

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's financial problems continue to raise security concerns because of his delay in resolving debts to multiple creditors. While Applicant's circumstances have some sympathetic elements, he failed to develop a plan to resolve all his debts in a timely manner. Thus, he has not demonstrated sufficiently that he has made a good-faith effort to resolve all his debts and to reform his financial practices. Security concerns over his personal conduct are also serious, as he failed to disclose required information on his security form. Clearance is denied.

CASENO: 02-28116.h1

DATE: 01/26/2006

DATE: January 26, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28116

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems continue to raise security concerns because of his delay in resolving debts to multiple creditors. While Applicant's circumstances have some sympathetic elements, he failed to develop a plan to resolve all his debts in a timely manner. Thus, he has not demonstrated sufficiently that he has made a good-faith effort to resolve all his debts and to reform his financial practices. Security concerns over his personal conduct are also serious, as he failed to disclose required information on his security form. 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 January 25, 2005. 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 a notarized Answer submitted on February 11, 2005; on February 16, 2005, he requested a decision be made without a hearing.

Department Counsel prepared the File of Relevant Material (FORM) on June 6, 2005. On June 10, 2005, the documents were forwarded to the Applicant who was advised he had thirty days from receipt of the FORM to submit any additional information. He received the FORM on June 20, 2005; but he did not submit any information by July 20, 2005. Consequently on August 1, 2005, the FORM was assigned to me. The government offered 23 items (Items 1-23) which were admitted into evidence without objection.

PROCEDURAL ISSUE

In the FORM the Government moved to amend the SOR to add an additional allegation:

1.t. You are indebted to the Internal Revenue Service in the approximate amount of \$167,143 for a federal tax lien that was filed on December 3, 2003. As of April 22, 2005, this debt has not been paid.

In the FORM the Department Counsel requested that Applicant file any objection to the amendment, or if no objection, to respond to the allegation. He failed to respond to this allegation. However, I will grant the amendment to the SOR and assume that Applicant's response is to deny the allegation.

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, 60 years old, was employed by Defense Contractor #1 in State #1 from June 1980 to present. Previously, he had been granted a Secret Defense Department clearance in November 1997. He completed a Security Clearance Application (SF 86) on May 12, 2000 and again on August 31, 2000. Previously, he served in the military from 1963-65. (Items 3, 4) Applicant has been married several times. He was married in 1965 and divorced in May 1977. He has a son born in 1973. He remarried in 1984-85 and again in 1987-88, but is now divorced. (Items 3, 4, 5)

Finances

Applicant explained his financial problems began in 1988 when his son had cancer and continued to 1994. He revealed to DSS in December 1994 that he gambled but did not believe that his gambling caused any financial issues as his losses were minimal. In December 1994 he had net monthly income of \$2,288, expenses of \$1,260. His debt payments required monthly payments of \$699 which left him a \$429 monthly remainder. (Item 6)

Again, in 1997 his son was seriously injured in an accident and has subsequently needed his financial support. Applicant borrowed \$22,000 in 1997 to purchase a home where they lived from 1997 to 2000. He borrowed \$21,000 to purchase a van for his son and \$22,000 to make repairs and handicap adjustments to the house. Two of the loans were from his 401K plan where he makes monthly payments. Consequently, he has fallen behind on his bills. He has tried to solve his financial problems by gambling at casinos and playing the lottery. (Answer; Item 5) His mortgage was foreclosed in November 1999. (Items 12, 23)

Applicant in 2002 had a net monthly income of \$1,565, expenses of \$1,262. His substantial debt payments and delinquent debts required monthly payments of \$1,000 which left him a \$697 monthly deficit. (Item 5) While he sought legal advice and was advised to file for bankruptcy, he has been unwilling to do so as he considers it "dishonest." (Answer) However, he provided no updated information about any other avenues he has explored to address his massive debt which is detailed below:

SOR 1.a.. Applicant claims to have paid the \$2,671 he owed Creditor #1, an individual, for a 1995 judgment but offered no evidence of payment. (Answer; Item 9)

SOR 1.b. Applicant argued he no longer owed the \$49 debt to Creditor #2, but provided no documentation. (Answer; Item 8)

SOR 1.c. Applicant both admitted this debt and claimed no knowledge of the debt to Creditor #3 for \$1,564, placed for collection in 1998 for utility expenses. (Answer; Items 8, 10)

SOR 1.d. Applicant admitted debt to Creditor #4 but disputed the amount of \$20,487 and argued it was the same of SOR 1.h. which Department Counsel persuasively disputed. (Answer; Items 7, 8, 9)

SOR 1.e. Applicant argued that Creditor #5 is out of business, so he does not owe \$55, but he provided no documentation. (Answer; Items 8, 9)

SOR 1.f. Applicant asserted he has paid the debt to Creditor #6 for \$500. (Answer)

SOR 1.g. Applicant denied a debt to Creditor #7, for \$345 for judgments entered in January 2000 which remain unpaid; however, he provided no documentation. (Answer; Item 8, 9, 19, 20)

SOR 1.h. Applicant admits the debt to Creditor #4, a bank, for \$13,507 for an account charged off as a bad debt in March 2000 which remains unsatisfied. (Answer; Items 7,8, 9)

SOR 1.i. Applicant denies the debt to Creditor #8 for \$55 but provided no documentation. (Answer; Items 7, 8, 9)

