

DATE: January 22, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31324

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over his finances and his isolated misdemeanor criminal conduct. Despite his past financial problems, he has resolved or is resolving outstanding debts to most of his creditors. Overall he has demonstrated that he is gaining control over his finances and has a good income and lives within his income. He has stability in his job as he has a general reputation for being conscientious and being honest and forthright in his dealings. 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 30, 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⁾ (Item 1) The SOR alleges specific concerns over and financial issues (Guideline F) in paragraph one and criminal conduct (Guideline J) in paragraph two,. Applicant responded to these SOR allegations in an undated notarized Answer and requested a hearing.

After Department Counsel signed a "ready to proceed" form on July 18, 2003, the case was assigned to another judge on July 18, 2003. Because the Applicant had relocated, the case was reassigned to me on July 24, 2003. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on August 5, 2003, set the matter for September 30, 2003. The Government introduced six exhibits which were admitted into evidence (Exhibits 1-6) Applicant testified and offered one exhibit (Exhibit A) which was admitted into evidence. Applicant requested that the record be kept open for two weeks, until October 14, 2003, so he could submit additional evidence. (TR 31, 36-37) As the Department Counsel did not object, I allowed Applicant until close of business (COB) on October 14, 2003, to submit any additional evidence and the Government time to review it. (TR 59) Applicant submitted 17 pages on October 9, 2003. (Exhibit B) On October 27, 2003, the Department Counsel presented her response to the post-hearing filings and indicated she had no objection. Thus, I admitted Exhibit B, and the record closed on October 27, 2003. The

transcript (TR) was received on October 9, 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, 52 years old, has worked for Defense Contractor #1 in State #1 since 2001. In September 2001 he completed a Security Clearance Application (Standard Form 86) (SF 86) and requested a security clearance which he needed. From 1999 to 2001 he worked for Company #2. In 1991 he received a diploma from a technical institute in State #2. (Exhibit 1; Exhibit B; TR 37-39; 51-54, 58)

Applicant was married in 1971 and divorced in 1981 from Wife #1; married in 1983 and divorced in 1985 from Wife #2; and married in 1992 to wife #3. He and his wife have custody of her seven year old grandchild. (Exhibit 1; TR 59; 56)

Financial Considerations

SOR 1.a. In March 1987 Applicant was granted a discharge in a Chapter 7 Bankruptcy Case. He reaffirmed the loan obligation on his home in State #1. (Exhibit 5; TR 25-26; 42-43)

SOR 1.b., 1.c., and 1.d. After Applicant was married to Wife #3, they began to play video poker and were "blowing money and running up a credit card debt." In April 1997 they filed for Chapter 13 Bankruptcy. He then moved to State #3 and sublet his home in State #1. He could not maintain the payments on the home and turned title over to the bank. He then started getting behind in the bankruptcy payments as well; and he could not contact the law firm that had represented him. So he stopped making payments while he lived in State #3. In 1998 he moved back to State #1. His Chapter 13 was dismissed in April 1999 as he was seven months behind in his plan payments and was in debt to 17 different creditors. He has paid Creditor #1; he paid Creditor #2 through garnishment (See 1.e. below); he paid Creditor #4, the Internal Revenue Service. He paid Creditor #5 for his State #1 taxes. He provided no evidence on the status of his payments to Creditors #7 through #17. (Answer; Exhibits 2, 3, 6; Exhibits A, B; TR 25, 29-36; 39-45; 56)

SOR 1.e. Applicant's wages were garnished by Creditor #2 from 1998-2000 and that debt is paid. (Answer; Exhibit A; TR 30-31; 45-46)

SOR 1.f. Applicant paid his debt in October 2001 to State #1 for taxes, penalties and interest after a tax lien was filed in May 1999. (Answer; Exhibit A; TR 24)

SOR 1.g. In April 2003 Applicant settled a debt to a bank and paid in full the debt of approximately \$1,000 which had been referred for collection in August 2000. (Answer; Exhibit A; TR 27-28)

SOR 1.h. In May 2003 Applicant made arrangements to start making payments of \$50 per month toward the balance owed to this creditor and has been consistent in the payments. (Answer; Exhibit B)

