

DATE: April 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-16934

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant's financial problems stemming from his wife's business problems and his subsequent divorce raised security concerns, he has resolved his debts to multiple creditors and mitigated those concerns by paying one creditor and discharging the other debts in bankruptcy in December 2002. He has one state tax debt he has yet to resolve, but Applicant demonstrated that conditions largely beyond his control led to this debt due to his efforts to try to help his wife in her business and the subsequent divorce stipulations. While Applicant still owes over \$11,000 to the state, he has presented a plan to resolve this debt. Thus, he has demonstrated that he is making a "good faith" effort to pay this debt. Applicant also mitigated personal conduct concerns over his financial disclosures in his security application. 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 October 23, 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) and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on November 12, 2002; he denied all the allegations in part and requested a hearing.

The case was assigned to Department Counsel who on December 6, 2002, stated it was ready to proceed; and the case was assigned to another administrative judge, Wilford Ross. On December 16, 2002, the case was re-assigned to me. Subsequently, after a mutually convenient date for hearing was agreed to, a Notice of Hearing issued on January 7, 2003, set the matter for January 29, 2003, at a location near where Applicant works and lives. At the hearing the Government offered into evidence four Government exhibits; all were admitted into evidence. (Exhibits 1-4) The Applicant represented himself, testified, and offered eight exhibits which were admitted into evidence. (Exhibits A-H) Applicant requested an additional week to submit additional documents; as the Government did not object, I allowed

him until February 5, 2003, to submit additional evidence to the Department Counsel. She then was allowed three days to review it and submit it to me by February 10, 2003. (TR 79-81) He submitted two additional exhibits (Exhibits I & J) in a timely fashion; on February 6, 2002, the Department Counsel stated she had no objection to their being admitted into evidence. Exhibits I & J were admitted into evidence and the record closed. The transcript (TR) was received on February 8, 2003.

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, 42 years old, has been an employee of Defense Contractor #1 since January 2000. In February 2001 he applied for a security clearance by completing a Security Clearance Application (SF 86). (Exhibit 1)

Applicant received a BS degree for a state university in December 1980. He was married in June 1993, but separated from his spouse in March 1999. They have one child born in 1995. (Exhibit 1; TR 40) They entered a written Marital Settlement Agreement and were divorced in August 2001. (Exhibit D)

Finances

Before he was married, Applicant had a very good credit rating and a good income. (TR 45, 58-59)

While Applicant was married, he and his spouse developed financial problems that he attributed to the "bad business practices" from his wife's business. In 1998 he left his professional career to try to help his wife with her business as it was a partnership, but she continued to have business difficulties. Subsequently, he stopped trying to help her and re-entered his field. He obtained a job in his field in another state before he was able to get a position with Company #1. His wife opened another business in her own name. In March 2000 Applicant's wife and her business filed Chapter 7 petitions for Bankruptcy. (Exhibit 2, TR 17-25; 42, 47, 49-50, 58-61, 65-66; Exhibits A, D, E)

The couple used their own personal finances to pay for the business expenses, so debts reflected in SOR 1. a. through 1.l. are mostly debts related to the business and date from 1995. Initially, he and his wife did consult consumer credit counseling (CCC) and also re-financed their house in order to address the debts. Some of the credit card debts were acquired while he was separated for expenses such as repair of his 1991 car which has over 153,000 miles. He has some savings to be able to replace it and for emergencies. (TR 43-44, 52-58, 67, 72)

Over the past four years since he separated from his wife, Applicant has paid many creditors that were not listed in the SOR. His wife kept the records on the creditors, so it was difficult to document the exact nature of all of the debts. (TR 47-48)

