

DATE: August 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-05255

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems raise security concerns because of his delay in resolving debts, including over \$4,500 owed to the Internal Revenue Service (IRS) for unpaid personal income taxes for 1997, 1998, and 1999 as well as a \$1,072 state tax lien. He effectively disputed a \$7,850 debt for child support. Even though he has sufficient reserves to resolve these debts, he has not provided evidence he has done so. Also, personal conduct concerns remain over his failure to list his IRS personal tax debts on his 1999 security questionnaire or to voluntarily disclose these financial issues in his Defense Security Service (DSS) interviews. However, those personal conduct concerns over his failure to list the state lien are mitigated as it was not filed until March 2000. 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 September 25, 2002. 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 over finances (Guideline F) in paragraph 1 and over personal conduct (Guideline E) in paragraph 2. Applicant responded to these SOR allegations in an Answer notarized on December 5, 2002, and requested an administrative determination without a hearing.

The case was assigned to Department Counsel who on April 22, 2003, prepared a File of Relevant Material (FORM) for the Applicant's review and advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on April 25, 2003, and again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on May 7, 2003, with a response due on June 6, 2003. The Applicant submitted no response. Subsequently, on July 16, 2003, the DOHA Director assigned the case to me for a decision on the record.

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 Findings of Fact:

Applicant, 43 years old, has worked for a defense contractor since November 1984 in State #1. He served in the military from 1978 to 1982. (Item 5)

Applicant married his first wife in 1989 and was divorced in 1991; he remarried in 1995. He has two children born in 1985 and 1992 and one stepchild born in 1984. (Item 5)

Finances and Personal Conduct

When Applicant applied for a security clearance in February 1999, he completed a Questionnaire for National Security Position (Standard Form 86) (SF 86). (Item 5)

- In answer to Question 36 the SOR alleges Applicant failed to disclose on the form, that he had a state tax lien filed against him in March 2000. (SOR 1.a. and 2.b.) A Defense Security Service (DSS) Report of Investigation (ROI) disclosed a tax lien filed for \$1,072 for tax years 1996 and 1997 which had not been satisfied. (Items 5, 9, 10, 11) In a DSS interview in March 2002 Applicant stated he was unaware of the \$1,072 lien and stated he would make arrangements to pay the debt. (Item 11) In his Answer, he admitted that the state tax lien existed; and he owed over \$1,000 in back taxes, and admitted he answered the question "this way" but "just did not think of the item in the question." He did not have the cash on hand to make his tax payments as he had a child support and loan payment coming out of his check and was "living from check to check." (Item 4) Since Applicant applied for a security clearance in February 1999, he cannot be held responsible for failing to list a state lien filed against him in 2000 and of which he claimed he was unaware.

In a DSS interview in March 2002 Applicant stated he owed federal taxes for tax years 1997, 1998, 1999 which he believed totaled \$3,000 and that he intended to make arrangements with IRS to pay these taxes. (Items 11, 14) In his Answer, he admitted that he owed over \$2,000 in back taxes from tax year 1997, over \$1,600 in back taxes from tax year 1998, and over \$1,000 in back taxes from tax year 1999. While he stated he made payment arrangements in November 2002 with the U.S. Department of Treasury to pay these back taxes, he did not provide any documentation of the payment agreement. He also admitted he answered the question "this way" but "just did not think of the item in the question." He did not have the cash on hand to make his tax payments as he had child support and loan payments coming out of his check and was "living from check to check." (Item 4) directly from his checks; he also has received refund checks from the bureau. However, he provided no evidence of these payments in response to the SOR or the FORM. (SOR 1.e.) (Items 1, 4) A February 2002 notice from the State #1 Child Support Enforcement showed he had \$21,054 past due. (Item 13) A DSS ROI reported a March 2002 interview where he disclosed that he was court ordered in 1991 to have his child support taken from his pay; he did not provide proof during the initial interview. Subsequently in March 2002 he was re-interviewed and provided a copy of his Leave and Earning Statement showing \$613.50 deducted every two weeks for a total of \$1,227 per month. The ROI disclosed an interview with a State #1 official which acknowledged he was current in his child support payments, but that there had been a reporting problem which developed when the state switched computer systems. (Items 8, 9) Given the mixed evidence on this point, I conclude that the Leave and Earning Statement he provided to DSS which showed \$613.50 deducted every two weeks for a total of \$1,227 per month is sufficient evidence to rule in his favor on this issue.

