

DATE: December 30, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28502

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant finally resolved some of his long-standing financial problems, security concerns remain because of his delay in resolving debts to several creditors and his failure to document that other debts are fully resolved. Further, personal conduct concerns persist over his failure to reveal the full extent of his financial problems on his security questionnaire. 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 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) in paragraph 1 and over personal conduct (Guideline E) in paragraph 2. Applicant responded to these SOR allegations in an Answer notarized on January 30, 2003; he requested a decision be made without a formal hearing.

The case was assigned to Department Counsel who on August 6, 2003, prepared a File of Relevant Material (FORM) for the Applicant's review and advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on August 6, 2003, and again notified the Applicant that he 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 August 13, 2003, with a response due on September 12, 2003. The Applicant submitted no response. The DOHA Director assigned the case to me for a decision on the record on October 14, 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, 33 years old, has worked for a defense contractor in State #1 since March 1997.

Applicant attended a technical school in 1997. He married for a second time in 1998; he has two children and one step-child. He served in the military from 1989 to 1997; he was granted a Confidential clearance in 1999 by the Department of Justice.

Finances and Personal Conduct

When Applicant applied for a security clearance in April 1999, he completed a Questionnaire for National Security Position (Standard Form 86) (SF 86) where he only revealed one adverse financial issue, a wage garnishment in March 1999. He answered, "No," to several questions where he should have answered, "Yes." He failed to reveal a charge for a Worthless Check in 1994 (SOR 1.a. and 2.a.); he stated that he was not aware a worthless check charge was on file as he stated he had made restitution. Nevertheless, he had a duty to reveal this adverse information.

Also, he failed to disclose an unpaid judgment to Creditor #2, a realty company in June 1995 (SOR 2.b.). While he provided a copy of a check for \$346.22, dated January 2003 (which he stated was settlement for the two debts of \$485.75 and \$287), he provided no proof from Creditor #2 that they accepted this partial restitution as settlement of those debts.

Applicant also failed to disclose on the form in answer to Questions 38 and 39 that he had financial delinquencies currently over 90 or over 180 days within the last seven years. (SOR 2.c.) He conceded in his response to the SOR that he failed to disclose the adverse financial information as alleged in the SOR. In his Defense Security Service (DSS) interview, in April 2001, he admitted these delinquent financial accounts and stated he would resolve them. He provided a Personal Financial Statement revealing net monthly income of \$2,722; monthly expenses of \$2,200 (including child support of \$1,200), monthly debt payments of \$357, and a monthly remainder of \$165. While he claimed that he has had financial delinquencies due to his divorce, he did not provide details on the divorce or how it adversely impacted him financially except for the debt to Creditor #1 (SOR 1.b.) of \$2,677 which was incurred by his former wife to purchase some encyclopedias in 1993, with no payments having been made since 1994. Although he initially claimed he would satisfy his debt if Wife #1 failed to do so, he took no action. In January 2003 when he contacted Creditor #1 he could not get any information on the account, and the debt remains outstanding.

To his credit Applicant paid the debt of \$360 to Creditor #3 in January 2003. (SOR 1.e.) Applicant stated he was paying his \$3,300 debt to Creditor #4 for a repossessed vehicle through a monthly payment of \$72 to AmeriDebt; however he only provided account information with them and no proof that he has made actual payments. Thus, there is insufficient evidence to establish that he is resolving that debt. Further, the same Account information showed he is paying over \$100 of other monthly payments to five additional creditors; Applicant provided no information to explain how he acquired these new debts and further details on when he began this arrangement with AmeriDebt. He provided no information as to how he was reformed his financial practices or that he has received or is receiving counseling for his financial problems. He failed to respond to the FORM and provide an updated Personal Financial Statement.

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.

Guideline E - Personal Conduct

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

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 all of his debts. Although he stated some of the debts stemmed from his divorce, he did not explain how the divorce led to his financial problems. While he was made aware of these debts and acknowledged them in an April 2001 DSS interview, he made no documented efforts to resolve any of these debts until after he received the SOR in January 2003. While he paid some small debts, he failed to show sufficient efforts to resolve two large debts. Thus, security concerns persist because of long-standing nature of these debts, and his failure to resolve them more quickly or to seek financial counseling.

Applicant mitigated⁽²⁾ his small debts alleged in SOR 1.a., 1.c., 1.d., and 1.e. as he has paid these debts. Thus, Mitigating condition (MC) 6 applies to these those debts as he initiated a good faith effort to repay his overdue creditors. While Applicant has made progress and provided documentary evidence in January 2003 that some of these debts have been resolved, he provided no documentary evidence of his having resolved his debt to Company #1 and Company #4 (SOR 1.b., 1.f.) He has no plan to pay Creditor #1 and there is no evidence that he has implemented his plan to pay

Creditor #4. Thus, while some of his debts are now resolved, the record is not clear concerning those other debts. Applicant has failed to demonstrate that he has made managing his finances a priority. Nor has he documented under MC 4 that he has received or is receiving counseling for the problem; there are no clear indications that all of his financial problems are being resolved or are under control. For example, he provided no current budget. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude that he has mitigated the allegations in SOR subparagraphs 1.a., 1.c., 1.d., 1.e., but failed to mitigate 1.b and 1.f. I rule against Applicant under SOR Paragraph 1.

Personal Conduct

Applicant failed to reveal his long-standing debts on his SF 86 form. This failure to disclose led the Government to raise security concerns over personal conduct issues. Applicant's omission of relevant and material information about his debts could reflect questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information. Applicant's explanations fail to overcome these Government's security concerns by demonstrating that he has mitigated, ⁽³⁾ his explanations for his omissions are not credible. There is no evidence that Applicant made prompt, good-faith efforts to correct the omissions before being confronted with the facts by DSS. Further, Applicant provided no recommendations as to his good character.

After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a. through 2.c. 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.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: 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.

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.