

DATE: June 18, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06395

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Henry Lazzaro, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant disputes the significance of \$20,000 in unresolved debt as the liabilities are so dated they were removed from his credit report. While his divorce and loss of professional business contributed to his financial difficulties, he failed to make sufficient efforts to address these financial issues. He did not seek financial counseling, so he still has not demonstrated sufficient control of his finances. While he failed to provide some information in response to one financial question on his security questionnaire, I accept that he had no intent to falsify as he revealed other adverse financial data. A naturalized U.S. citizen since 1976, Applicant's clear ties to the U.S. suggest any risk of foreign influence would be slight. Applicant mitigates the personal conduct and foreign influence concerns, but failed to mitigate security concerns over his finances. 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 October 15, 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⁾ (Item 1) The SOR alleges specific concerns in paragraph 1 over financial issues (Guideline F), in paragraph 2 over personal conduct (Guideline E), and in paragraph 3 over Foreign Influence. Applicant responded to these SOR allegations in an Answer notarized on November 16, 2001, and attached a credit report. He denied all financial and personal conduct allegations and requested a hearing.

The case was assigned to Department Counsel #1 who indicated that the case was ready to proceed on March 12, 2002. Initially, the case was assigned to another administrative judge on March 13, 2002; the case was re-assigned to me on March 14, 2002. On March 21, 2002, the hearing was set for April 18, 2002, at a location near where Applicant works and lives. At the hearing the Government was represented by Department Counsel #2 who introduced eight exhibits; Exhibits 1-6⁽²⁾ and 8 were admitted. Applicant objected to Exhibit 7 as a record for a debt⁽³⁾ for which he was not responsible and which had not been alleged in the SOR, but offered to rebut his statement he was debt free. (TR 20-24)

Exhibit 7 was not admitted into evidence until after his testimony when he withdrew his objection. (TR 32-33)

Applicant testified and offered one exhibit (Exhibit A) which was admitted into evidence. As the Government did not object, Applicant was given seven additional days until April 25, 2002, to submit any additional evidence to Department Counsel; the latter then had two days to review the documents and submit them to me. The government requested and was also given seven days to submit a provision in the State #1 civil practice code for Official Notice. (TR 67-70)

On April 19, 2002, Department Counsel submitted Exhibit I for Official Notice and provided a copy to Applicant who noted no objection; so the item was admitted for the purposes of Official Notice. On April 29, 2002, Department Counsel forwarded exhibits Applicant had submitted on April 24, 2002. The Government had no objection, so Exhibits B & C were admitted. The record closed on April 29, 2002. The transcript (TR) was received on April 29, 2002.

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, a 61-year-old employee of a defense contractor, has worked at Company #1 in State #1 since October 1998. From 1992 to 1998 he worked for another Federal Contractor in State #2. He was self employed from 1984 to 1992 in his own professional firm which was a partnership in State #1. In February 1999 he completed a Security Clearance Application (Standard Form 86) and requested a security clearance. (Exhibits 1 & 2) Company #1 has contracts with many federal agencies which require Applicant to have a Top Secret Clearance. (TR 29-30, 38-39; 62-63; 71)

Applicant received an advanced degree in June 1973 in his professional field in State #3. His 1983 marriage to Wife #1 ended in a separation in 1987 and a divorce in 1989. They have one child born in April 1984. (Exhibits 1, 2, 3, 6 & 8)

Foreign Influence

Applicant was born in Yugoslavia and became a naturalized U.S. citizen in June 1976 in State #1. He holds a U.S. passport issued in 1994. In November 1997 he inherited a one bedroom apartment in Yugoslavia from his father's estate which he has been renting for five years for about \$300 per month. The rental money has been used there largely for renovation. Applicant testified he plans to sell the apartment and buy something in the US; but he has not yet listed it for sale. He estimates it is worth approximately \$50,000. He has not yet listed the property for sale. Applicant has a brother who resides in Yugoslavia who manages the property for him. He visits his brother and family on a yearly basis. His brother is now retired but was an engineer who did not work for the government. None of his brother's family has worked for the government. Also, Applicant has a close friend there with whom he has frequent contact; that friend has worked for the Japanese Embassy for 40 years and has never worked for the government of Yugoslavia. His friend's son worked for the U.S. embassy in Belgrade; when it was closed the son was given the opportunity to emigrate to the U.S. which he did. Applicant's family was always anti-communist and his father was a private owner of a bakery. (Exhibits 1, 2 & 3; TR 28-29; 56-61; 74) With this family history and the lack of connection of the brother and friend to the government, any risk of foreign influence would be slight. Further Applicant has been a naturalized U.S. citizen since 1976 with clear ties to the U.S.

