

DATE: December 26, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0637

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant resolved his financial problems in February 2000 in order to qualify for a mortgage, he failed to show due diligence in completing a July 1999 Personnel Security Questionnaire. Applicant neglected to disclose adverse financial information required in response to five questions on the form. These security form falsifications due to his negligence underpin security concerns over his personal conduct. With respect to his misleading answers in his November 2000 response to interrogatories from the Defense Office of Hearings and Appeals (DOHA), Applicant was confused and had no intent to falsify. He had no criminal intent to falsify and was never charged, so the criminal conduct concerns are resolved in his favor. Applicant failed to mitigate the security concerns over his personal conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on March 16, 2001; however, the package was never received and the SOR was resent on July 5, 2001. 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⁾ The SOR alleges specific concerns in paragraph 1 over personal conduct (Guideline E) and paragraph 2 over criminal conduct (Guideline J). Applicant responded to these SOR allegations in an Answer notarized and received on August 21, 2001, where he admitted paragraphs 1.a. and 1.c. through 1.f.; but denied 1.b., and failed to answer 1.d.(3), 2 or 2.a. He requested a hearing.

The case was assigned to Department Counsel. On September 5, 2001, she attested the case was ready to proceed. On September 6, 2001, the case was assigned to me. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing was issued on September 13, 2001, which set the matter for October 15, 2001, at a location near where Applicant works and lives. At the hearing the Government introduced four exhibits which were admitted into evidence (Exhibits 1-4). The Applicant testified and offered one exhibit (Exhibit A) which was admitted into evidence. The transcript (TR) was received on October 23, 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 31 year old employee of a defense contractor (Employer #1 in State #1), where he has worked since July 1997. He had an interim security clearance in 2000 after he completed a Security Clearance Application (SF 86) in July 1999. From December 1996 to July 1997 he worked for a temporary agency and was unemployed from May to December 1996. (Exhibit 1, Exhibit A, TR 52-53)

Applicant was married in May 1994 and has two children⁽²⁾, ages 10 and 7, and is partial guardian to his sister who is 15. (Exhibit 1; TR 53-54)

Personal Conduct

In July 1999 Applicant had substantial debts (detailed in the SOR subparagraphs) that he did not pay off until February 2000 because a condition of his March 2000 house settlement was that he resolve all of his past debts. However, when he completed the Security Clearance Application (SF 86) in July 1999, he did not reveal the full extent of these financial problems; but he attested that the information on the SF 86 form was true, complete and correct to the best of his knowledge and belief. Thus, he negligently failed to disclose this adverse financial information because of his admitted "bad judgment and oversight." He concedes that the SF 86 had "quite a few mistakes on it." (Exhibit 1; TR 19-21, 39, 46-50)

- In response to Question 33 the Applicant failed to reveal a Chapter 7 Bankruptcy petition in November 1993 where debts of almost \$19,000 were discharged in April 1994 even though the date he filed was within the required seven year time frame when he completed the SF 86 in July 1999. (He filed for bankruptcy because his wife was out of work, and he had exceeded his limit for personal debts when he purchased the truck.) (SOR 1.a.) (Exhibit 1; TR 21-22, 35-36, 44-44, 49-50)
- In response to Question 35 he failed to reveal that he had voluntarily surrendered his automobile to be repossessed when he was unable to make regular payments even though according to the terms of the bankruptcy he could have kept the truck. His lawyer advised him incorrectly that the record would show the return as a voluntary surrender. (SOR 1.b.) (Exhibit 1; TR 24-25, 36, 43)
- In response to Question 37 he failed to reveal two judgments, one for over \$1,000 filed in April 1998 (which he satisfied in February 2000) and one for over \$3,000 filed against him in 1994 (which he satisfied in February 2000). He thought those judgments had been included in his bankruptcy and forgot the judgment to a law firm. (SOR 1.c.) (Exhibit 1; TR 25-26)
- In response to Question 39, he failed to reveal financial delinquencies over 90 days late to three creditors: one for over \$1,000 since 1995 which he had forgotten about (which he satisfied in February 2000); one to a dentist for \$654 sent for collection in March 1999 (which he satisfied in February 2000) and the two judgments listed above. He admits it was negligent for him not to answer "yes" to this question, but claimed he did not know about these debts. (SOR 1.d.) (Exhibit 1; TR 27-30, 36, 49)
- In response to Question 40 he failed to reveal his public record of civil court actions for a 1994 civil judgment for \$207 for a state division of motor vehicles surcharge which he had satisfied in September 1995; he never had to go to court on this debt and was unaware that there was a public record of a civil court action. (SOR 1.e.) (Exhibit 1; TR 30-32, 49):

