

DATE: April 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-18778

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred debts during his marriage while he and his spouse both earned incomes. After he retired from the military, and was divorced, he could not pay the debts. Applicant filed for bankruptcy, as did his former wife, and was discharged from his obligations. He currently handles his debt obligations responsibly. Applicant mitigated the financial concerns and it is clearly consistent with security clearance concerns to issue a clearance. Clearance granted.

STATEMENT OF THE CASE

On November 26, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personal security Guideline F (Financial Considerations) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated December 26, 2002, Applicant responded to the SOR allegations. He requested a hearing. This case was originally assigned to Administrative Judge Roger Willmeth on February 3, 2003, but was reassigned to me on February 12, 2003 due to caseload considerations. On February 12, 2003 a Notice of Hearing was issued setting the hearing date for March 7, 2003. On that date I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented four exhibits⁽¹⁾, all of which were admitted into evidence. Applicant appeared and testified, and offered four exhibits⁽²⁾, all of which were admitted into evidence. Applicant was given two weeks until March 21, 2003 to submit a copy of his bankruptcy documents. He did submit those documents on time. I received the transcript (Tr.) of the hearing on March 18, 2003.

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.a., 1.c., 1.d., 1.e., 1.f., 1.g., and 1.h. of the SOR. He denied subparagraph 1.b. of the SOR. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant retired from the U.S. Navy in a senior enlisted grade in August, 1996. He is 54 years old. Applicant is currently drawing retired pay. Applicant got divorced in April, 1998. He has two daughters, ages 26 and 22. Applicant is employed as an office manager for a defense contractor. This position requires a security clearance. Applicant held security clearances during his active military service. (Tr.14, 18, 54; Applicant Exhibits A and B)

Applicant's financial problems arose after his retirement from military service. He did not find a job which allowed him to pay his bills. His family income with his former wife at one time reached \$64,000 annually. After he retired and got divorced, his single income was not sufficient to pay the debts incurred on a two person income basis. For a two year period from 1996 until 1998 Applicant could not pay his bills and got into financial difficulty. Some of the debts were incurred jointly with his former wife. Some of the debts dated back to 1980, and he had been paying the minimum payment on them since then. Applicant's former wife filed for bankruptcy. Applicant did not use his credit cards after 1996 and did not open any new accounts. He does have a store credit card and a gas credit card. (Tr. 14, 37, and 38, 48, 49, 50, 51, 54; Gov't. Exhibit 3 at 1, 2, and 22)

Applicant filed for bankruptcy in June, 1998, but did not complete the bankruptcy because he was not satisfied with the service he obtained from the lawyers and the bankruptcy advisor he hired. Applicant stated on his security clearance application (Question 33) that he filed for bankruptcy in June, 1998, but he never followed up that statement with proof that he completed the bankruptcy. He did state in the "General Remarks" section that the court date and lawyer assignment was pending in February, 1999 when he filled out the application. Applicant stated in his June 20, 2001 statement to a Defense Investigative Service agent that he intended to file for bankruptcy in 2001. He did not file until November, 2002. Applicant was discharged in bankruptcy on February 1, 2003. The bankruptcy order listed all the debts, except the debt in subparagraph 1.b. of the SOR, which are the subject of this case. (Tr. 21, 22, 30; Gov't. Exhibit 1 at 7; Gov't Exhibit 3 at 2; Applicant Exhibits 3 at 1 and 2, and Exhibit 4 at 15 and 16)

Applicant purchased a car for about \$19,000 in 2001 and made payments monthly on that car. After he filed his bankruptcy, the auto dealer called him and took the car back even though Applicant was current on his payments. The dealer allowed him to buy a used car, valued at \$15,000, under a so-called "start over program". At the time of the hearing he had not made his first payment, but he said he would. Applicant is making his mortgage payments on time and the mortgage was not included in his bankruptcy. (Tr. 31, 32, 33, 41, 42; Gov't. Exhibit 4 at 3)

Applicant compromised the one debt specified in subparagraph 1.b. of the SOR. He does not remember when he did it, or the amount, but he knows it was compromised and he does not owe that debt anymore. That is why he denied the allegation in subparagraph 1.b. (Tr. 52)

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

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. Directive, ¶ E2.A6.1.1.