Financial Considerations and Personal Conduct

In the June 1989 divorce degree Applicant was ordered to pay child support of \$780 per month until his daughter became age eighteen. In 1992 Applicant was in arrears over \$9,000 for the 1991-92 period which the court ordered in August 1992 to become a lien on the property he owned in State #1. He petitioned to have his child support modified due to a change of circumstances. Court records at the time child support was calculated in August 1992 show that Applicant continued to be held the person responsible for support even though he was then unemployed and receiving unemployment compensation as the Court found him capable of greater earnings, but the court reduced his monthly payments to \$151 for that period. (Exhibit 8)

In response to questions on his finances on Standard Form 86, in response to Question 36 Applicant acknowledged financial issues of concern: two tax liens in 1992 for over \$8,000 and \$9,000; in response to Question 39 he also

detailed two debts that were over 180 days delinquent: \$14,000 to Creditor #1 and \$600 to another creditor, not alleged in the SOR. He failed to reveal any judgments in response to Question 37. Nevertheless, he certified that the statements on the form were "true, complete and correct" after he was advised that a knowing and willful false statement on the form could be punished under Section 1001 of Title 18, United States Code). (Exhibits 1 & 2) With respect to the question on unpaid judgments, he did not list the judgment from Creditor #1 as he claimed he was never served (4) a copy. (Exhibits 1, 2, 6; TR 55-56) There is no direct evidence that Applicant was properly served though his wife had counsel in the matter, and in November 1993 her attorney served him with her Answer at the address that matches his current address in the SF 86. (Exhibit 6)

A June 1999 Credit Report revealed a variety of financial issues. (Exhibit 5) In August 1999 Applicant was interviewed by the Defense Security Service (DSS) and explained his finances and other issues: he got into financial difficulties in the late eighties and early nineties because of a divorce and loss of business which forced him to sell his home. He paid some of the liens with the proceeds from the sale of the house, but did not pay Creditor #1 as they had not filed a lien. His Personal Financial Statement revealed his monthly net salary to be \$2,600 a month in August 1999. He documented only \$1,700 in monthly expenses and only \$30 in monthly debt payments for two credit cards where he had debts of \$500 and \$290; he had a net remainder of \$831 per month. He said he was doing better financially and trying to resolve all his debts. He planned to contact a lawyer to resolve his debts, but he did not do so. (Exhibit 3; TR 75-77)

At the hearing in April 2002 Applicant explained that his finances were adversely affected by his divorce and also by a down-turn in his own business which led to a lot of credit card debt. He went to a legal aid office in 1992-93 to apply for bankruptcy. However, he never completed the filing; so the debts were never discharged. A lot of judgements and liens were placed against his property, but he sold the house in 1993 and the companies who had filed liens divided the equity. He disputed these dated debts with the credit agency as the problems dated from the 1992-92 period. (TR 27-28; 52-53; 63-66) While Applicant denied in his answer all of the liabilities listed in the SOR, other records support the debts:

1.a. A debt of approximately \$15,000 is due to Creditor #1, a bank, after a default judgment was entered against him in May 1994 which he has not paid. He claimed he did not get any notice from the court. He used his credit card to pay for his mortgage and child support. He did not receive any money when the house was sold as the equity was divided among other claimants. He never recalls being served with paperwork for this judgment which was filed against him and his wife. Applicant's former wife reached a settlement with the creditor but there is no evidence he was served. On his SF 86 Applicant detailed this debt as being over 180 days delinquent: \$14,000 to Creditor #1. He still believes he is not in a position to pay this debt. (Answer; Exhibits 3, 4, 5, 6; TR 33-35; 44-50; 53-54, 64-66)

1.b. Applicant disputes a debt of approximately \$2,600 to Creditor #2, a delinquent account placed for collection which he has not paid. (Answer; TR 45; 53-54)

1.c. Applicant disputes a debt of approximately \$2,500 to Creditor #3 which he has not paid. (Answer; Exhibits A, TR 45-47)

1.d. Applicant has paid a debt of \$327 to Creditor #4. (Answer; Exhibit 3; Exhibits A & C; TR 45-47; 53)

1.e. Applicant's debt of \$783 was charged off by Creditor #5 for utilities. He plans to pay that debt, but has not yet done so. (Answer; TR 45; 53)

Applicant testified that he has successfully persuaded the credit reporting agency to remove these dated debts from his credit report. He is not sure if he still legally owes these creditors, but has not sought counsel to clarify the issue. (Answer; Exhibit A; TR 54)

Although not alleged in the SOR, Applicant resolved a disputed matter with Creditor #6. He took his child to an emergency room in 1999 when she got sick and gave them her mother's insurance card, but the hospital never placed the claim; he and his former wife were unsuccessful in getting the debt resolved. Finally, the debt was settled when he and his wife each paid half of the \$300 debt in February 2002. (Exhibit B; TR 20-24, 32-33; 36-37)

