

DATE: June 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19678

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant's financial problems raised security concerns because of his delay in resolving debts to three creditors, he has resolved his debts fully including over \$20,000 owed to the Internal Revenue Service (IRS) for unpaid personal income taxes for 1997 which he had disputed even though he had sufficient reserves to resolve these debts. Finally, he resolved his debts to the IRS and to a school; and he disputed persuasively a small debt to another creditor. Also, he mitigated the personal conduct concern over his failure to list a 2002 IRS personal tax lien 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 December 9, 2002. 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 December 22, 2002, and requested a hearing.

The case was assigned to Department Counsel who indicated on February 20, 2003, that the case was ready to proceed and the case was assigned to me. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing, issued on March 14, 2003, set the matter for April 4, 2003. At the hearing the Government introduced four exhibits which were admitted into evidence (Exhibits 1-4). Applicant testified and asked that Official Notice be taken of one exhibit (ON I; TR 19-20). He offered four exhibits (Exhibits A through D) which were admitted into evidence and asked for seven days additional time to submit additional evidence. I granted him seven days until April 11, 2003 to submit additional evidence to Department Counsel and granted the Government three days until April 16, 2003, to review and submit the evidence to me. (TR 56-59) While Applicant attempted to reach Department Counsel on April 11, 2003, to request additional time, he did not succeed and submitted his documents by facsimile on April 13, 2003.

Department Counsel did not object to this delay and forwarded the documents to me on April 17, 2003, with no objection to their admissibility. Consequently, Applicant's Exhibit E (20 pages) was admitted into evidence and the record closed. The transcript (TR) was received on April 10, 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, 46 years old, is self-employed as head of his own company since July 1991. He is a defense contractor in State #1. (Exhibit 1, Answer; TR 44-45)

Applicant has BS degree which he received in 1979 from a state university in State #2. He married in 1983 and has one child. He served in the military from 1979 to 1986 and was honorably discharged; he has served in the national guard⁽²⁾ from 1985 to present. (Exhibit 1; Exhibit E) He also has a masters degree in business. Applicant has had a security clearance for over 20 years. (TR 24, 34) He stated he never had any incident or infraction in his military record and has attained the rank of Lieutenant Colonel. He has received several commendation medals. (TR 37-40; Exhibits C, E)

Finances and Personal Conduct

When Applicant applied for a security clearance in October 2001, he completed a Questionnaire for National Security Position (Standard Form 86) (SF 86). (Exhibit 1)

- Applicant failed to disclose on the form in answer to Question 36, that he had a federal tax lien filed against him in August 2000. (SOR 2.a.) (Exhibit 1) In his Answer, he admitted that the tax lien existed, but denied he falsified material facts as he associated this tax lien with his company as his Internal Revenue Service (IRS) corporation status is "C" not "S." He claimed he had no reason to hide a "company" tax lien that he was disputing. He was aware that he had an IRS lien outstanding on his personal taxes; part of the dispute involved his claim that with his "S" corporate status that he wanted to carry back all of his income and losses to his personal taxes. (Answer; TR 21-25, 33-35) Applicant explained he did not disclose this debt in answer to Question 39 on the SF 86 (as a financial delinquency over 180 days delinquent) as in his view the IRS would ultimately owe him money; further he thought of the debt as a company obligation, not a personal one. (TR 43-46) In August 2002 he was questioned by the Defense Security Service (DSS) about adverse credit information; and he voluntarily provided full information on his finances and the dispute with the IRS. (Exhibits 2, 3, 4)
- He has been attempting to resolve this dispute with the IRS since October 2000. (Exhibit 4; Exhibit B) Initially, the amount in dispute was \$46,000. (TR 22) He was sent a Final Notice from the IRS of their Intent to Levy in June 2002 which was addressed to him personally, not to his company. (Exhibit 3; TR 46-47) Applicant is not over extended as he owns 100% of his company that has generated \$3 million in sales in the past three years and is expected to exceed \$4 million in sales for CY 2003. He expected to resolve the dispute with the IRS by March 1, 2003. (Answer; TR 26, 52) At the time of the April 2003 hearing he had still not resolved the IRS dispute and admitted that the dispute with the IRS had "gone on longer than it should have." He stated that several different IRS agents have been assigned to this dispute; he admitted that this IRS matter needed to be resolved. While he took a "firm position" that he did not owe the IRS any money, he had not retained counsel to represent him; he had not make a priority to resolve the tax matter because of his other workload and out of state travel. (TR 23-25, 27-28, 33; 41-42, 52-53) Subsequent to the hearing, he paid his debt to the IRS in full and provided proof of delivery of his \$20,984.42 check. (Exhibit E) disputed because of the "unfair treatment" his daughter received at the school. (Answer) In his view the school had "recruited" his daughter to attend the school and offered her scholarship money of \$750 to \$1000 which they never received. He admitted that he had not handled the matter in the best way. (TR 29-30, 33) While he had offered to make a partial payment to settle the account, the collection company would only accept payment in full. (TR 47-49) Subsequent to the hearing he paid \$800 to resolve fully this tuition debt to the school. (Exhibit E) 1.c.) (Exhibits 2), 4 (Answer; TR 30, 33; 49-50) Initially, he never disputed this item on his credit report as he did not consider his credit rating important as he did not anticipate he would need credit in the future given his finances. (TR 54) Applicant disputed this debt subsequent to the hearing. (Exhibit E)

