credit risk who is living within his means and has a larger percentage of disposable savings and income than most people. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on December 15, 2000. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) (Item 1) The SOR alleges specific concerns in paragraph 1 over financial issues (Guideline F). Applicant responded to these SOR allegations in an Answer notarized on January 11, 2001, where he admitted paragraphs 1.a. through 1.f. and 1.h. through 1.i; but initially denied 1.g. Subsequently, on January 19, 2001, he admitted 1.g. He initially requested a decision based on the information he supplied, but later on March 5, 2001 he retained counsel who advised that Applicant requested a hearing.

DOHA Department Counsel filed a Ready to Proceed notice on March 28, 2001; and this case was assigned to me on March 29, 2001. A Notice of Hearing was issued on April 11, 2001. Because of scheduling difficulties, Applicant's counsel and Department Counsel concurred on a May 7, 2001, hearing date. At the hearing the Government offered eight exhibits (Exhibits 1-8) that were admitted into evidence, but called no witnesses. Applicant testified himself, and called one expert witness. He offered nine exhibits that were admitted into evidence (Exhibits A-I) At his counsel's request, I allowed seven days until May 14, 2001, to submit additional evidence. (TR 76, 96) Subsequent to the hearing

Applicant's counsel provided an exhibit (Exhibit J) on May 14, 2001. Department Counsel did not object to the admissibility of Exhibit J. I did admit Exhibit J into evidence, and the record closed on May 14, 2001. The transcript (TR) was received on May 24, 2001.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 46 year old employee of a defense contractor, Employer #1, where he has worked since April 1997 in an overseas assignment. From 1995-97 he worked in another civilian jobs for employer #2 in an overseas assignment; from 1993-95 for employer #3 in an overseas assignment. Previously he worked for employer #4. He applied for a security clearance in July 1998. (Security Clearance Application, SF 86). (TR 10, 29, 34-38; Exhibit 1)

He was married in 1973 and has three children born in 1973, 1975, and 1978. His wife and children live in State #1; he has lived separately from them for twenty years since 1979, but provided financial support until his youngest child graduated from high school. (TR 10, 29, 32-34, 64; Exhibit 1)

Financial Considerations

In the SF 86 he revealed unidentified financial delinquencies over 180 days and that he had filed for Chapter 13 Bankruptcy in August 1992. (Exhibit 1) He is the oldest of seven children and grew up in a rural community where he was expected to help his siblings; in 1992 he had loaned money to family members who did not repay him which led to his initial financial difficulties. (TR 31, 42) He no longer has any financial obligations for his wife and adult children. (TR 34) However, he helps his children financially when he can. (TR 59)

He first went overseas in 1993 in order to try to get his financial affairs "back in order." (TR 50) He has not had any financial problems since he went to work overseas as he pays his bills on time. (TR 56) He would never act illegally to enhance his financial situation as in fact he has turned down higher paying jobs because his values are not materialistic. (TR 60)

His annual salary is \$79,000; also, he saves money in a 401K plan which is now valued at \$30,000. He has regular savings of approximately \$6,000. Because of his good credit, his credit limit was expanded last year from \$1,200 to \$10,000. In January 2001 he had a zero balance on his credit card, but he now owes \$5,000 for classes and his travel to the US for the May 2001 hearing. (TR 38, 57-58, 72-73; Exhibit F)

Applicant's current monthly income is \$6,031; his monthly expenses \$1,040; his debt payments \$880; thus his net remainder monthly is \$4,111. His assets total approximately \$35,000. (Exhibit J)

In March 2000 Applicant was interviewed by the Defense Security Service (DSS) and explained his finances and the debt to Creditor #1. (Exhibit 2) He had earlier been interviewed by DSS in July 1995. (Exhibit 8) Until he received the SOR, he was unaware that these dated debts would still be on his record as he had not applied for any loans and had not done a credit check. (TR 79-80)

Applicant failed to file and pay federal income taxes for tax years 1990 and 1991. He owed more taxes than he had money withheld from his salary during that period. He subsequently paid those taxes in full after his wages were garnished by a tax lien. His wife's house burned, so he does not have detailed records from those years. He now timely files his taxes. (SOR 1.a., 1.b.) (TR 55-56, 65-67, 71-72, 74, 77; Exhibits 5, 6, J)

Applicant owed \$2,501 to Creditor #1, but has since paid them. (SOR 1.c.) (TR 54-55, 77-78; Exhibits 2, E)

Applicant owed Creditor #2 \$150 for a loan for his wife; it was charged off in May 1992 as a bad debt. He has paid Creditor #2 \$385 in April 2000. (SOR 1.d.) (Answer; TR 53, 78; Exhibit D)

Applicant owes Creditor #3, a credit union, \$5,905 for a car and signature loan from 1992. It was overdue in November

2000. Initially he was told by the credit union that this debt was charged off and thought he was no longer liable for the debt. He was made aware of this debt from the SOR. He then made arrangements to pay them \$500 per month in January 2001 and has made timely payments since then. (SOR 1.e) (Answer; TR 51-53, 73-76; Exhibits C, J)

