

DATE: June 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18855

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Michael W. Frey, Esquire

SYNOPSIS

Applicant mitigated security concerns over criminal conduct, personal conduct and finances from the 1998 through 2000 period. Despite his past financial problems, he finally resolved outstanding debts to significant creditors through his 1998 discharge in bankruptcy and attempted to resolve or dispute debts to other creditors. Overall he has demonstrated that he has control of his finances as Applicant now has a good income and with limited expenses he lives within his income. He mitigated concerns over his misdemeanor 1998 and 2000 criminal conduct and concerns over his personal conduct after his divorce by demonstrating he is fully rehabilitated. He has had no subsequent adverse conduct of any kind in the succeeding three years. 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 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. [\(1\)](#) (Item 1) The SOR alleges specific concerns over criminal conduct (Guideline J) in paragraph 1, personal conduct issues (Guideline E) in paragraph two, and financial issues (Guideline F) in paragraph 3. Applicant responded to these SOR allegations in an undated notarized Answer and requested a hearing.

The case was assigned to another judge but on March 30, 2003, the case was re-assigned to me. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on March 26, 2003, set the matter for April 10, 2003. Subsequently, Applicant retained counsel who entered his appearance. At the hearing the Government introduced seven exhibits which were admitted into evidence (Exhibits 1-7; TR 19). Applicant testified and offered four exhibits (Exhibits A through D) which were admitted into evidence. (TR 20-25) The transcript (TR) was received on April 18, 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, 39 years old, has worked for a defense contractor since July 2000. In October 2000 he completed a Security Clearance Application (Standard Form 86) and requested a security clearance which he needs for his position. (Answer; Exhibit 1; TR 49, 63)

Applicant was married in 1987 and divorced in July 1998; they have one son born in 1994. (Exhibit 1; Exhibit B; TR 36, 51-53)

Applicant served in the U.S. military for 22 years. (Answer; TR 70) From 1981 to 1986 he served in the active reserves, from 1986 to 1997 on active duty, and from 1997 to present on active reserve duty. He attended the Basic Non-Commissioned Officer Course in June 1992 and was the number one student in his class. He chose not to re-enlist and was given an Honorable discharge in December 1997. (Exhibit 1; Exhibit A; TR 27-36, 55-56, 70-71) He was granted a Secret clearance in June 1988. (Exhibit 1)

Criminal Conduct, Personal Conduct and Financial Considerations

Prior to leaving military active duty in April 1997, Applicant had no financial problems or delinquencies. He had purchased an automobile, a mobile home, and other items while he was in the military. After he left the military, he had difficulty making his payments. When she urged him to leave the military, his wife promised him that she would get a job immediately after he was discharged to make up for the lost income, but she did not do so. Thus, his income fell after he left the military from a salary of approximately \$2,800 per month to his national guard salary of \$377 per month while he was in school. Also, a mobile home that he had purchased in the military, he was unable to sell. (TR 37- 49; Exhibit 2)

In his SF 86 Applicant disclosed he filed for bankruptcy in January 1998 and the court discharged over \$71,000 in debt; however part of the debt discharged was secured debt: he surrendered his mobile home to the financial company that held the debt of \$20,000. Similarly, he surrendered a car as part of the bankruptcy as it was a secured debt. He disputed one debt of \$18,000 that was included in his bankruptcy that he stated he had not incurred, but included to discharge it. At the time he filed for bankruptcy he was attending school and only had income from his national guard position. (SOR 3.a.) (Answer; Exhibits 1, 3; TR 37-47)

Applicant admitted he was issued a citation for public drunkenness in August 1998. (SOR 1.c.) He paid a \$100 fine and \$75 in costs. (Answer; Exhibit 6) This incident happened eleven days after his divorce decree was final. (TR 53-55)