SOR 1.j. Applicant admits the debt to Creditor #9 for \$4,235 for an account placed for collection in June 2000 which remains unpaid. (Answer; Items 8)

SOR 1.k. Applicant denies the debt to Creditor #10, for \$1,565 for an account placed for collection in September 2000 that remains unpaid; he provided no documentation. (Answer; Items 8, 9)

SOR 1.l. Applicant admits the debt to Creditor #11 for \$286 for a dental bill which remains unpaid. (Answer; Item 7, 8, 9)

SOR 1.m Applicant did not know of the debt to Creditor #12 for \$737. (Answer; Items 7, 9)

SOR 1.n Applicant admits his debt to Creditor #13 for \$916 for an account placed for collection in July 2002. (Answer; Items 7, 8)

SOR1.o. Applicant admits his debt to Creditor #14 for \$364 for an account placed for collection in July 2002. (Answer; Item 8)

SOR 1.p. Applicant admits his debt to Creditor #15, the Internal Revenue Service, for \$7,978 in taxes, penalties and interest. A notice of Federal Tax Lien was filed in 2002 for non-payment of Federal taxes debts. Applicant stated he is paying \$800 per month on this debt at his suggestion. (Answer; Items 7, 8)

SOR 1.q. Applicant admits his debt to Creditor #16 for \$24,768 for an account placed for collection in April 2003. (Answer; Items 7, 8)

SOR 1.r. Applicant denies his problems are related to gambling; however, he has had four gambling related debts:

(1) He denied at debt to Casino #1 and claimed the \$566 was paid in 1998; however, he provided no documentation. (Answer; Item 9)

(2) Applicant satisfied the 1998 judgment for \$7,963 to Casino #2 in August 2001. (Answer, Items 7, 8, 9, 18)

(3) Applicant admitted his debt to Casino #3 for \$438 which remains unpaid.

(4) Applicant admitted his debt to his son for \$10,000 for a default judgment in 2001; he denied the reasoning that he had gambled away his son's insurance settlement. (Answer; Item 11)

SOR 1.s. Applicant admits that his monthly expenses exceed his income. (Answer; Item 5)

SOR 1.t. Applicant failed to answer the allegation that he owes the IRS a debt of \$167,143 which remains unpaid. (Items 7, 15)

Personal Conduct

Applicant only disclosed one \$885 debt in answer to Question 38. He intentionally omitted information from the Security Clearance Application on financial issues, such as his wage garnishments in answer to Question 34, his unpaid judgments in answer to Question 37, his financial delinquencies over 180 days in answer to question 39. (Items 3, 4) He was afraid and ashamed to admit his financial crisis. (Answer) Further, Applicant continues to gamble and spends at least \$125 monthly even though he is unable to meet his monthly financial obligations and has experienced past financial problems related to gambling. His falsifications are aggravated because he serves as a security officer at his company. (Items 3, 6)

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.

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.

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

The Government established disqualifying conditions that could raise a security concern and may be disqualifying including Applicant's (1) history of financial problems and his (3) inability or unwillingness to satisfy the majority of his debts. Even after being put on notice in 2002 about the government's concerns over his finances, he made no concerted effort to resolve these debts. While he rejected the advice of lawyers who recommended bankruptcy, he took no other positive steps to address these issues.

While Applicant's circumstances have some sympathetic elements as his son was injured and he initially tried to help him, later Applicant appropriated \$10,000 in insurance proceeds from his son's insurance settlement for gambling debts. Thus, that sympathy is diminished as he his son got a default judgment against him in 2001 which remains unpaid. He failed to develop a plan to resolve all his debts in a timely manner. Thus he has failed to mitigate⁽²⁾ these financial concerns. Even giving him the benefit of the doubt for disputed debts, still he has only resolved a fraction of the remaining debts which can therefore be mitigated under E2.A6.1.3. 6. (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.) Thus, for the remaining debts Applicant has yet to demonstrate that he is financially responsible.

Further, Applicant did not show that he has received or is receiving counseling for the problem, nor has he developed a budget. In sum, Applicant failed to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts in a timely manner. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant as he mitigated the allegations in SOR subparagraphs 1.f., and 1.r.(2), but against him under subparagraphs 1.a. through 1.e., 1.g. through 1.r.1., and 1.r.(3) through 1.t. under SOR Paragraph 1.

Personal Conduct

The government established its concerns over Guideline E Personal Conduct under Disqualifying Condition E2.A5.1.2.2. 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. On his Security Clearance Application Applicant failed to disclose wage garnishments, unpaid judgments, and financial delinquencies over 180 days. In addition he has shown poor judgment with respect to his gambling which he has similarly failed to address. Because he intentionally falsified, none of the mitigating conditions relating to personal conduct apply.

Also, I considered the record evidence as a whole to determine whether Applicant's overall conduct can be mitigated. Thus, I have evaluated his conduct and considered the following factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Even 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.d. 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: 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

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.r.(1). Against Applicant

Subparagraph 1.r.(2): For Applicant

Subparagraph 1.r.(3): Against Applicant

Subparagraph 1.r.(4): Against Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against 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:** E2.A6.1.3. 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); E2.A6.1.3. 4. . . . there are clear indications that the problem is being resolved or is under control; and E2.A6.1.3. 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.