Applicant owed over \$2000 for a judgment in State #1 for Creditor #4 for a 1992 loan; He had paid back all of the amount except for \$200 in 1993 when he went overseas; later that year he sent the remaining \$200 to his wife to pay Creditor #4. She did not do so and the first time he learned of the outstanding debt was when he received the SOR. He has paid this creditor in full. (SOR 1.f.) (Answer; TR 43-49; Exhibit B)

Applicant initially disputed this debt for \$272 with Creditor #5 which was registered as a judgment against him in November 1993 in State #1, but he later admitted it as a medical expense for one of his children. He learned about this debt from the SOR and paid the amount owed. (SOR 1.g.) (Answer; TR 46-48, Exhibit A)

Applicant filed for Chapter 13 bankruptcy in 1992 in State #1. He filed for bankruptcy as he had loaned money to family members who did not repay him which led to his initial financial difficulties. It was dismissed in 1992 because he failed to make the agreed upon payments, but he has subsequently paid these creditors. His house was repossessed after the bankruptcy was dismissed. (SOR 1.h.) (TR 31, 42-44, 70; Exhibit 7)

Applicant was arrested in 1984, 1988, 1990, and 1991 in State #1 for writing Worthless or Fraudulent Checks, a misdemeanor; he was convicted and fined. During that period he was working for Employer #4 and had to travel frequently for his job, so he left post-dated checks with his wife to cover expenses; sometimes she would deposit the checks before he was paid. When he was notified, he would go to the courthouse and pay the charges. All these issues have been resolved as he has paid the amounts due. (SOR 1.i through 1.l) (TR 38-42, 45)

Expert Testimony

Applicant consulted an professional on financial and accounting matters, Mr. X, whose expert qualifications were accepted. In May 2001 this expert gave Applicant some financial advice as to how to enhance his financial position by paying off his credit card money and putting less in his 401K and more in a Roth IRA account. He counseled Applicant on his financial situation. While he made some poor decisions while he was supporting two households, his life improved financially in 1993 when he went to work overseas as that work enhanced his income and lessened his contact with relatives who needed his help. Applicant's level of savings is admirable, and his debt to earnings ratio is well within the acceptable range. He is not financially over-extended, and he has met and is meeting all of his obligations. This expert's view was that Applicant is in "good shape financially." Also, Applicant is going to school to increase his value to his employer. This expert also advised him to have his credit record corrected. He views Applicant as an acceptable credit risk. He is living within his means and has a larger percentage of disposable savings and income than most people. (TR 61-64, 80-81, 84-97; Exhibit I)

References

A program manager who has known Applicant for eighteen months and who is his third level supervisor assesses Applicant as "extremely responsible, conscientious, and self disciplined." She has "the upmost respect for the good judgment and professionalism that [Applicant] continuously displays." She trusts him complete and highly recommends him for a security clearance without any reservations. (TR 60; Exhibit G)

Applicant's immediate supervisor who has known him for 18 months finds his work done in a professional manner and states that he has always make ethically correct decisions. He finds him also responsible outside the workplace. (TR 61; Exhibit H)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a

consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline F - Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

- (1) The behavior was not recent;
- (4) The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
- (6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Criterion F - Financial Considerations

Applicant's financial problems initially raised security concerns as he has (1) a history of financial problems and has shown (3) an inability or unwillingness to satisfy debts (SOR 1.a-1.) Admittedly, Applicant had some troublesome experiences as a young man with a series of arrests for worthless or fraudulent checks but he resolved those incidents that occurred because he trusted his wife, from whom he was separated, to handle post-dated checks correctly. He also had tax problems because of a shortfall of withholdings. However, he has not repeated the mistake since 1991, over ten years ago.

Thus, I conclude he has sufficiently met several of the mitigating conditions (MC ⁽²⁾) to extenuate these security concerns. While Applicant does not assert that conditions largely beyond his control caused his financial problems, he did have a period in the early 1990's where he was unable to pay his taxes and meet even his bankruptcy payments because of various family pressures. First under MC 1, this behavior was not recent as it occurred initially in the early 1990's. While Applicant's conduct did raise security concerns, he has successfully mitigated them under MC 6 by initiating a good-faith effort to repay overdue creditors or otherwise resolve his debts. Once made aware of these financial issues by the SOR, he has demonstrated his intent to resolve his dated debts fully; and he has made significant steps to do so. He has paid Creditors # 1, 2, 4, & 5 in full. He has made an agreement with Creditor #3 and has made timely payments of \$500 monthly since January 2001 to resolve a dated debt which is less than \$5,000. He is financially in a position to resolve completely the debt to Creditor #3 and has committed to pay that debt. I note favorably that he lives modestly, has a stable job and income, and is highly regarded at his place of employment as competent and

professional. He is now able to be financially responsible.

Applicant also meets MC 4: The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control. According to this financial expert, Applicant's level of savings is admirable and his debt to earnings ratio is well within the acceptable range. He is not financially over-extended; he has met and is meeting all of his obligations. This expert's view was that Applicant is in "good shape financially." Applicant is an acceptable credit risk who is living within his means and has a larger percentage of disposable savings and income than most people. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.l. under SOR Paragraph 1.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. **Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated

incident; 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); 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.