

DATE: May 1, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06276

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant's past financial conduct and personal conduct raised security concerns, he has mitigated these concerns. He has an agreement to pay his back state taxes and has explained or resolved the majority of his other financial issues. To his credit Applicant is highly regarded at work and now lives within his means. In evaluating his failure to disclose all required adverse financial information on his security forms, Applicant did not intend to omit any substantial information as he was not aware of adverse judgments and debts, several of which were reported after he completed his 1998 security clearance application (SF 86); he did reveal other adverse information on the form. 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 September 19, 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 over financial concerns (Guideline F) in paragraph 1, and personal conduct (Guideline E) in paragraph 2. Applicant responded to these SOR allegations in an Answer notarized on October 15, 2001, where he denied in part subparagraphs 1.a., 1.b., 1.c., 1.d., 1.f and subparagraphs 2.a., 2.b., 2.c., and 2.d. and attached enclosures A1 and A2. He requested a decision be made on the record, without a hearing.

The case was assigned to Department Counsel who on January 22, 2002, prepared a File of Relevant Material (FORM) which included twelve items. On January 22, 2002, the Personnel Security Specialist forwarded the FORM to Applicant to give him the opportunity to review the evidence and to submit material in response within thirty days of the day he received the letter. He received the FORM on February 1, 2002; and his response was due on March 3, 2002. On February 19, 2002, he submitted his response and attached two letters of reference (Applicant's Exhibits B,C, & D). The information was reviewed by Department Counsel, who on March 5, 2002, indicated she had no objection to the admissibility of the evidence.

On March 13, 2002, the case was assigned to me. Applicant's Exhibits A1, A2, B, C, & D were admitted into evidence.

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, 35 years old, has worked for Employer #1 in State #1 since September 1997; previously he was unemployed from June to September 1997. Formerly he served in the military from March 1986 to June 1997. He married in 1992 and separated in April 1997. (Item 4) In January 2001 he reported he was divorced. (Item 5)

Financial Issues and Personal Conduct

Applicant completed his Security Clearance Application (SF 86) in April 1998; and he attested to its being "true, complete, and correct to the best of my knowledge and belief. . ." (Item 4) While Applicant revealed no financial issues on his SF 86; he explained in an interview in January 2001 with the Defense Security Service (DSS) that he was unaware of any debts or judgments and attested that he did not intentionally omit information on his security forms. (Items 4, 5) He cooperated and explained his financial situation without any noted DSS confrontation. Applicant's financial problems developed while he was in military service when he and his wife lived beyond their means and did not pay creditors in a timely way. He acknowledged and explained several bad debt accounts on a May 1998 credit report and in January and February 2001 planned to make arrangements to satisfy these debts. He disputed some debts, for example a judgement for a rental property, and claimed lack of knowledge of other accounts.

His debts include the following:

- 1.a. A State #1 judgment from February 2001 for unpaid state taxes of \$666. In his response he claims to have spoken to the "IRS" to institute a payment plan of \$75 per month, but provided no documentation; however, I conclude he is paying on the state debt as no IRS debt is alleged in the SOR or documented in the evidence. (Items 3, 8)
- 1.b. In October 1996 Creditor #1 filed a judgment against him of \$1,700; however, the creditor (previously known as Creditor #2) advised that the debt was satisfied. (Items 3, 7, 8, 9; Exhibit 1A)
- 1.c. A credit report reported that in October 1996 Creditor #2 charged off as a bad debt a loan of \$13,438; however, this debt was for a car that was totaled and the creditor stated that the debt was satisfied. (Item 3, Exhibit 1B)
- 1.d. His debt of \$334 to Creditor #3 was placed for collection in February 2001; he claims to have paid the debt in 2000, but provided no documentation. (Items 3, 7, 8)
- 1.e. In September 2001, he was behind in paying his debt to Creditor #4 for \$1,694, as he did not pay the credit card debt for three months in July, August, and September 2001; but in October 2001 he stated he paid \$200 to bring it current, but provided no documentation. (Items 3, 7, 8)
- 1.f. His debt to Creditor #5 of \$200 was placed for collection in September 2001; however, he claimed to be unaware of this creditor and said he would research the debt, but provided no additional information at the time of his response to the FORM. (Items 3, 7, 8)