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

- (1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1. 2.1.
- (3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Conditions that could mitigate security concerns include:

- (1) The behavior was not recent. Directive, ¶ E2.A6.1.3.1.
- (2) It was an isolated incident. Directive, ¶ E2.A6.1.3.2.

(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). Directive, ¶ E2.A6.1.3.3.

(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. Directive, ¶ E2.A6.1.3.4.

(6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Directive, ¶ E2.A6.1.3.6.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

The Government proved Applicant had financial problems. He incurred a lot of debts during his marriage. But Applicant explained why he could not pay them off, which was that he incurred them from 1980 onward with his now former wife, incurred them when their joint income was higher than his single income after 1998, and could not find a job which paid him enough money that with his military retirement he could pay them in a timely fashion. However, he also bought a \$19,000 new automobile when he had these debts to pay. It appears from his testimony and the other evidence Applicant decided not to pay the old marital debts, and tried to start anew after his divorce. He did buy a townhouse and the new car. He does seem to have controlled his spending so he has not incurred new obligations since 1998 which he cannot handle. Clearly, Disqualifying Conditions (DC) 1 and 3 above apply.

The next issue is whether Applicant mitigated these conditions. The evidence is manifest that Applicant, after two unsuccessful attempts to file bankruptcy, did file bankruptcy in November, 2002, and was discharged in February, 2003. Therefore, he used a lawful means to rid himself of these debts. Mitigating Condition (MC) 6 would apply because Applicant initiated a good faith effort to resolve the debt through bankruptcy, a lawful procedure. The debts were accumulated from 1980 to 1998, and he did not resolve the debts through bankruptcy until February, 2003. That time period makes the debts recent, and MC 1 cannot be applicable. However, I give greater weight to the fact that the debts were finally resolved than that he took so long to do so. He did attempt to file bankruptcy in 1998, but he seems to have had some problem with the attorney to whom he was referred and the bankruptcy counselor he hired. Nonetheless, he should have pursued payment of these debts or bankruptcy promptly in 1998 or 1999. Applicant did not complete his bankruptcy filings as he stated he would on two government forms, and these statements would be a concern except I find his actions to be caused more by a lack of focus on resolving the problem than a deliberate attempt to deceive or mislead the Government.

The divorce and loss of full military pay and his spouse's income makes Applicant fall under MC 3. The bankruptcy and the evidence Applicant does not incur new debts which he cannot pay from his current income supports the applicability of MC 4. It could be argued that all his debts prior to 1998 are isolated from his current situation, but I think it stretches the intention of MC 2, so I find that MC is not applicable here.

After observing his demeanor at the hearing, and considering his testimony, I find his explanations of his financial problems to be credible. His use of the bankruptcy statute, like his former spouse's use of the same statute to relieve herself of her share of the debts, is reasonable and legal, and within the requirements of Guideline F that he has "otherwise resolved his debts." (E2.A6.1.3.6)

Evaluating the totality of the evidence, I conclude Applicant's financial problems have been mitigated and successfully and legally resolved. Therefore, it would be clearly consistent with national security concerns to renew his security clearance.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: For the Applicant

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Philip S. Howe

Administrative Judge

1. Government Exhibit 1: Applicant's security clearance application dated February 25, 1999

Government Exhibit 2: Applicant's credit report of May 19, 1999

Government Exhibit 3: Applicant's statement of June 20, 2001 and credit report of March 14, 2001

Government Exhibit 4: Financial interrogatories of October 1, 2002

2. Applicant Exhibit A: Retirement DD 214

Applicant Exhibit B: Form showing prior security clearances

Applicant Exhibit C: Bankruptcy Court final decree

Applicant Exhibit D: Bankruptcy schedules