Initially, Applicant did not want to file for bankruptcy, so that was one of the reasons for the separation from his wife. Also he stated that his wife could generate more debt than he could contain. After he and his wife separated in 1999, his wife continued to run her jewelry business, but decided she would not pay taxes. Because he helped his wife prepare the payroll, he was also held liable by the state. As part of the August 2001 divorce proceedings, each party was to be responsible for each of their debts, but part of the proceeds from the sale of their house went to pay a business tax debt of approximately \$57,000. Each were to be responsible for half of the remaining state tax liability as a result of non-payment of certain retailers and occupation sales tax and payroll withholding tax associated with a business. Applicant was charged with responsibility for this debt of \$11,500 to State #1 relating to taxes, penalties and interest due to his spouse's business.(SOR 1.n.) (Exhibit 2, TR 17-25, 35-42, 46-47, 49, 62-65, 74; Exhibits A, D, E) A December 2001 Settlement Agreement with the Department of Revenue stipulated that Applicant and his wife would be jointly and severally liable for all taxes incurred by the jewelry business from 1997 to 1999. (Exhibit I)

According to the August 2001 Marital Settlement Agreement, Applicant is to pay \$76.50 per week for child support. (Exhibits D, I; TR 80-81) His child support is deducted directly from his salary. (Exhibit I)

In March 2002 DOHA sent an Interrogatory to ask Applicant to further explain his finances and debts to twelve

creditors. At that point he paid some of the creditors and was trying to negotiate with his other creditors to resolve the debts and was also considering bankruptcy to resolve his debts. He was saving 20% of his salary in order to be able to resolve his debts. (Exhibit 4) In June 2002 his monthly net income was over \$3,000, his monthly expenses approximately \$2,300 and he was making no payments on his debts, so had a remainder of over \$700. He explained to the Defense Security Service (DSS) in June 2002 that he planned to file for bankruptcy. (Exhibit 2, TR 17-25, 69; Exhibits A, D, E) He explained he only used some of this excess money to pay his listed debts as he need to save money for emergencies. (TR 70-71)

Applicant filed a Chapter 7 petition for bankruptcy in August 2002 and listed creditors and debts that totaled \$27,196. He paid one of the small debts (SOR 1.m.), but the remainder of his debts listed in the SOR were discharged under Section 727 of Title 11 of the United States Code (Bankruptcy Code) in December 2002. (TR 19-21, 33-36; Exhibits B & C)

He has a 401K which he began in January 2002, but he has had to take loans from that asset to pay lawyers and other debts. The only way he is able to save is by putting in substantial overtime. He will pay his loans against his 401 K in 2003. (TR 50-51, 67-68) Currently, he has two credit cards which are tied to his business account and which are paid off regularly. (TR 67) In 2002 his salary was \$93,000, part of it from overtime. (TR 68) For 2001 his US Individual Income Tax Return reflects adjusted gross income of \$87,000; for 2000, \$72,000; and for 1999, \$40,000. (Exhibit J) He has a 401K plan and retirement benefits worth \$46,000 with a prior employer and a "SIP" worth \$14,000 with Company #1. His current monthly net income is approximately \$2,600 and his monthly expenses are approximately \$2,600. He expects a raise in September 2003. (Exhibit I) His expenses in January 2003 approximately equaled his income; he even stopped using cable to cut his expenses. (TR 71) He now does everything he can to economize, even going to a dollar store to save on his expenses. (TR 73) He has not incurred any new debt since his divorce. (TR 85)

Applicant is in the process of resolving the \$11,500 tax liability issue with State #1; however, in September 2002 State #1 Board of Appeals dismissed his appeal until the completion of his bankruptcy proceedings. He could not negotiate with them until his other debts were discharged in bankruptcy in December 2002. In January 2003 he filed a petition with State #1 to resolve the matter making an offer in compromise of \$3,500. (TR 75-79; Exhibits E, I)

Personal Conduct

While Applicant did not disclose all of the details of his financial problems on his 2001 SF 86, he did disclose the full financial details in documents to security personnel at Company #1 and to the DSS in his interview. A company security official confirmed that Applicant had advised them of all of his credit problems, but the company did not list them fully in the security form as they were aware that DSS would run a credit check. He had no intent to falsify his SF 86. (Exhibits 1, 2, Exhibits E, F H; TR 10-11, 16-17, 22-23, 25-26, 28-33)

