

DATE: June 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06410

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems raise security concerns as she and her husband have repeatedly chosen to resolve their debts by resorting to bankruptcy under Chapter 7 in 1989, under Chapter 13 in 1990, and again under Chapter 7 in 2001 where over \$50,000 in debts were discharged. She provided insufficient evidence to establish that conditions that led to that debt were largely beyond her control. Further, Applicant provided no evidence that she has received or is receiving counseling for her financial problems to assure that these conditions will not recur. 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 July 14, 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). (Item 1) Applicant responded to these SOR allegations in an Answer notarized on August 8, 2003 where she admitted allegations 1.a., 1.b., and 1.c., but denied 1.d., 1.e., 1.f., 1. g., and 1.h. She did not request a hearing.

The case was assigned to Department Counsel to prepare for a decision on the administrative record. She prepared the File of Relevant Material (FORM) for the Applicant's review and advised Applicant that she had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that she had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on December 12, 2003, and again notified the Applicant that she had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on December 29, 2003, but failed to respond before the deadline of January 28, 2004. On February 5, 2004, the case was assigned to me.

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, 37 years old, has been an employee of Defense Contractor #1 in State #1 since 2000. In February 2001 she applied for a security clearance by completing a Security Clearance Application (Standard Form 86) (SF 86). (Item 5)

Applicant was married in 1985 and has two children born in 1986 and 1989. (Item 5)

Finances

In January 2002 she was questioned by the Defense Security Service (DSS) about adverse information in her background and provided more information on her finances. She explained that in 1989 she and her husband developed financial problems after they moved to State #1 and had no insurance to handle medical expenses and did not qualify for public assistance. They filed for Chapter 7 liquidation of all debts in the U.S. Bankruptcy Court in State #1; the court discharged over \$9,000 in debts in 1989. (SOR 1.c.) (Items 6, 7)

Again, in 1990 they filed for Chapter 13 reorganization of all debts in the U.S. Bankruptcy Court in State #1 with debts of over \$17,000 after their "financial situation just snowballed." She had two children and could not work and her husbands hopes that a specialized course would lead to employment was not fulfilled. They completed the plan and were discharged in 1994. (SOR 1.b.) (Items 6, 8)

Subsequently, they purchased a home and Applicant got a job and her husband's pay increased. However, in February 2000 her father died; she was devastated by his death and switched from a medical job with elderly patients to a temporary job without any medical insurance. In 2001 her mother-in-law moved into their household, and they also assumed responsibility for an unrelated teenager. (No explanation was provided as to why they assumed this responsibility.) Applicant's husband lost his job making \$12 per hour and found ones for \$9 and \$10 per hour. They consulted credit counselors who recommended they file for bankruptcy. So, again in March 2001 they filed for Chapter 7 bankruptcy and in June 2001 were discharged of over \$50,000 in debts. (SOR 1.a.) (Items 6, 9) Applicant provided insufficient evidence that the conditions that led to these debt were largely beyond their control.

Again, they experienced financial difficulties from July 2001 to January 2002 when they were one month delinquent in paying their second mortgage. In January 2002 Applicant and her husband had over \$3,300 in monthly income, over \$1,600 in monthly expenses, and monthly debt payments of over \$1,200. (Item 6)

DOHA sent an Interrogatory to ask Applicant to further explain her finances. (Item 10) In November 2002 she responded to the Financial Interrogatory to explain that a series of eight debts had been discharged in bankruptcy. In January 2003 Applicant and her husband had over \$3,200 in monthly income, over \$1,200 in monthly expenses, and monthly debt payments of over \$1,400 which left a monthly net remainder of over \$600. They own a house worth \$125,000 and cars⁽²⁾ worth \$24,000. (Item 10)

A June 2003 credit report showed five additional debts which Applicant disputed⁽³⁾ as having already been discharged in the 2001 Chapter 7 bankruptcy. Department Counsel accepted her evidence in the FORM. (SOR 1.d through 1.h.) (Items 1, 4)

However, Applicant provided no evidence that she has received or is receiving counseling for her ongoing financial problems. She provided no updated financial information in response to the FORM.

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:

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

Applicant has (1) a history of financial problems and has shown (3) an inability or unwillingness to satisfy her debts except through relying on bankruptcy: she and her husband filed for Chapter 7 liquidation of all debts in the U.S. Bankruptcy Court in State #1 and the court discharged over \$9,000 in debts in 1989. Again in 1990 when financial problems "snowballed," they filed for Chapter 13 reorganization of all debts in the U.S. Bankruptcy Court in State #1 with debts of over \$17,000; they completed the plan which was discharged in 1994. Again in March 2001 they filed for Chapter 7 bankruptcy and in June 2001 were discharged of over \$50,000 in debts. (SOR 1.a. through 1.c.) On the other hand, Applicant effectively mitigated the SOR allegations concerning debts alleged in SOR 1.d, 1.e., 1.f., 1.g and 1.h. as those debts were included in the 2001 Chapter 7 bankruptcy filing, so they were legally resolved.

However, with respect to Applicant's repeated bankruptcy filings she failed to meet mitigating conditions (MC⁽⁴⁾). While she gave a limited explanation of how conditions in 1989 led to the first bankruptcy filing she failed to explain how conditions largely beyond her control led to so much debt that she filed again for bankruptcy in 1990 and again in 2001. What explanations she gave are not sufficient to mitigate under that guideline. While bankruptcy is an acceptable legal mechanism to resolve debt, her repeated use of this mechanism raises security concerns.

Further, in response to the FORM Applicant provided no updated information on her 2004 finances nor did she document that she sought financial counseling to reform her financial practices. She did disclose that in 2003 her automobiles were worth \$24,000 when they were only worth \$4,000 at the time of the 2001 bankruptcy which suggests financial overreaching may still persist. Applicant has a has had a stable job since 2000, but she provided no evidence as to how she is regarded by her superiors. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 1.a. through 1.c. under SOR Paragraph 1; I conclude that she has mitigated the allegations in SOR 1.d. through 1.h.

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.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: 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. At the time of the 2001 bankruptcy Applicant and her husband provided information that their cars were worth \$4,400. (Item 4)

3. Although she highlighted these five accounts, in copying the highlighted portion much of the highlighted information was made illegible when the document was copied and her notions were barely visible. (Item 4)

4. **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.