Applicant admitted he has somewhat neglected his credit rating as he believed that his company would provide him with enough financial security that he would not need credit ever in his lifetime. (Answer) Outside of the debts in the SOR allegations, Applicant is otherwise financially stable⁽³⁾ as he owns his company 100% and also owns his residence and his automobiles. (Exhibits A, E; TR 27) His company has three locations in three different states and the company pays its bills on time. He has people on his payroll in three states. (Exhibit D; TR 31) He disclosed his salary from his company is \$32,000. (Exhibit D; TR 32) However, he has \$400,000 in cash reserves plus he anticipated additional income from completed contracts. (Exhibit E; TR 55-56)

References

A colonel in the national guard (who has known Applicant for 17 years and has supervised him for six years) appraised him as "an extremely professional and responsible" military officer with superb morals and ethics. He performed all of his assignments in an above average manner. (Exhibit E)

A friend who is employed by Applicant has known him for 23 years and assesses Applicant as having "always exhibited the utmost integrity and character in all of his personal and professional activities." He recommends Applicant for a security clearance. (Exhibit E)

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

[First] Refusal to undergo or cooperate with required security processing, including medical and psychological testing; or

[Second] Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

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;

3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

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. He was sent a Final Notice from the IRS of their Intent to Levy in June 2002 which was addressed to him personally, not to his company. Although he made some attempts to resolve these disputes, even on the date of the hearing he had failed to resolve a \$20,000 debt to the IRS and a debt for tuition to his daughter's school. (SOR 1.a. and 1.b.) (He disputes the minor debt for a credit card as he claims never to have had an account with that company.) (SOR 1.c.)

While Applicant admits he has not made it a priority to resolve the tax matter because of his other workload and out of state travel, Applicant has a good income with sufficient reserves to handle his financial obligations as he has a successful business. Applicant effectively mitigated⁽⁴⁾ his debts alleged in SOR 1.a. and 1.b. by paying those debts in full in April 2003. Mitigating condition (MC) 6 applies to these those debts as he initiated a good faith effort to repay his overdue creditors: after the hearing he paid over \$20,000 to the IRS to resolve the outstanding tax dispute (SOR 1.a.) and also paid his debt to the school for his daughter's tuition (SOR 1.b.). I accept his statement that he did not have an account with the creditor listed in SOR 1.c. as he has disputed that small debt of \$645. Thus, Applicant has sufficiently demonstrated he is now financially responsible as he resolved the disputed debts. Although these disputes raised concerns because of long-standing nature and his failure to resolve them more quickly, he otherwise has acted responsibly and has substantial financial resources.

Also, Applicant serves successfully in the military reserves. Indeed, a colonel in the national guard (who has supervised him for six years) appraised him as "an extremely professional and responsible" military officer with superb morals and ethics. After considering the Appendix 8 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.c.

Personal Conduct

Applicant failed to reveal a personal IRS lien 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 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^(S) this concern under MC 2 and 3. I find his explanation credible. As he is self-employed, he believed the dispute with the IRS over his 1997 income tax involved the treatment of his company income and expenses and would ultimately be resolved in his favor. The Government's evidence of the tax levy was dated June 2002, several months after he completed this SF 86 in October 2001. Further, at the DSS interview in August 2002 Applicant was not confronted, but volunteered extensive information about his dispute with the IRS and attached a full history of his dispute. He explained the basis for his initial belief that it was a business-related matter. He successfully demonstrated that he had misunderstood the question on the security clearance questionnaire. Further, there is evidence in the DSS statement that Applicant made prompt, good-faith efforts to correct the omissions before being confronted with the facts. Hence, Applicant met MC 2 and MC 3: the falsification was an isolated incident, and he has subsequently provided correct information voluntarily; and he made prompt, good-faith efforts to correct the falsification before being confronted with the facts. Further, a friend who, though now employed by Applicant, who has known him for 23 years, assesses Applicant as having "always exhibited the utmost integrity and character in all of his personal and professional activities." He recommends Applicant for a security clearance. After looking at the whole person and considering the Appendix 8 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

Paragraph 2. Guideline E: 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. His security clearance for his military assignment was not addressed by this proceeding. (TR 23-24)
3. In December 2002 when he provided his Answer Applicant stated that he and his wife had a personal net worth exceeding \$5 million. In April 2003 he stated his net worth was in excess of \$3 to \$4 million. (Answer; TR 27)
4. **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.
5. **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.