Based on a November 1999 Report of Credit which revealed adverse credit information and a US Bankruptcy Court petition (Exhibits 2 & 4), Applicant was interviewed by the Defense Security Service (DSS) in March 2000. Applicant explained details of his finances which were material and which he had failed to disclose in the SF 86. He explained that he provided copies of his financial conditions to the DSS Special Agent⁽³⁾ as at that point he was buying a house and seeking to resolve his debts. While he claimed to have told the DSS agent in the March 2000 interview that his failure to

list the bankruptcy and other adverse credit information was due to an oversight on his part, there is no way to confirm what happened in the interview as the agent was not called to testify and took no written statement to document the interview. Further, Applicant himself could not really remember how the interview proceeded as to "who asked who what questions first." In short, he could not conclusively show that he made a prompt, good-faith effort to correct the falsification before the agent confronted him with the facts. (TR 23-25, 36-37, 40-43, 51)

In February 2000 Applicant had resolved several of the financial issues identified to him in the process of buying his house. (TR 22-24, 28, 46)

When the Applicant replied in November 2000 to DOHA interrogatories (Exhibit 3), he explained that he was confused as he thought that he was being asked again about financial issues he had fully explained to the DSS agent in March 2000. While Applicant had a duty to ask for further clarification if he did not understand, I conclude that in his answers to the DOHA interrogatories that Applicant did not intend to falsify material facts when he stated all his adverse financial information was listed on "the application. . . ." Applicant explained that by this answer he meant the disclosures he made in the DSS interview while the Government reasonably concluded that by "application" the Applicant meant the July 1999 SF 86 where none of the adverse financial information was disclosed. After viewing his testimony, I found his defense credible that he did not understand the interrogatories and the relationship between DSS and DOHA. This confusion extenuates his misleading written response in Exhibit 3. (SOR 1.f.) (Exhibit 3; TR 23-25, 36-37, 40-43, 51)

References

Applicant's supervisor attested to Applicant's being "very reliable, dependable, and trustworthy." When Applicant had access to classified information in the past, he was fully aware of the rules and regulations for handling classified material. (Exhibit A)

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 E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

[First] Refusal to undergo or cooperate with required security processing, including medical and psychological testing; or

[Second] Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

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

(2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Conditions that could mitigate security concerns include:

None

Guideline J - Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

(1) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

Conditions that could mitigate security concerns include:

(4) . . . the factors leading to the violation are not likely to recur;

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

Personal Conduct

Applicant had a duty in completing the SF 86 to disclose all adverse information in response to the questions asked: he failed to do so with respect to five key financial questions. Thus, conditions that could raise a security concern and may be disqualifying include his deliberate omission, concealment, or falsification of relevant and material facts from his personnel security questionnaire. He had a duty to fully disclose all relevant and material information and failed to do so. However, with respect to his answer to the DOHA interrogatories, I conclude that he was confused and had no intent to falsify that document.

Applicant has not sufficiently demonstrated he meets mitigating conditions⁽⁴⁾

with respect to the SF 86 omissions. While he argues that he was merely confused and negligent in completing the form, he concedes that he certainly should have listed his bankruptcy filing. While he may have been unaware that his voluntary surrender of this truck was reported as a repossession and also may have been unaware of a public record of a civil court action, he had a duty to show the same diligence in completing his security form accurately as he showed in completing the forms for a mortgage application. Further, while he claims to have been cooperative in explaining all of his financial details to the DSS agent in an interview, he failed to call that agent and even Applicant's own memory of the interview was insufficient to establish that his conduct falls within MC 3. (Evidently no statement was taken from the DSS interview as neither side offered such a document.) Applicant failed to mitigate as there is insufficient evidence that he made a prompt, good-faith efforts to correct the falsification before being confronted with the facts. Further, he never argued that his failure to provide complete responses on the security form in 1999 fell within MC 4: omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided.) While he provided a favorable character reference from his supervisor, that in and of itself is insufficient to mitigate the serious omissions on the government security form.

After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 1.a. through 1.e., but for Applicant on subparagraph 1.f. under SOR Paragraph 1.

Criminal Conduct

The Government maintains security concerns over criminal conduct issues because of Applicant's omissions on his SF 86 detailed above under Personal Conduct even though he was never charged with a felony under 18 USC Section 1001. While I conclude above that Applicant was careless and negligent in completing his security form, Applicant did not demonstrate the requisite willful intent to falsify needed to maintain a criminal charge under Title 18 USC Section 1001. Even if one were to conclude his omissions of the SF 86 were to fall with the criminal conduct disqualifying condition 1, I resolve that his alleged criminal conduct could be mitigated as the factors leading to the violation are not likely to recur. He was clearly remorseful at the hearing. Consequently, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. under SOR Paragraph 2.

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 E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.a.(1): Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.c.(1): Against Applicant

Subparagraph 1.c.(2): Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.d.(1): Against Applicant

Subparagraph 1.d.(2): Against Applicant

Subparagraph 1.d.(3): Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.e.(1): Against Applicant

Subparagraph 1.f.: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a.: For 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 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. Applicant's omission of his two children from the SF 86 was not alleged as an issue.
3. In response to the Government's discovery letter, Applicant failed to request that the Government make the DSS Special Agent available to testify even though at the hearing he argued that the DSS agent was essential to his case of mitigation. (TR 60-62)
4. **Conditions that could mitigate security concerns include:**
 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;
 4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;
 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;
 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;
 7. Association with persons involved in criminal activities has ceased.