

DATE: December 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19884

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant finally resolved a majority of his long-standing financial problems, security concerns remain because of his delay in resolving debts to some creditors and his failure to document that other debts, including a state tax debt, are fully resolved. Further, personal conduct concerns persist over his failure to reveal these financial problems on his security questionnaire or fully to disclose the status of his repayment efforts in his first investigative interview. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on November 14, 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 3, 2002. On December 18, 2002, he requested a decision be made without a formal hearing.

The case was assigned to Department Counsel who on July 15, 2003, prepared a File of Relevant Material (FORM) for the Applicant's review and advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on July 16, 2003, and again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on July 24, 2003, with a response due on August 23, 2003. The Applicant submitted his response on August 25, 2003 and attached four items. (Exhibit A) The DOHA Director assigned the case to me for a decision on the record on September 5, 2003. Subsequently, on November 20, 2003, Exhibit A was forwarded to Department Counsel who indicated on November 21, 2003 that she had no objection to Exhibit A.

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, 51 years old, has worked for a defense contractor in State #1 in a management position since September 1998.

Applicant has a masters degree which he received in 1994 from a university in State #2. He married in 1983 and has two children. He served in the military from 1972 to 1992 and was granted a Top Secret clearance in November 1978.

Finances and Personal Conduct

When Applicant applied for a security clearance in September 1999, he completed a Questionnaire for National Security Position (Standard Form 86) (SF 86). Applicant failed to disclose⁽²⁾ on the form in answer to Questions 38 and 39 that he had financial delinquencies of 90 and 180 days within the last seven years. (SOR 2.a.) He conceded in his response to the FORM that he "just did not take great care to ensure that all of the information provided was fully accurate and correct." (Exhibit A)

In his Defense Security Service (DSS) interview, in January 2002, Applicant stated that he became delinquent in a number of financial accounts after leaving employment with Company #2 in April 1996 when his yearly income dropped \$30,000 per year and he could only secure low paying employment or was self employed. (He did disclose in his SF 86 that he had left Company #2 under less than favorable conditions.) However, by January 2002 his net monthly income had risen to approximately \$7,000 per month, his expenses were approximately \$2,500; his monthly debt payments totaled approximately \$1,600. Thus, he had a net remainder of approximately \$2,700 per month, but failed to take immediate action to resolve his finances delinquencies as detailed below:

- Applicant's had a debt to Company #1 for \$316 for cell phone service while he was self-employed. In January 2002 he planned to make a payment to resolve this debt. In April 2002 Applicant stated that he thought he had previously resolved this debt, but had not done so and intended to contact Company #1 and arrange a payment. In December 2003 he advised that he could not resolve the matter as Company L#1 had no record of his past account. In August 2003 he stated he had resolved his debt to Company #1 by paying a successor company \$135.28. (He did not explain why this lesser amount was acceptable to Company #1.) (SOR 1.a.) (Exhibit A) He became delinquent on his \$399 monthly payments and made arrangements to repay at \$300 per monthly in November 2001. While he stated they were current in January 2002, in April 2002 he conceded that these payments were not all current. He claimed that his wife pays all the bills, and he was not aware that payments for November 2001 and February 2002 were outstanding. He planned to have automatic electronic payments made to this creditor. He paid this account in full in February 2003. (SOR 1.b.) (Exhibit A) provide a copy of the check to document this payment. (SOR 1.c.) provide a copy of the check to document this payment. (SOR 1.d.) approximately \$1,300. (SOR 1.f.) He failed to file tax returns and lost the paperwork. In June 2000 he arranged a payment schedule at \$195 per month. In April 2002 he conceded that his wife had not been making these monthly tax payments as agreed, and his 2000 tax year refund was to be applied towards the outstanding balance. In May 2002 he stated he paid the balance of \$1,182.72 but did not provide a copy of the check to document this payment. In February 2002 he paid his debt management plan in full, including a payment for his 1996 State #1 tax debt. (Exhibit A) The status of his 1998, 1999, and 2000 tax debt is unclear. five other creditors. In February 2002 he had paid his debt management plan in full, including a payment for his 1996 State #1 tax debt. (SOR 1.g.) (Exhibit A)

In April 2002 Applicant claimed to DSS that he had not falsified his prior DSS statement, as he claimed he was unaware that his wife had not been making payments and of the failure to pay Creditor #2 and his State #1 taxes. In April 2002 he also conceded he had not yet filed his 2001 State #1 tax return and did not apply for an extension and expected to be assessed a penalty.

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.

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:

None

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. Although many of the debts stemmed from his decision to leave a job in 1996 which led to a substantial

salary reduction, he failed to show sufficient efforts to resolve these debts after he regained a professional position with Company #1 in 1998. Instead many of his debts remained unresolved, including his tax debts to State #1. He failed even to file his State #1 return in 2001 or to get an extension. While in his initial DSS interview he claimed debts were being paid in a systematic way, further investigation showed he and his wife had not been consistently paying these debts as agreed. Thus security concerns persist because of long-standing nature of these debts, and his failure to resolve them more quickly

Applicant effectively mitigated⁽³⁾ his debts alleged in SOR 1.a. and 1.b., 1.e., and 1.g. by paying those debts in full, so Mitigating condition (MC) 6 applies to these those debts where he initiated a good faith effort to repay overdue creditors. While Applicant has made much progress and provided documentary evidence in August 2003 that some of these debts have been resolved, he provided no documentary evidence of his having resolved his debt to Company #3 and Company #4 (SOR 1.c., 1.d.) or all of his tax debt to State #1 (SOR 1.f.). Thus, while some of his debts are now resolved, the record is not clear concerning those debts where he claims payment, but provided no documentary evidence. Applicant has a good income with sufficient reserves to handle his financial obligations, but has not made managing his finances a priority. For example, he claimed to be unaware that his wife had not continued to make payments as agreed. Nor has he documented that under MC 4 that he has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control. For example, he provided no current budget. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude that he has mitigated the allegations in SOR subparagraphs 1.a., 1.b., 1.e., and 1.g., but failed to mitigate 1.c., 1.d., and 1.f. I rule against Applicant under SOR Paragraph 1.

Personal Conduct

Applicant failed to reveal his debts 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 failed to overcome these Government's security concerns by demonstrating that he has mitigated⁽⁴⁾ as his explanation that he forgot these debts is not credible in light of his having detailed his 1996 employment issues on the security form as those problems led to his debts. Further, at the initial DSS interview Applicant failed to fully inform himself on the status of his debt payments and further misled the DSS which required a second interview. There is no evidence that Applicant made prompt, good-faith efforts to correct the omissions before being confronted with the facts. Further, Applicant provided no recommendations as to his good character. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against 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: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not 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. Give the size of the debts, Applicant's claim in his Answer that he simply forgot the debts because they were charged off is not credible.

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.