

DATE: February 10, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00260

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant's financial problems raised security concerns because of his two bankruptcies in 1997 and 2003, he has legally discharged his debts to almost all his creditors and has a plan in place to resolve the remaining debts. The majority of his financial difficulties were caused by conditions largely beyond his control from two divorces and from having custody of two children without any financial support from his former wife. He has sought financial counseling, lives modestly, and performs his job professionally. Thus, he has mitigated these security concerns. 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 April 18, 2003. 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. Applicant responded to these SOR allegations in an undated notarized Answer which was received on May 16, 2003. He admitted all debts but stated they were discharged on February 5, 2003, in a bankruptcy. He requested a hearing.

The case was assigned to Department Counsel who indicated on September 2, 2003, that the case was ready to proceed and the case was assigned to another judge. The case was transferred to me on September 12, 2003. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing, issued on September 16, 2003, set the matter for November 13, 2003. At the hearing the Government introduced five exhibits which were admitted into evidence (Exhibits 1-5). Applicant testified and offered seven exhibits (Exhibits A through G) which were admitted into evidence. The record was ordered held open for Applicant to submit additional evidence. I granted him until November 28, 2003, to submit further evidence through Department Counsel and granted the Government five days until December 3, 2003, to review and forward the evidence to me. (TR 49-51; 76)

Applicant submitted his documentation on November 25, 2003. Department Counsel did not object to his submissions (Exhibit H) and forwarded the documents to me on December 2, 2003. Consequently, Applicant's Exhibits I through O were admitted into evidence and the record closed. The transcript (TR) was received on November 24, 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, 30 years old, has been employed by Company #1, a defense contractor in State #1, since February 2001. Previously, from December 2000 to February 2001 he was unemployed in State #1. From 1992 to 1996 he served in the military and received a General Discharge under honorable conditions. He had a secret clearance when he was in the military. He served in the national guard from June 2000 to 2001. (Exhibits 1, 2; Exhibit I; TR 25, 27, 41, 63, 67)

Applicant married Wife #1 in 1993. They were divorced in April 1998, and he was awarded custody of the two children born in 1994 and 1995. He married Wife #2 in May 1999 and divorced in February 2000. (Exhibit 1, Exhibit L; TR 17, 25; 55-56, 59-60; 68-69)

Finances

Applicant and his first wife had extensive medical bills from her illness in 1994. He was serving in the military, and his wife was not working. They filed for Chapter 13 Bankruptcy in State #2 in June 1995 with assets of over \$11,000 and liabilities of over \$26,000; they converted it to a Chapter 7 Bankruptcy in 1997 and all debts were discharged in April 1997. (SOR 1.ll) (Exhibits 1, 2, 3; TR 17; 52) They moved to State #3 when he got out of the military and lived with his wife's sister for a year before he and Wife #1 divorced. He was unaware that his wife was bouncing many checks with his name on them. (TR 17-18; 52)

Since April 1997 Applicant has had temporary custody of his two children after he separated from his wife; and he got legal custody in April 1998. Although the courts ordered child support of \$35 per week, the mother has paid no support. He moved to State #1 in September 1997 to be near his parents and lived with them for over a year. Initially, his income was very limited as he was making only \$8 to \$9 an hour, yet that was too much for him to receive state assistance. He incurred medical bills not covered by insurance. Divorced from wife #2 in 2000, he lost everything and had to start over when he left Wife #2. He moved back to his parents home, but subsequently established his own home where he lives with his children. His new debts include a loan for furniture for his new home. (Exhibits A, K, L; TR 18-20; 23-26; 69-70) His mother continues to help him by caring for the children when he works. (TR 59-60)

Applicant paid in February 2000 a state tax lien filed against him in State #2 for \$249.36 in October 1999. (Exhibit 2, Exhibit Q) In January 2001 a creditor had a judgment entered against him in the amount of \$618 for medical bills, and in May 2001 he reached an informal agreement with the creditor to pay them \$50 per month. (SOR 1.kk) (Exhibit 2)

In October 2001 he reported to the Defense Security Service (DSS) on a Personal Financial Statement that he had net monthly income of \$1,678, monthly expenses of \$988, and debt payments of \$572 which left him an \$118 monthly remainder. (Exhibit 2) An October 2001 credit report showed past due debts of \$5,900 to many creditors. (Exhibit 4)

Subsequently, Applicant sought counseling from a financial consultant who advised him to file for bankruptcy. The advisor also advised him on how to budget for his bills. When Applicant filed for Chapter 7 Bankruptcy in November 2002, he reported annual income of \$26,846 in 2000, \$27,964 in 2001, and claims from creditors ⁽²⁾

of \$17,985. All debts listed in the SOR were discharged in February 2003 except for a debt of \$5,718 which is on his credit report but was not included; he is discussing this matter with his bankruptcy attorney and plans to have it re-opened so that it is included. (Exhibits 5; Exhibits G, J, O, R; TR 21; 49-55)

In December 2002 he reported on a Personal Financial Statement that he had net monthly income of \$2,269, monthly expenses of \$1,332, and debt payments of \$620 which left him an \$317 monthly remainder. Wife #1 was court-ordered to pay \$140 per month child support (which he included in his net monthly income), but she has not paid any support.