SOR 1.i. Applicant denied a debt to a credit card to Creditor #7 for \$1,276 which was referred for collection in May 1996. (Answer; TR 47)

Applicant and his wife have not consulted any credit counselors to help resolve the debt. His wife handles the family finances. Applicant grosses \$60,000 annually. (TR 47-48) In 2002 Applicant and his wife purchased a new car after their car was totaled in an accident. (TR 49-50; 57-58) He is current in his payments on a \$18,000 debt to a federal credit union for this car loan, current in payments on a \$16,000 education debt, and current with payments on a \$2,500 debt to a collection agency. His total monthly net pay is approximately \$3,687 and his monthly expenses and debt payments total approximately \$3,656. (Exhibit B)

Criminal Conduct

In January 1998 in State #3 he was driving home and was stopped by a roadblock; he had packaged beer in his vehicle. He was charged with (1) Unlawful Possession of Alcoholic Beverage and (2) Driving Under the Influence (DUI). He was found guilty of the first charge and paid a fine and costs in April 1998, but found not guilty of DUI in August 1998. (Answer; Exhibits 1; TR 23-24)

Reference

The Vice President of Defense Contractor #1 has employed Applicant since 2001 and assesses him as excellent in his job; his work habits, self-direction, and ability to complete a task have made him an asset in the office. Applicant is respected by management and his co-workers and has been forthright and honest in his performance of his duties. (Exhibit B)

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:

1. The behavior was not recent;
4. [T]here are clear indications that the problem is being resolved or is under control;
6. The individual initiated a good-faith effort to . . . otherwise resolve debts.

Guideline J - Criminal Conduct

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:

1. The criminal behavior was not recent;
2. The crime was an isolated incident;
6. There is clear evidence of successful rehabilitation.

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

Under Financial Considerations Applicant has demonstrated disqualifying conduct (DC) as under DC 1, he has had a history of financial problems. He filed a 1986 Chapter 7 bankruptcy where his debt was discharged and filed for Chapter 13 bankruptcy in 1997 after he developed debts from paying video poker. He has shown under DC 3, an inability or unwillingness to satisfy debts; he has delayed resolving all of the debts that persisted after his Chapter 13 bankruptcy was dismissed when he failed to make timely payments.

On the other hand Applicant no longer engages in video poker. He has now resolved a large number of the debts that persisted after his Chapter 13 Bankruptcy was dismissed. For example, he has paid Creditor #1; he paid Creditor #2 through garnishment; he paid Creditor #4, the Internal Revenue Service; and he paid Creditor #5 for his State #1 taxes. He also has a payment plan with other creditors and is current in his payments. While he failed to establish that he has resolved each and every debt listed in the SOR, after reviewing him as a whole person, I accept Applicant's explanation and his reasons for his piecemeal approach to resolving these debts and accept his intent that he is willing to continue to resolve these debts in the future. The remaining outstanding debt is not substantial in light of Applicant's current overall recovery and his positive financial circumstances. Applicant lives modestly and has only developed a new debt for a car after an accident, but he is current in his payments.

Thus, Applicant has demonstrated he met mitigating conditions (MC⁽²⁾) under MC 6 as he has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Security concerns may be mitigated as Applicant now has a good income and limited expenses. He provided updated budget information which shows he now lives within his income and currently meets all of his obligations. While some of his debts remain unresolved, Applicant has demonstrated he is now financially responsible and has resolved the majority of his debts. In addition, his job is secure as his employer assesses him as excellent in his job and plans to retain him. Applicant is respected by management and his co-workers and has been forthright and honest in his performance of his duties.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on all subparagraphs under SOR Paragraph 1 as I conclude that he has mitigated the allegations in SOR 1.a. through 1.i.

Criminal Conduct

Applicant has similarly mitigated the concern over his criminal conduct for a misdemeanor conviction in 1998 for unlawful possession of alcoholic beverage when he had packaged beer in his vehicle which was illegal in that state. This conduct is isolated, has not recurred, and there is evidence of his rehabilitation through his excellent performance on the job. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. 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: 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

Paragraph 2. Guideline J FOR APPLICANT

Subparagraph 2.a.: 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. **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.