

DATE: September 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13568

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant's financial problems raised security concerns because of his delay in resolving debts to creditors, he has now resolved his debts or has a plan in place to do so with the remaining creditors. Also, he mitigated the personal conduct concern over his failure to list his misdemeanor arrests and detail his financial problems on his 2001 security questionnaire. Thus, he has mitigated these security concerns. 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 21, 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 May 7, 2003, and requested a hearing.

The case was assigned to Department Counsel who indicated on June 9, 2003, that the case was ready to proceed and the case was assigned to Judge John Metz that day. Because of regional rotation of assignments, the case was re-assigned to me on June 30, 2003. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing, issued on July 17, 2003, set the matter for August 11, 2003. At the hearing the Government introduced eight exhibits which were admitted into evidence (Exhibits 1-8). Applicant testified and offered seven exhibits (Exhibits A through G) which were admitted into evidence; he asked for seven days to submit additional evidence. I granted him seven days, until August 18, 2003, to submit further evidence to Department Counsel and granted the Government seven days until August 25, 2003, to review and submit the evidence to me. (TR 89-90, 98)

Applicant submitted his documents by facsimile on August 11, 2003. Department Counsel did not object to his submissions and forwarded the documents to me on August 25, 2003. Consequently, Applicant's Exhibits H and I were

admitted into evidence and the record closed. The transcript (TR) was received on August 20, 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, 48 years old, has been employed by Company #1, a defense contractor in State #1, since April 2001. Applicant received a Certificate of Appreciate for his outstanding attendance record from April to July 2001. Previously, from 1999 to 2001 he worked for Company #2, a company in State #1 that went bankrupt. From 1992 to 1998 he owned his own business in State #2. (Exhibit 1, Answer, Exhibit C, G; TR 21, 56-56, 71-72)

Applicant has a high school degree which he received in 1973 in State #1. He married in 1983 and has four children. Although they were separated in State #2 in 1997-98 and his wife filed for divorce in State #2 in 1997, they reconciled and are now living together in State #1. (Exhibit 1; TR 28-29, 41-43; Exhibits A, F, I)

Finances and Personal Conduct

When Applicant applied for a security clearance in April 2001, he completed a Questionnaire for National Security Position (Standard Form 86) (SF 86). (Exhibit 1) When he filled it out, he focused on the question on whether or not he had ever been charged with a "felony," and knew he had not been, so he did not carefully read the remainder of the questions about past arrests. He did not intend to mislead by not disclosing his misdemeanor arrests. (TR 31-32, 55, 91-92)

- Applicant failed to disclose on the form in answer to Question 23.d. that he had a police record after he was charged in October 1996 with Driving a Motor Vehicle While Under the Influence of Intoxicating Liquor (DUI) and/or Drugs and Assault in State #2. The DUI charge was amended to Negligent Driving/First Degree, and he was fined \$375; the Assault Charge was dismissed at the request of the victim in November 1996. Applicant first disclosed this information to a Defense Security Service (DSS) Special Agent in December 2001. (SOR 1.a, 1.a.(1)) (Exhibits 1, 2) Applicant denied the falsification allegation as when he completed the form, this incident "never rang" to his mind as it was an isolated alcohol-related arrest. He also denied the allegation as the DUI charge was dropped after he passed the Breathalyzer Test; he asserted he and his wife were "in a conflict" which led to the assault charge as there was a red mark on her wrist that the police noted after she called them. When she testified that she was not hurt or assaulted, the assault charges were dropped. Applicant's wife confirmed his version that she was not injured. (Exhibits 1, 6, 7, 8; Answer; TR 32-37, 58-63, 78-80; Exhibit I)
 - Applicant disputed that he falsified his SF-86 in response to 23.f., concerning his Police Record, when he did not disclose his December 1997 arrest for Assault/Domestic Violence which was dismissed in January 1998 at the request of the victim. (SOR 1.b. and 1.b.(1)) He never was arrested for this incident and was not aware his wife had pressed charges until after he left State #2. He admitted that once again he and his wife were in confrontation when his young son, five at the time, called the police; but he was not arrested, was not detained by the police, and the charges were dropped after his wife provided a statement. His wife stated this "heated" argument occurred when they were separated and after she had filed divorce papers when he came to the family home. Before he knew the police were looking for him, Applicant independently decided to leave State #2 and return to state #1. Thus, the police were unable to contact him. The pending charges were dismissed based on information from the wife. Applicant first disclosed this information to a DSS Special Agent in December 2001. He stated he had never seen the citation until the Government sent it to him in preparation for the hearing. (Exhibits 1, 3; Answer; TR 37-40, 63-69; Exhibit I) beyond his ability to manage them; he had no intent to mislead. He has substantial assets that outweighed his debts. (SOR 1.c.) (Answer; TR 73-77)

