

DATE: November 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27156

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems and personal conduct raised security concerns because of his failure to resolve \$25,000 in debts to several creditors; while in June 2002 he promised to began a good-faith effort to resolve his debts, he failed to do so even though he has a stable job and substantial assets. He failed to document any action to challenge two debts he disputes. While his wife became ill in 2000, he failed to detail how her illness adversely affected his financial situation. Personal conduct concerns persist as he failed to disclose any of his financial difficulties on his security clearance application. However, these omissions do no establish criminal conduct. 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 August 29, 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), personal conduct (Guideline E), and criminal conduct (Guideline J). Applicant responded to these SOR allegations in an Answer notarized on November 3, 2003, and requested a decision be made without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on January 23, 2004, which she forwarded to Applicant with the explanation that he would have thirty days from the date of receipt to submit any objections or any additional information. He received the FORM on February 6, 2004, but submitted no additional information. The case was assigned to me on March 22, 2004.

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, 43 years old, has been employed by a defense contractor in State #1 since December 1992. He completed a Questionnaire for National Security Position (SF86) on March 22, 2002. He received a BSEE degree in 1985 from a university in State #1. (Exhibit 4)

Applicant is married and has two children born in 1987 and 1990. (Exhibit 4)

Finances, Personal Conduct, Criminal Conduct

Applicant signed his SF 86 in March 2002 and certified that the statements on the form were true and correct. (Exhibit 4) However, Applicant failed to disclose any adverse information regarding his finances in response to questions on the form. Investigation by the Defense Security Service (DSS) disclosed several adverse credit references on his March 2002 Credit Report. (Exhibits 4, 6) During his June 2002 interview he provided a Statement where he explained that he thought that his debts had been paid or were more than seven years old or that he misinterpreted the question on the judgment account. (Exhibit 5)

In his November 2003 Answer to the SOR he provided different explanations for his failure to disclose required information in response to Questions 35, 37, and 38 concerning his financial delinquencies: he stated that the first repossession was older than seven years; he did not consider the 2000 incident to be a repossession; and he forgot the unpaid judgment. He admits he left the delinquent debts off his SF 86, but was either "unaware of the responsibility or forgot" his obligation or denied the validity of the debts listed in 1.a. and 1.b. He further stated that his errors of omission were due to "misinterpretation or failed memory." He graduated from college with a BSEE degree and does not have the defense of a limited education. (Exhibits 3, 5)

At the time of his DSS interview in June 2002, he cooperated in discussing his financial issues. (Exhibit 5) Applicant's stated that his financial problems developed in the 2000 after his wife was diagnosed with cancer in October 2000 and he had to pay these medicals bills. In June 2002 his net income was \$4,691 per month; he had monthly expenses of \$2,275, and he had monthly payments for his mortgage and other creditors of \$1,915. He had a monthly remainder of \$501. He has \$246,5000 in assets including a home (valued at \$160,000), bank savings (valued at \$3,000), stocks and bonds (valued at \$47,000), and five cars and two boats (which he valued at \$36,500) (Exhibit 5) Applicant has the financial means to resolve his debts and provided the following explanations:

SOR 1.a.. Applicant's debt to Creditor #1, a finance corporation, for \$10,948 was a deficit balance due after a vehicle was voluntarily repossessed and sold at auction in October 1994; Applicant returned the car to the dealer when they would not "live up" to the repair contract. The account was referred for collection in May 1995. He stated in June 2002 he "totally disagrees with owing them any money" and stated he would "pursue the matter legally if it becomes necessary" as he does not intend to pay this debt. In September 2003 he reported no legal or other action he had taken to resolve this debt. (Exhibits 1, 3, 5)

SOR 1.b. Applicant has a debt to Creditor #2, an auto action company, for \$12,843 for a delinquent account as a result of a vehicle that was repossessed in April 2000. He stated in June 2002 he did not believe this was his account, and he does not intend to pay this debt. In September 2003 he reported he had purchased a van from them in March 2000 and made a down payment of \$1,250 towards the purchase price of \$13,000; he had them pick up the van from his home in April 2000, but admits he failed to have a written agreement with Creditor #2 as to the status of his return. He stated he contested the entry of this debt and the entry was removed; however, he provided no copy of this action. Thus, he documented no legal or other action to resolve this debt. (Exhibits 1, 3, 5)

