

DATE: January 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17046

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn MacKinnon, Esquire, Department Counsel

FOR APPLICANT

James Nowogrocki, Esquire

SYNOPSIS

While Applicant's financial problems raised security concerns because of his delay in resolving debts to several creditors, he has resolved or is resolving his debts which were in large part caused by conditions beyond his control. Also, he mitigated the personal conduct concern as he had no intent to falsify when he failed to list his outstanding debts on his 1999 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 March 12, 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 April 17, 2003, and requested a hearing.

The case was assigned to Department Counsel who indicated that the case was ready to proceed; and the case was assigned on May 5, 2003, to another judge who on May 22, 2003, set it for hearing on June 12, 2003. Subsequently, Applicant retained counsel who requested a continuance which was granted on June 5, 2003, and the hearing was cancelled. On June 23, 2003, the case was transferred to me. After a mutually convenient date for hearing was agreed to, a Notice of Hearing, issued on July 15, 2003, again set the matter for July 31, 2003. Again, Applicant's counsel requested a continuance on July 21, 2003, due to a medical emergency in Applicant's family. As Department Counsel did not object, I granted the continuance on July 24, 2003. On August 6, 2003, the hearing was re-set for September 18, 2003.

At the hearing the Government introduced four exhibits which were admitted into evidence (Exhibits 1-4). Applicant's counsel called Applicant and two other witnesses to testify and offered 12 exhibits (Exhibits A through L) which were

admitted into evidence. Applicant's counsel asked for and was granted seven days additional to submit additional evidence and the Government was granted four days to review the documents. On September 24, 2003, Applicant's submitted additional evidence, Exhibit M (eight pages). Department Counsel reviewed this the evidence and did not object. Consequently, Applicant's Exhibit M was admitted into evidence and the record closed. The transcript (TR) was received on September 29, 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, was first employed by Company #1 in State #1 in September 1979; but he was laid off in January 1991 after a contract was cancelled. In the interim he worked as a contract engineer for Company #2. He was rehired in January 1995 by Company #1. In 1996 that company became a subsidiary of Company #3 where he currently works. Applicant was initially granted a security clearance in 1979. He has never been subjected to any disciplinary action. (Exhibit 1, Answer; TR 20-26, 41-42)

Applicant received a BSEE degree in 1977 from a state university in State #1. He married in 1986 and has two children born in 1987 and 1989. He has had some additional education at another university. (Exhibit 1; TR 17, 30; 71)

Finances and Personal Conduct

When Applicant applied for a security clearance in February 1999, he completed a Security Clearance Application (Standard Form 86) (SF 86). (Exhibit 1) Applicant failed to disclose in answering questions on debts that he had any debts there were more than 90 days and/or more than 180 days delinquent. (SOR 2.a. and 2.b.) Applicant did not pull a credit report before he completed the SF 86. (TR 52) He testified he never had any intent to mislead or hide information and later cooperated with the Defense Security Service (DSS) in the investigation. (Exhibit 1; TR 35-37; 54-55)

Applicant explained to DSS in February 2000 that he and his wife had for several years supported ⁽²⁾ both his mother and her grandmother who were in nursing homes. Further, in December 1997 his wife was downsized from her corporate position where she had made an annual salary of \$79,000. She had a severance package and started her own solo law practice which at first did not generate much income. He stated that they planned to address each of the debts identified in the 1999 credit bureau report. In 2000 he and his wife had monthly net income of over \$7,000 per month, expenses of \$4,000, debt payments of \$2,400 and a remainder of \$600 per month. He had real estate assets of \$111,000 and a car worth \$7,000. (Answer; Exhibits 2, 3; 30-35; TR 44, 73-78) He believed that the DSS was satisfied they were making progress toward paying off their debts. (TR 55)

To address their debts, Applicant and his wife postponed house repairs and used her income and some of his income to resolve old debts, but paying off the debt was not their first priority. (TR 37-38; 56) Applicant's wife has handled their finances for ten years, and is gradually paying off the debts they developed. (TR 71; 90-95)

1. Applicant owed Creditor #1 for a delinquent account of over \$9,000 which was charged off in November 1998. Applicant settled the matter in December 1999. (Exhibits 3,4; Exhibit M; TR 104-5; 124)
2. Applicant owed Creditor #2 over \$4,000 for an outstanding balance for a January 1998 automobile repossession for a car his wife leased for her practice. They kept the car beyond the lease period and had an accident in 2000 which led to a dispute. Applicant's wife said the amount owed was adjusted from \$8,000 claimed to a settlement figure of \$2,000 which they paid for the damage to the car. (Exhibits 3,4; Exhibit E; TR 48; 105-108; 124-125)
3. He owed Creditor #3 over \$1,000 for a delinquent account charged off in January 1999. Applicant's wife testified that the account was recently paid in full. (Exhibits 3,4; Exhibit H; TR 48; 108; 125)
4. He owed Creditor #4 over \$1,000 for a delinquent account placed for collection in January 1999. Applicant's wife testified that they had paid that account, and that it was inaccurately reflected in the credit report. (Exhibit I; TR 87-88; 108-109; 125)
5. Applicant admitted he owed Creditor #5 almost \$4,000 for a delinquent account written off as profit and loss in February 1999. Applicant's wife is currently paying \$200 per month on this account which she stated was her