Letters of Recommendation

An individual who has known Applicant through a business relationship for 18 months described Applicant as "one of the most compassionate, trustworthy, and ethical people" that he has dealt with and views him as a valuable business asset. (Exhibit E)

A co-worker who has discussed job issues and ideas with him found Applicant very innovative and very dedicated to doing a good job. (Exhibit E)

A co-worker who has known him for three years states that Applicant has provided "excellent, conscientious support to a very important developmental program." He frequently contributes original ideas and is dedicated to finishing his tasks. (Exhibit E)

The lead project engineer who has known him for two years stated that he was very satisfied with Applicant's work ethic and character. He is a critical part of the design team and he recommends Applicant for a security clearance. (Exhibit E)

Applicant's brother-in-law has known him for 15 years and recommended him for the position at Company #1 where he works. He assesses Applicant as "honest, trustworthy, and reliable." He recommends him for a security clearance.

(Exhibit E)

Applicant volunteers in a sports program in the community. (Exhibit E)

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);
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.

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, 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;
- (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.

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. Applicant and his former wife used their own personal finances to pay for the jewelry business expenses. Debts reflected in SOR 1. a. through 1.l. are mostly debts related to the business and date from 1995. Some of the credit card debts were acquired after he separated in 1999. As part of the divorce agreement in August 2001 and a December 2001 Settlement with the state, he was held liable for \$11,500 (50% of the state taxes unpaid by his wife's business) which remains an outstanding liability.

By a bankruptcy discharge in December 2002, Applicant effectively mitigated the SOR allegations concerning his debts alleged in SOR 1.a through 1.l.; he paid the creditor listed in SOR 1.m. By discharging legally or by paying those debts, Applicant met mitigating conditions (MC ⁽²⁾) for those debts. While he has yet to resolve the state tax debt (SOR 1.n.), Applicant demonstrated that conditions largely beyond his control led to this tax debt due to his wife's business problems, his efforts to help her, and the subsequent divorce. While Applicant still owes over \$11,000 to the state, he has presented a plan to resolve this debt. Thus, he has demonstrated under MC 6 that he is making a "good faith" effort to pay this debt as he has filed a petition with the state and made an offer to pay this tax debt. Further, while he initially was slow to resolve these debts, he testified convincingly of his continuing efforts to find a plan to resolve them and his ultimate decision to seek a resolution through bankruptcy. He does not live extravagantly and now lives within his means. Significantly, he has not incurred any new debt since his divorce. Thus under MC 4, there are clear indications that the problem is being resolved or is under control.

Applicant has a good income, has had a stable job since January 2000, and presented evidence that he is highly regarded in the workplace. For example, the lead project engineer stated that he was very satisfied with Applicant's work ethic and character. He is a important part of the design team, and he recommends Applicant for a security clearance. While ideally he should develop a longer track record of success, I found his continuing efforts since his 1999 separation to resolve these debts credible. Looking at the whole person and the special circumstances that led to the debts, I conclude he now meets the high standards needed to gain access to classified information. Therefore, Applicant is now in a position to be financially responsible. He has conscientiously worked to improve his financial situation. With an income of \$93,000 in 2002 and his willingness to work overtime, I conclude he has demonstrated that he is in a position to act with fiscal control and responsibility in the future. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. through 1.o under SOR Paragraph 1 as I conclude that he has mitigated these financial concerns.

Personal Conduct

While failures to disclose all of his financial difficulties on a 2001 SF 86 led the Government to raise security concerns over personal conduct issues, at the hearing the Department Counsel conceded that Applicant had mitigated ⁽³⁾ this concern. Both in a submission to his employer and in the DSS interview, he disclosed all of his financial difficulties. (Exhibits 2 & E) Applicant made prompt, good-faith efforts to correct the falsifications before being confronted with the facts. Hence, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.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 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

Subparagraph 1.m.: For Applicant

Subparagraph 1.n For Applicant

Subparagraph 1.o.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: 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.