His efforts to get support using the state child support venue has not been successful. (Exhibit 2; Exhibits B, I, K) Applicant continues to get financial counseling from relatives who are helping him manage his bills. He also does yard work for them in the summer and fall make makes about \$1,200 per year. He intends to pay off two loans and other past due accounts in January 2004 after he files his tax return and gets a refund which he anticipates will be \$3,000. He was able to obtain \$6,329 loan from a bank for his 1997 car purchased in September 2003 and has opened a checking account in an effort to improve his credit rating. (TR 22-23, 47; 62; 65-66) In 2003 he was being paid \$14.61 an hour and earning an annual salary of approximately \$30,000. His medical and dental expenses are covered through insurance. He has no credit cards. He has a loan for his furniture and his television that he is paying monthly. (TR 28-41, 46-49, 56-58; Exhibits B, E, I, P)

Although not alleged in the SOR, Applicant has some debts on his credit report that he is trying to resolve, including a debt to a cell phone company. (TR 43) Also, in January 2003 he was ill himself and incurred more medical bills which he intends to pay. (TR 21, 43-45) Applicant has matured and is taking steps to better himself. (TR 64-65)

Awards and References

Applicant received an award for his support for a military mission in September 2003. (Exhibit F; TR 66-67)

A supervisor since April 2001 stated that Applicant is very dependable and completes all job assignments in a professional manner. He has "proven himself to be an honest and trustworthy employee." (Exhibit C; TR 23, 60-62)

Another supervisor for eighteen months stated that Applicant has proven himself to be dependable and honest; he works with a good attitude and takes pride in doing a good job. (Exhibit D; TR 23; 60-62)

When Applicant served in the military he received several awards. (TR 63; Exhibit N)

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.

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

While Applicant has had under DC (1) a history of financial problems and filed for bankruptcy in 1995 and again in 2002 and has demonstrated (3) an inability or unwillingness to satisfy all of his debts in the past, he has made substantial efforts to resolve these debts as detailed in the Findings of Facts either by paying the debts or having the debts discharged through Chapter 7 bankruptcy. Many of the debts in both bankruptcies were due to financial problems which Wife #1 caused in part; she still fails to pay any court-ordered child support on a consistent basis.

While Applicant has a only moderate income with two children to support, he has effectively mitigated⁽³⁾ those debts alleged in SOR 1.a. through 1.1l. First, under MC 3 the conditions that resulted in the behavior were largely beyond the person's control, for example medical emergencies with his children and/or separation from Wife #1 and Wife #2. Many of the debts were incurred after he left the military and was separated from Wife #1 and was the sole support of his two children. He was further disadvantaged financially by his divorce from Wife #2 when he had to start over again. Many of his medical debts are for care for his children not covered by insurance.

MC 4 applies in his favor, as he sought counseling. After he received this counseling for his financial problems, he had the majority of his debts discharged in bankruptcy in February 2003; thus, there are now clear indications that the problem is being resolved or is under control. As an indicator of his improved financial standing, Applicant was able to finance a \$6,329 car loan from a bank for a 1997 car in September 2003 and opened up a checking account to try and improve his credit rating. He has advanced on his job, and in 2003 he was being paid \$14.61 an hour, earning an annual salary of approximately \$30,000. His medical and dental expenses are covered through insurance. He has no credit cards. He has a loan for his furniture and his television that he is paying monthly which he intends to pay off with his tax refund. In sum, under MC 6, he has made a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has sufficiently demonstrated he is now financially responsible as he has resolved the majority of his debts and is living within his means. Although his history of delinquent debt raised concerns, it is unlikely these financial issues will recur as his life is now stable. Also, two supervisors who have known him assessed Applicant as honest and trustworthy. As Applicant is viewed as a dependable person, his position with Company #1 appears to be secure. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude that he has mitigated the allegations in SOR subparagraphs 1.a. through 1.1l. and resolve SOR Paragraph 1 in his 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: 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

Subparagraph 1.p.: For Applicant

Subparagraph 1.q.: For Applicant

Subparagraph 1.r.: For Applicant

Subparagraph 1.s.: For Applicant

Subparagraph 1.t.: For Applicant

Subparagraph 1.u.: For Applicant

Subparagraph 1.v.: For Applicant

Subparagraph 1.w.: For Applicant

Subparagraph 1.x.: For Applicant

Subparagraph 1.y.: For Applicant

Subparagraph 1.z.: For Applicant

Subparagraph 1.aa.: For Applicant

Subparagraph 1.bb.: For Applicant

Subparagraph 1.cc.: For Applicant

Subparagraph 1.dd.: For Applicant

Subparagraph 1.ee. For Applicant

Subparagraph 1.ff.: For Applicant

Subparagraph 1.gg.: For Applicant

Subparagraph 1.hh.: For Applicant

Subparagraph 1.ii.: For Applicant

Subparagraph 1.jj.: For Applicant

Subparagraph 1.kk.: For Applicant

Subparagraph 1.ll.: 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. One creditor (SOR 1.h.) was not included in the bankruptcy (where he had debts of \$29 and \$28) as he had trouble finding the proper credit agency who handles that account as the company has gone out of business. (Exhibit A; TR 18-19)
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.