- account where he is a co-owner. (Exhibits 3,4; Exhibit C; TR109-110; 125-126)
6. Applicant admitted he also owed Creditor #5 over \$6,000 for a delinquent account written off as profit and loss in December 1998. In September 2003 he paid a settlement amount of \$3,318 and Creditor #5 was to report it as "paid in Full for Less than the Full Balance" and retained the previous delinquent history. (Exhibits 3,4; Exhibit C; TR 40; TR 110-111; 125-126)
 7. Applicant admitted he owed Creditor #6 \$4,648 for a delinquent account turned over for collection in February 1999. They settled this matter with a payment in April 2003 of \$2,480. (Exhibits 3,4; Exhibits K, M; TR 112-116, 118-119; 120-121; 126)
 8. In March 2000 a judgment was entered against Applicant in State #1 on behalf of Creditor #7. That matter was settled in 2001. (Exhibits 3,4 Exhibit G, H; TR 90; 116; 127)

In September 2003, Applicant's salary was \$70,000 per year. (TR 29) Applicant relies on his wife to hand the day-to-day finances. (TR 52) They were current with respect to the mortgage payments; the mortgage was only \$30,000 with monthly payments of less than \$1,000. He estimated the house to be worth \$140,000; the county appraised the house for tax purposes at \$143,800. He has a \$25,6000 second mortgage where he makes monthly interest payments of \$250; and he is also current on that payment. (Exhibit A; TR 17-19; 45-47; 81-84) He helps provide partial support to his wife's sister's two children. (TR 43)

In September 2003 Applicant's wife settled a large case and put her \$32,000 fee in their joint checking account. She expects her practice to grow. (TR 79-80) His wife has a lease payment of \$500 for her car. (TR 84) Their children are in private school with combined monthly payments of over \$1,000 per month. They are paying \$200 per month for braces for the children. Her parents are disabled so she sends them intermittent payments, recently \$2,000. (TR 99-104)

Evaluation and References

Applicant submitted four years of evaluations from Company #3 from 1999 to 2002; in 2002 he was rated in performance values as "Met all expectations" and in the value of "Integrity" he was rated as "Frequently exceeded expectations." (Exhibit B; TR 26-28)

A manager who has been Applicant's supervisor since April 2003 testified that he has never had any concerns about Applicant's handling of classified information. He stated that Applicant does a good job and communicates more effectively with his manager. The company requested that Applicant complete his security paperwork to be eligible for a security upgrade. . (TR 58-69)

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:

3. The conditions that resulted in the behavior were largely beyond the person's control
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:

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

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 for a number of years showed (3) an inability or unwillingness to satisfy all of his debts. Even after he met with the DSS in 2000 and promised to resolve debts on his 1999 credit bureau report he failed to take charge of his finances and to make much progress in resolving his debts. Applicant admits he has not made it a priority to resolve the credit matters as paying off debts was not their first priority even though Applicant has had a good income.

On the other hand, Applicant demonstrated several mitigating (3) factors that led to his debts alleged in SOR. Under Mitigating Condition (MC) 3, several conditions that led to the debts were largely beyond Applicant's control- he had two family members in nursery homes for an extend period of time and his wife lost her corporate legal position in 1997 when her position was downsized. While she established a law practice, it took her several years to develop it from an economic perspective. They have been slowly resolving these matters: 1.a. was settled in 1999; 1.b. was settled by partial payment; 1.c. was recently paid in full; 1.d. has been paid; 1.e. is being paid at the rate of \$200 per month; 1.f was settled for \$3,000 in September 2003; 1.g. was settled in April 2003 for \$2,480; 1.h. was settled in 2001. Thus, MC 6 applies to these those debts as he and his wife demonstrated a good faith effort to repay these overdue creditors. Thus, Applicant has sufficiently shown he is now financially

responsible as he has resolved or is resolving all of these debts. He and his wife now have substantial financial resources.

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

Personal Conduct

Applicant failed to reveal any of these personal debts on his SF 86 form in 1999 when he completed it. This failure to disclose led the Government to raise security concerns over personal conduct issues. 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 that he has mitigated⁽⁴⁾ this concern under MC 2 as he credibly explained that he had no intent to falsify. As he left the management of financial matters in his wife's hands, he was not fully aware of his debts. Further, at the DSS interview in August 2002 Applicant fully cooperated and volunteered extensive information about his financial circumstances. In the workplace Applicant has a general reputation for honesty. Hence, Applicant met MC 2: the falsification was an isolated incident, and he has subsequently provided correct information voluntarily. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a.. and 2.b. 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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: 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. In 1996 Applicant's mother was diagnosed with Alzheimer's disease. He is an only child and initially had difficulty qualifying his widowed mother for edicaid before her death in November 1999. His wife supported her grandmother in a nursing home until she qualified for Medicaid; she died in 1997. Thus, expenses for their care contributed to the financial pressures. He would get cash advances on credit cards to cover their expenses. He ultimately was able to qualify his mother for Medicaid which covered her nursing home costs.

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.

4. 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.