In January 2001 Applicant had monthly net income of approximately \$3,000; expenses of approximately \$1,300, and debt payments of \$350 on \$2,500 in debt; thus, he had a net monthly remainder of almost \$1,000. He stated his intent to take care of all of his debts and believed he had enough money to do that. (Items 5, 6, 7)

Evaluation

Applicant is endorsed by a senior project manager for a Top Secret security clearance as he has handled millions of pages of classified information for the past four and one-half years. This manager who has known him since September 1997 reports that Applicant has produced "virtually error-free review at a volume consistently higher than his peers." This manager rates him in the top ten percent of individuals doing his category of work. (Exhibit C)

A family friend who has known him for 23 years endorsed him as a very responsible individual. He is "a man of

character, a man of extraordinary integrity and someone you can trust." (Exhibit D)

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, 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:

4. . . .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.

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:

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. 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

Security concerns over Applicant's financial problems were initially raised by his (1) history of financial problems and (3) inability or unwillingness to satisfy debts with a State #1 tax debt and other creditors. (SOR 1.a-l.e.) The most recent debt is a State #1 judgment from February 2001 for unpaid state taxes of \$666. Evidently, the 1996 debts and judgement for a car have been satisfied. He has paid one small debt and denies knowledge of another small debt. He was behind for three months in 2001 on a credit card debt but brought it current in October 2001.

Applicant needs to meet mitigating provisions (MC-⁽²⁾) to extenuate these security concerns. While his past debts raised security concerns, he has now addressed the majority of them and paid them off or reached an agreement to do so. While his explanation was not documented on the State #1 tax debt, he stated he has a monthly payment plan to resolve that tax debt. While in September 2001, he was behind in paying his debt to Creditor #4 for \$1,694, in October 2001 he paid \$200 to bring it current. The only remaining unresolved debt is a small debt for \$200 which he disputes (1.f.). While he was briefly behind in his credit card payments (1.e.), he made it a priority to bring the account current in October 2001.

Thus, Applicant has successfully mitigated these concerns under Mitigating Conditions (MC) 4, as there are clear indications that the problem is being resolved or is under control; under MC 6 he has initiated a good-faith effort to repay his tax and other debts. His late payments for three months in July, August, and September 2001 are not sufficient to establish security concerns over his finances as he subsequently brought the account current. With a \$1,000 cushion each month between expenses and income, he is financially in a position to resolve his debts completely and has stated his commitment to pay all debts. I note favorably that he lives modestly, has a stable job and income, and is highly regarded at his place of employment which suggests employment security. To his credit Applicant has had an outstanding record of performance with his current employer for four and one-half years. " His manager praises Applicant for his "virtually error-free review at a volume consistently higher than his peers" and rates him in the top ten percent of individuals doing his category of work.

Further, Applicant lives within his means and has had no large financial issues outstanding. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.f. under SOR Paragraph 1.

Personal Conduct

Applicant denied his intent to falsify on the security form and refuted the Government's security concerns over personal conduct issues concerning his omissions of adverse financial information. Significantly, Applicant did reveal other adverse information on his security form: his military police record in 1994. Applicant believably asserts that he was unaware of judgments and overdue balances and did not intentionally omit information from Questions 37, 38, and 39 from his security form as alleged. For example, Applicant thought the 1996 debt from the car accident was resolved and provided documentation to support his conclusion. His other debts were not substantial or developed, like the State #1 tax judgment, after he completed the 1998 form.

Thus, Applicant demonstrated that he has mitigated⁽³⁾ concerns over personal conduct. He did freely discuss his financial situation in his DSS interview promptly and without any noted confrontation. As he cooperated with the investigation and explained his finances, I am persuaded that the individual has subsequently provided correct information voluntarily; it was not his intent to omit any material information to deceive the government.

Further, I considered his reputation as "a man of character, a man of extraordinary integrity and someone you can trust." Hence, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 2.a. through 2.c. 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 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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: 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.

3. **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.