SOR 1.c. Applicant admits his debt to Creditor #3, a telephone company, of \$1,272 from when he moved in 1999; he stated he would pay this bill but provided no documentation that he had done so. (Exhibits 1, 3, 5)

SOR 1.d. Applicant admits his debt to Creditor #4, an individual landlord who obtained a \$1,500 judgment against him in April 2001 when Applicant failed to appear in court. Applicant stated in June 2002 that he would pay this debt by December 2002; however, he provided no documentation that he had done so. (Exhibits 1, 3, 5)

Although Applicant stated he has not resolved these debts as he has had expenditures due to "unforeseen expenses," he did not document or detail those expenses. His top priority has been his wife's care and day to day living expenses. His

wife has had to close two businesses as a result of her illness. He admits his work history is stable. (Exhibit 3)

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

The Concern: 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

The Concern: 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.

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:

None

Guideline J - Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

Conditions that could mitigate security concerns include:

4. . . . the factors leading to the violation are not likely to recur;

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 developed (1) a history of financial problems and subsequently showed (3) an inability or unwillingness to satisfy all of his debts. At the time of the investigation he had four unresolved debts that totaled approximately \$25,000. While Applicant disputed two debts for repossessed cars, he provided no documentation to establish his defense. While he earlier promised in June 2002 that he intended to make it a priority to pay his \$1,200 overdue phone bill and his \$1,500 judgment to his prior landlord, he provided no evidence he has done so. While his wife has been ill, he provided no evidence of how her medical expenses adversely affected his finances. Notably, he has substantial income to handle his current financial obligations and substantial assets totaling \$246,5000 [including a home (valued at \$160,000), bank savings (valued at \$3,000), stocks and bonds (valued at \$47,000), and five cars and two boats (which he valued at \$36,500)].

Thus, Applicant has failed to mitigate⁽²⁾ these concerns as he has provided no evidence that he resolved any of these debts. Applicant has failed to demonstrate that he is now financially responsible as he failed to follow through on his plan to resolve these debts. Neither has Applicant shown that he 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 Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 1 as he failed to mitigate the allegations in SOR subparagraphs 1.a. through 1.e.

Personal Conduct

Applicant failed to reveal any of his personal debts on his SF 86 security clearance application form as required. These omissions constituted a willful intent to falsify so as to raise security concerns under Personal Conduct. His conduct falls with DC 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.

While he denies he knowingly falsified his security clearance application, his inconsistent answers as to why he failed to disclose these persistent financial delinquencies diminish the credibility of his denial. Applicant's varied explanations for his omissions are not credible as they are inconsistent. During his June 2002 interview he explained that he thought that his debts had been paid or were more than seven years old or he misinterpreted the question on the judgment account. In November 2003 in his Answer to the SOR he provided different explanations for his failure to disclose: he stated that the first repossession was older than seven years, he did not consider the 2000 incident to be a repossession, and he forgot the unpaid judgment. He admits he left the delinquent debts off his SF 86 but was either "unaware of the responsibility or forgot." Thus, Applicant has failed to mitigate⁽³⁾ these concerns. While he argued he had no intent to falsify and in June 2002 cooperated with the DSS agent to provide extensive information about his financial circumstances, there is no evidence that he corrected the falsification before confronted by DSS as required by MC 2 and 3. He had a duty initially to fully disclose adverse information on the SF 86. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a. through 2.c. under SOR Paragraph 2.

Criminal Conduct

Applicant never was charged with any criminal misconduct for these omissions; and I conclude these omissions do not meet the higher standard required for felony criminal conduct under 18 U.S.C. Section 1001. Even if one were to conclude that these uncharged actions fall within DC 1, I conclude that conditions exist that mitigate this security concern under MC 4, the factors leading to the violation are not likely to recur.

After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 3.a. under SOR Paragraph 3.

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.: Against Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.a.: 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. Clearance is denied.

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.