In August 1999 Applicant provided the DSS a Personal Financial Statement (PFS) which showed net monthly income of almost \$4,000, monthly expenses of \$2,000, and one current debt of \$250 and one delinquent debt of \$290. He had a monthly net remainder of almost \$2,000. He had total assets of over \$12,000. (Item 6) In October 1999 Applicant disclosed to the DSS investigator that he had a series of tax liens filed by the State #1 Department of Revenue for 1993 taxes which he fully paid; he had county tax liens filed for the years 1993, 1997 and 1998 which he has also paid. He stated that he also had a lien for his State #1 1993 taxes for \$897 which he has paid. He stated he was "current on all other requirements regarding paying and filing of federal and state income taxes." (Item 7)

In March 2002 Applicant provided a PFS ⁽²⁾ which disclosed net monthly income of \$2,424, monthly expenses of \$2,352, and past due debts of \$27,000 in child support, \$1,072 for the state tax lien, and \$3,000 for the federal taxes owed. (Item 11) A State #1 official acknowledged to DSS Applicant was current in his child support payments, but that there had been a reporting problem which developed when the state switched computer systems. (Items 8, 9)

Applicant states he enjoys his work and has an outstanding work record; he spends his off time volunteering for a local fire and emergency service. He lives modestly and drives a 1981 pickup truck; he had to save for six months to provide a new motor for his vehicle. (Item 4)

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:

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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.

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:

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;

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

Financial Considerations

Applicant has (1) a history of financial problems and has shown (3) an inability or unwillingness to satisfy all of his debts. Although he stated he made some attempts to resolve these delinquencies, he provided no evidence that he had in fact resolved his state tax lien or developed a plan to pay his past due federal taxes. Personal Financial Statements provided in 1999 and 2002 to DSS show that Applicant has a good income. Despite his child support payments, he should have sufficient reserves to handle his tax obligations as he has long term employment.

While Applicant failed to mitigate⁽³⁾ his tax debts alleged in SOR 1.a. through 1.d., there is evidence he has consistently made his child support payments. Mitigating condition (MC) 6 applies to the child support debts as he initiated a good faith effort to pay that court ordered support by payroll deduction. However, Applicant has failed to demonstrate that he is otherwise now financially responsible as he has provided no evidence that he resolved the federal and state tax debts. He has thus demonstrated he failed to act responsibly and also failed to seek financial counseling to resolve these matters. Although Applicant states he enjoys his work and has an outstanding work record, he failed to provide any evidence to support these claims.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 1 and 1.a., 1.b., 1.c., 1.d. but for him on 1.e. as I conclude it was not proved that he owed the back child support as alleged.

Personal Conduct

The Government raised security concerns over personal conduct issues as Applicant failed to reveal his state tax lien and IRS tax debts on his 1999 SF 86 form. Applicant's omission of relevant and material information about this debt could reflect questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information. However, Applicant could not have revealed the State #1 tax lien filed in 2000 on his 1999 SF 86 form. In October 1999 Applicant did disclose to the DSS investigator that he had a series of tax liens filed by the State #1 Department of Revenue for 1993 taxes which he fully paid; he had county tax liens filed for the years 1993, 1997 and 1998 which he had also paid. He stated that he also had a lien for his State #1 1993 taxes for \$897 which he had paid. But he also stated he was "current on all other requirements regarding paying and filing of federal and state income taxes." Applicant was not current on his federal taxes at that time.

Thus, he mitigated⁽⁴⁾ personal conduct concerns in part for the state tax lien filed in 2000 as he fully disclosed all of his earlier state tax liens in the 1999 interview and in the 2002 DSS interview said he was not aware of the 2000 state tax lien. MC 2 and 3 mitigate the state tax lien concerns he cooperated in his subsequent multiple interviews with the DSS where he voluntarily disclosed these state tax matters. He made no claim that he had misunderstood the question on the security clearance questionnaire with respect to his failure to disclose his federal tax debts. Further, he provided no evidence in response to the FORM; for example, he provided no references who spoke in general about his personal conduct or recommended Applicant for a security clearance. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 2 for subparagraph 2.a. and for Applicant under 2.b.

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: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: 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. The March 2002 Statement did not explain why there was such a disparity from his earlier PFS where in August 1999 Applicant revealed a net monthly income of almost \$4,000, monthly expenses of \$2,000, one current debt of \$250, and one delinquent debt of \$290. He had a monthly net remainder of almost \$2,000.
3. **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.
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.