Applicant admitted that in January 2000 he broke into the home of his ex-wife and her current husband and was arrested; he was charged with burglary residential in the first degree in May 2000. (SOR 1.a. and 2.a.) He explained the circumstances that led to his misconduct. That day he had been assisting his ex-spouse with car problems and gave her a ride home from the garage; her current husband passed them on the highway; when they arrived at her home, her husband was standing on the front porch with a gun. His former wife got out of the car, and Applicant left. Applicant stated he went home, but he became concerned after he got a call from his wife's family who lived across the street who were worried about her safety. Concerned over his former spouse's and his son's safety, Applicant attempted to call their home. When they did not answer the phone, he then returned to their home. He initially knocked on the door; but when they would not come to the door, Applicant admitted he lost his temper and kicked the door open. Her husband was standing there with a baseball bat, and the men fought. Although Applicant was charged with breaking and entering and assault, the charges were later reduced to misdemeanors. After he paid court costs, the case was not prosecuted and the charges were dismissed in June 2000. (Answer; Exhibits 1, 2, 5; TR 57-62; 73-76)

Applicant admitted he was issued a citation for public drinking on the highway in September 2000 (SOR 1.b.) Applicant stated he was pulled over for following too close, and when he was stopped there was an empty beer can sitting on the console of his truck. He paid a \$50 fine and \$75 in costs. (Answer; Exhibit 7; TR 63-64)

Subsequently, in summer of 2002 Applicant decided to stop drinking for health reasons. He also has improved his

relationship with his wife and her husband. He sees his son every weekend, on holidays, and in the summer. (TR 64-65; 81)

In April 2002 Applicant was interviewed by the Defense Security Service (DSS) and explained his finances. He asserted he had been current on all of his bills and finances since the 1998 bankruptcy and divorce. He pays \$62 a week for child support. He considered his current financial situation good even though he had not resolved the matter with Creditor #1; he stated they had never contacted him after he re-affirmed the debts in the bankruptcy proceedings. In April 2002 his net monthly income was \$1,414; his monthly expenses were \$1,023 and his net remainder was \$391. He listed his total assets as \$12,000. (Exhibit 2)

He reported his finances in April 2003 included monthly net pay of \$251 from the national guard and approximately \$1,200 from the defense contractor. His child support remains \$62 per week. His house is paid for as he lives in a mobile home that he purchased. He has no credit cards, so has no credit card debt. (Exhibits C, D; TR 65-66) He makes all of his monthly payments on a timely basis and has had no delinquent debts since the bankruptcy. (TR 71-72; 82) However, he has never sought any financial counseling. (TR 81-81) He has several unresolved debts:

- As part of the bankruptcy proceedings, he agreed in March 1998 to pay Creditor #1 over \$1,335 in increments of \$26 monthly for an air-conditioner, cam-corder, television, and rack system. However by April 2002 he had not made any payments. (SOR 3.b.) (Exhibit 3; TR 79) He attempted to contact Creditor #1 to make these payments, but was not successful in making payment arrangements. He receives no collection letters from this creditor, has failed in his attempts to contact them and has made no payments. (TR 69; 78-80)
- As part of the bankruptcy proceedings, he agreed to pay Creditor #1 a debt of \$356 in increments of \$13 monthly; however by April 2002 he had not made any payments. (SOR 3.c.) (Exhibit 3) He attempted to contact Creditor #1 to make these payments, but was not successful. He receives no collection letters from this creditor, has failed in his attempts to contact them and has made no payments. (TR 69; 78-80)
- Applicant denied a debt to Creditor #2 for \$66 and as of April 2001 the debt was unpaid. (SOR 1.d.) (Answer; Exhibit 4) He explained that this bill was incurred during his divorce after he had moved out; he considers this debt belongs to his former wife but she refused during the divorce proceedings to give him the bill so he could pay it. He has made no effort to dispute it. He has phone service in his own name and pays timely. (TR 67-68; 76) uncertain about the source of this debt, but has made no effort to dispute it. (TR 69; 77)

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 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;
2. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

1. The criminal behavior was not recent;
5. Acquittal;
6. There is clear evidence of successful rehabilitation.

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:

1. Reliable, unfavorable information provided by associates, employers, co-workers, neighbors, and other acquaintances;

Conditions that could mitigate security concerns include:

5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;

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;
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. . . . there 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.

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

Criminal Conduct and Personal Conduct

Applicant mitigated the three misdemeanor criminal incidents which occurred in 1988 and 2000 after he left the military service and after his divorce. The most troublesome of these incidents was in January 2000 when he broke into the home of his ex-wife and her current husband and was arrested. Disqualifying conditions (DC) include DC 1, Allegations or admissions of criminal conduct, regardless of whether the person was formally charged and DC 2, A single serious crime or multiple lesser offenses.