Applicant now has a good salary with Company #1 of \$52,000. However, he has accumulated approximately \$7,000 in

current debt not alleged in the SOR: he and his daughter use one credit card with a balance of \$3,800. Applicant has a second credit card with a balance of \$3,000, a third with a balance of \$287, and a fourth with a balance of \$956. He makes monthly payments on these current card cards every month; for example, one credit card for his sports club he makes \$150 payments monthly. He uses his credit cards to improve his credit rating. He no longer has a child support obligation. He rents a house for \$945 monthly rent; and has no car payments on his old car; his insurance is only \$240 annually. (Answer; Exhibit A; TR 35-36; 39-44; 50-51; 72-73)

To date Applicant has not consulted with any financial expert or consumer credit counseling service to resolve his financial matters. Neither has he consulted a lawyer or filed for protection under the federal bankruptcy laws. (TR 66-67)

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:

- (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);

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:

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:

2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

Guideline B - Foreign Influence

The concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

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

(1) an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country

Conditions that could mitigate security concerns include:

(1) a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

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 his debts. Overall, Applicant neglected for several years his responsibility to address and resolve his debts to creditors even after he was employed by Company #1 in 1998. While he claimed to have no knowledge of many of these debts and has had these dated obligations removed from his credit report, the debts remain unresolved except for Creditor #4. While he has made a substantial salary in his professional position for almost four years, he has failed to sufficiently demonstrate he is now financially responsible. Instead of resolving his old debt, he has acquired substantial new debt even though he lives modestly. He has failed to take corrective action with his many creditors.

While security concerns may be mitigated if conditions were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), Applicant's divorce and business problems alone cannot mitigate ongoing financial concerns. At one point he made one attempt in 1992-93 to seek financial advice from legal services, but he never completed his bankruptcy filing. Neither did he initiate a good-faith effort to repay these overdue creditors or otherwise resolve these debts with his available resources. He failed to take sufficient action even after he was advised of their adverse security implications in a DSS interview in August 1999 and after the SOR was issued in October 2001.

Thus, Applicant has not sufficiently met the mitigating conditions (MC⁽⁵⁾) except for the one debt he resolved (1.d.) While he now has a good salary, I cannot predict with certainty his future responsible financial conduct as he has not demonstrated that he has met 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. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 1.a., 1.b., 1.c., and 1. e. under SOR Paragraph 1.

Personal Conduct

Applicant had a duty in completing his SF 86 to disclose all material adverse information in response to the questions asked. He failed to provide information on an adverse judgment to Creditor #1. 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 the personnel security questionnaire.

While the Government offers as Exhibit I, for Official Notice, a state provision that requires service before a judgment is issued, I accept Applicant's proffer that he did not know about it at the time he completed the form. Applicant's defense that he did not know of this judgment is credible in the face of his having revealed substantial other adverse financial information and in light of his cooperation in the DSS interview. He did not seek to suppress all information on his financial problems. Indeed, he did not hide this debt as he listed it on the SF 86 as being over 180 days delinquent: \$14,000 to Creditor #1. Thus, Applicant meets the personal conduct mitigating conditions(MC) 2 as his omission was isolated.⁽⁶⁾

He did provide adverse information in response to two other financial questions. Although the DSS agent did not testify, it appears from the Statement that Applicant was cooperative in explaining financial details to the agent. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. under SOR Paragraph 2.

Guideline B - Foreign Influence

The Government also expressed security concerns over Applicant's possible foreign influence raised by his close ties of affection to citizens of a foreign country: he has a sibling and a friend who are citizens in the country of his birth and also has inherited an apartment there. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Conditions that could raise a security concern and may be disqualifying include: (1) an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country. Further, concern is raised by the income from the apartment he inherited from his father that his brother manages for him.

On the other hand, contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. These security concerns are mitigated by the fact that Applicant's relatives and close friend have no ties to their foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. Applicant is not vulnerable to duress merely because of these family and friendship ties. Looking at the whole person and his family's historic independence from the government in Yugoslavia, I think it improbable that any of his family members or friend would create a situation that could result in the compromise of classified information as his family and friend have no ties to the government.

Applicant became a naturalized U.S. citizen in 1976. Given Applicant's clear ties to the U.S. over a long period of time, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Further, he has made minimal rental income from his inherited apartment and plans to sell the overseas apartment. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, here I

conclude these ties are not of such a nature as to create any tangible risks of undue pressure so as to invoke foreign influence concerns. Thus, I resolve SOR paragraph 3 and subparagraphs 3.a. through 3.b. in Applicant's favor.

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.: For Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2. Guideline E FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline B FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.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. Two pages of Exhibit 6 are illegible.
3. Applicant took his child to an emergency room in 1999 when she got sick and gave them her mother's insurance card, but they never placed the claim. He and his former wife were unsuccessful in getting the debt resolved. Finally, the debt was settled when he and his wife each paid half of the \$300 owed in February 2002. (TR 31-32; Exhibit B)
4. The Government submitted for Official Notice a state court rule and statute that requires an individual be served before judgment can be entered. (Exhibit I)
5. **Conditions that could mitigate financial 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.

6. Conditions that could mitigate foreign influence 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.