With respect to his finances, Applicant explained that he had a series of medical problems after he was involved in an accident in 1990 which injured his leg, and he stayed home from 1990-92. He had fourteen surgeries on his left leg from 1995-96. He later developed heart problems in 1998. As a result, he had multiple hospital bills that contributed to his financial problems. Also he was off work for various times

which reduced his income. (TR 26-27, 51-53, 69-73; Exhibits D, E)

Also, he had more financial problems created when Company #2 declared bankruptcy as he was holding five checks that the bank would not honor. (TR 53-54)

He discussed his debts with the DSS Special Agent in full and explained the nine debts listed in the SOR as follows:

- Applicant denied that he was indebted to Creditor #1, a hospital. Company #2 was to pay for this required annual physical through his insurance, but did not because of their bankruptcy. He paid his part of the bill initially, and then paid the debt in March 2002. (SOR 2.a.) (Exhibits 2, 4, 5; Answer; Exhibits A, C; TR 21-22; 24-25; 45-46)
- Applicant denied a debt to Creditor #2 for chiropractic care that was required after an injury at Company #2 which was to be paid under workman's compensation, but was not paid by the bankrupt company. He paid his part of the bill initially and paid the debt in March 2002. (SOR 2.b.) (Exhibits 2, 4, 5; Answer; TR 46; Exhibits A, C)
- Applicant denied a debt to Creditor #3, a credit card company. He was injured in 1996 and had a total knee replacement. He had insurance on the card and expected it to cover his debt after the injury. When it did not, he paid this debt by transferring the amount to another credit card company. (SOR 2.c.) (Exhibits 2, 4, 5; Answer; TR 46-47)
- Applicant denied this debt as he has previously paid his debt to Creditor #4 in 1998. They claimed they never received the check, so he paid them in full with a money order. (SOR 2.d.) (Exhibits 2, 4, 5; Answer; TR 23, 47; Exhibit B)
- Applicant denied this debt to Creditor #5 of \$773 as it was an account his wife had; he stated he settled the account with them for \$400 which was to be paid in August 2003. (SOR 2.e.) (Exhibits 2, 4, 5; Answer; TR 48, 81-82)
- Applicant admits a debt to Creditor #6, which he also admitted in an interviewed by the DSS Special Agent in March 2002, but said he has made arrangements to pay this debt in June 2003 and is now in good standing. He is paying them \$40 per month by automatic deduction from his bank. (SOR 2.f.) (Exhibits 2, 4, 5; Answer; TR 22, 48, 82-83; Exhibits A, B)
- Applicant denies a debt to Creditor #7 which he claims is his wife's account. His wife is in charge of their finances; he has asked her to resolve this debt. (SOR 2.g.) (Exhibits 2, 4, 5; Answer; TR 43-44, 49, 83-84)
- I accept Applicant statement that Creditor #8 is the same as Creditor #3. (SOR 2.h.) (Exhibits 2, 4, 5; Answer; TR 49)
- Applicant denies a debt to Creditor #9 which occurred when he co-signed a loan for his son's car in State #2. After the son was injured, the son fell behind in his car payments, so Applicant had his father drive the car to State #1; he asked for a payoff amount which Creditor #9 stated was \$2,700. Applicant paid that amount and subsequently Creditor #9 sent him the title. He later sold the car to an individual as he had clear title. While Creditor #9 claimed he owed them \$1,200 additionally, Applicant insists he does not as he got clear title to the car. (SOR 2.i.) (Exhibits 2, 4, 5; Answer; TR 49-51, 84-85; Exhibit A)

In March 2002, Applicant stated his monthly net income was \$3,572, monthly expenses were \$908; monthly debt payments were \$1,159; he had a net remainder of \$1,505. His assets totaled \$130,000 including real estate, bank savings, and car/boat. (Exhibit 2; TR 85-86) In August 2003 he stated he has paid off the debts on all of the vehicles that the family owns and only has a mortgage payment. (TR 78) He has not acquired any new debts. (TR 86) His assets include a home on six acres, a motorcycle, two cars, a 1996 pickup, a 1937 pickup (worth \$30-40,000), two boats and outboard engines, and three farm tractors. He is attempting to sell several of his vehicles to be debt free. (TR 87-88; Exhibit H) Applicant now has an annual salary of over \$38,000 which is a monthly average of over \$3,000; his wife makes \$300-\$350 monthly as a substitute teacher. Their monthly expenses now total close to \$2,000 which leaves more than \$1,000 monthly as a cushion. (Exhibit H)