On the other hand, while he was charged with residential burglary in the first degree in May 2000, the case was dismissed in June 2000 and not even prosecuted after he paid court costs. Thus, Applicant has mitigated⁽²⁾ these security concerns over the alcohol-related charges in 1998 and 2000 because of mitigating condition (MC), MC 1, the passage of time. Also, by MC 6, Applicant's subsequent conduct has demonstrated clear evidence of his successful rehabilitation: he voluntarily stopped drinking in 2002. He further mitigated the January 2000 incident by MC 5, acquittal (even more persuasive than acquittal, his 2000 charge was never prosecuted). To his credit Applicant has had no subsequent incidents in the past three years. Further, Applicant has improved his relationship with his former wife and her husband, so a similar incident is unlikely to recur. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. through 1.c. under SOR Paragraph 1.

While Personal Conduct concerns were also alleged over the January 2000 incident, there is no allegation that Applicant at any time falsified information; certainly Applicant showed extremely poor judgment in his 2000 incident at his former wife's home where he lost his temper and acted irrationally. In this case the closest disqualifying condition relevant under Personal Conduct is DC 1, reliable, unfavorable information provided by associates, employers, co-workers, neighbors, and other acquaintances; however, this adverse information was in fact provided by an arrest record as alleged and discussed under Criminal Conduct. It is relevant under Personal Conduct that Applicant fully cooperated with law enforcement officials in all of his arrests and with the DSS in discussing these issues. Thus, as discussed under criminal conduct above, Applicant has mitigated this conduct by his subsequent good conduct which demonstrates clear evidence of his successful rehabilitation. Under Personal Conduct, the closest is MC 5, as Applicant has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress based on this adverse conduct as he has improved his personal conduct. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. under SOR Paragraph 2.

Financial Considerations

Applicant has demonstrated disqualifying conduct as he has under DC 1, a history of financial problems and has shown under DC 3, an inability or unwillingness to satisfy debts which is worsened by his delay in resolving the debts he reaffirmed in his bankruptcy. He raised security concerns by his 1998 bankruptcy where \$71,000 of debt was discharged (SOR 3.a.) and by his subsequent failure to address sufficiently and promptly pay his debts from that 1998 period to Creditors #1, #2, #3. (SOR 3.b.-3.e.)

While he neglected to resolve some debts that stem from the time of his divorce, after reviewing him as a whole person, I accept Applicant's explanation and his reasons for his failure to resolve or dispute these debts stemming from the 1998 period. The most significant mitigating consideration is that Applicant has developed no new debts after that troubled time period since he left the military and divorced in 1998. Thus, Applicant demonstrated he met mitigating conditions (MC⁽³⁾). Security concerns may be mitigated under MC 3 if conditions were largely beyond the person's control (e.g., divorce or separation). Clearly, his marital problems and divorce contributed to his financial difficulties as he had no documented financial issues while he served in the military and was married. Further, he explained the difficulties of contacting Creditors #1 to resolve the debts he re-affirmed in his bankruptcy. While this failure remains a concern, the remaining outstanding debt is not substantial in light of Applicant's current overall recovery and his positive financial circumstances. 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. Though he has not resolved the debt to Creditors #1, #2, or #3, he explained his efforts to try to get information to contact Creditor #1 and his dispute over the debts to Creditors #2 and #3.

Applicant persuasively disputed the SOR allegations concerning the telephone charge for a small debt established by his wife during their divorce (SOR 3.d) and by his lack of knowledge of the \$7,000 debt to Creditor #3 (SOR 3.e.) While some of his debts remain unresolved, Applicant has otherwise sufficiently demonstrated he is now financially responsible. After considering the Appendix Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on all subparagraphs under SOR Paragraph 3 as I conclude that he has mitigated the allegations in SOR 3.a. through 3.e.

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 J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2. Guideline E FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline F FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d.: For Applicant

Subparagraph 3.e.: 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 criminal behavior was not recent;
5. Acquittal; 6. There is clear evidence of successful rehabilitation.

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.