References

A former supervisor who knew Applicant from April 1997 to August 2000 stated that he completed all tasks in "an outstanding manner." For Company #2 Applicant oversaw security guards and had overall protection of \$20 million in equipment, including the personal safety of over 250 workers. During his tenure, Applicant excelled in all assigned tasks. The supervisor concluded that Applicant could "be trusted in any situation at any time, in any position." (Exhibit G)

His current supervisor who has known him for 18 months observed that Applicant is "very dedicated to his job and is very focused in the performance of his duties." He assessed Applicant as honest and trustworthy with good leadership qualities. "He is trustworthy, reliable, shows sound judgment and uses discretion that's required for one in his position." (Exhibit G)

A co-worker observed that Applicant has "integrity of the highest standard" and is focused on doing his job. "He has shown strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment." (Exhibit G)

Another co-worker who has known him for two and one half years, describes Applicant as a dependable person. He sold him a tractor on a trust loan, and Applicant paid him on time. He observed that Applicant is well liked and respected by all. (Exhibit G)

A minister from his church who has known him for four years describes Applicant as a person of high character, honesty and integrity. (Exhibit G)

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 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:

2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

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:

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);
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

Personal Conduct

After Applicant did not reveal two past arrests and his financial difficulties on his SF 86 form, this failure to disclose led the Government to raise security concerns over personal conduct issues. Disqualifying Conditions (DC) that could raise a security concern and may be disqualifying 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. Applicant's omission of relevant and material information about this debt 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 rebutted and overcame these Government's security concerns by demonstrating he mitigated⁽²⁾ this concern under Mitigating Condition (MC) 2 . He credibly explained the basis for his initial beliefs that his misdemeanor arrests were not required in response to the security clearance questionnaire. In fact, in his words, the 1996 incident "never rang" to his mind as it was an isolated alcohol-related arrest that was reduced to Negligent Driving. In the 1997 incident, he was never actually arrested; and his wife ultimately dropped the charges both in 1996 and 1997. Further, he did not consider his financial issues were serious given his assets. There is evidence in the DSS statement that Applicant fully cooperated with the agent after he was questioned about his past arrests and financial difficulties and provided the requested information voluntarily. Hence, Applicant met MC 2: the falsification was an isolated incident, and he has subsequently provided correct information voluntarily. Further, supervisors and co-workers from his employers, both past and present, view Applicant generally as a person of integrity and honesty. After looking at the whole person and

considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. through 1.c. under SOR Paragraph 1.

Financial Considerations

While Applicant has had under DC (1) a history of financial problems and showed (3) an inability or unwillingness to satisfy all of his debts, he has made substantial efforts to resolve these debts as detailed in the Findings of Facts either by paying the debts, working out a plan with the debtor (SOR 2.f.), or effectively contesting the debt (SOR 2.i.). Applicant has a good income with sufficient reserves to handle his financial obligations and has substantial assets. Applicant effectively mitigated (3) his debts as alleged in SOR 2.a. through 2.i. under MC 3 (the conditions that resulted in the behavior were largely beyond the person's control, for example loss of employment and unexpected medical emergency, or separation) and MC 6 (a good-faith effort to repay overdue creditors or otherwise resolve debts) apply. Applicant had substantial medical problems that led to periods of unemployment and also worked for Company #2 which declared bankruptcy; all these factors contributed to his adverse financial situation. Once alerted to security concerns over these debts, Applicant promptly initiated a good faith effort to repay his overdue creditors. Thus, Applicant has sufficiently demonstrated he is now financially responsible as he resolved the debts. Although these debts raised concerns because of their long-standing nature and his failure to resolve them more quickly, he now has substantial financial resources and it is unlikely these financial issues will recur. Also, a co-worker who has known him for two and one half years, describes Applicant as a dependable person. He sold him a tractor on a trust loan and he paid him on time. He observed that Applicant is well liked and respected by all. His current and past supervisors also attest to his trustworthiness overall. His former supervisor concluded that Applicant could "be trusted in any situation at any time, in any position." His current supervisor observed that Applicant is "very dedicated to his job and is very focused in the performance of his duties." He assessed Applicant as honest and trustworthy with good leadership qualities. "He is trustworthy, reliable, shows sound judgment and uses discretion that's required for one in his position."

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under SOR Paragraph 2. I conclude that he has mitigated the allegations in SOR subparagraphs 2.a. through 2.i.

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 E: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.a. (1): For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.b. (1): For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline F: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: For Applicant

Subparagraph 2.i.: 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 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.

3. 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.