

DATE: November 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21419

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems raise security concerns because of his delay and, in several cases, refusal to resolve approximately \$5,000 in debts to six creditors. He failed to demonstrate his commitment to becoming financial responsible even though he has a stable job. Also, his personal conduct raises security concerns as he failed to disclose his financial delinquencies on his security form when he completed it in March 2000. 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 September 24, 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) and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on October 23, 2003, and admitted allegations 1.a., 1.b., 1.c., 1. e., 2.a. and 2.b. and requested decision without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on March 1, 2004, where he made a motion to amend the SOR subparagraphs 2.a. and 2.b. for technical changes to reflect the document (Exhibit 4) which Applicant signed on March 28, 2000. Department Counsel specified the new allegations in the FORM. The FORM was forwarded to Applicant for his review and response within thirty days of receipt. Applicant received the FORM on March 9, 2004, but submitted no response objecting to the motion to amend the SOR and submitted no additional evidence by the April 10, 2004, deadline. On April 26, 2004, the case was assigned to me. As Applicant did not object to the technical amendments to the SOR, I granted the Department Counsel's motion to amend SOR 2.a. and 2.b. as specified in the FORM.

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, 28 years old, has been employed by a defense contractor in State #1 since March 2000. He completed a Questionnaire for National Security Position (SF 86) on March 28, 2000. (Exhibits 4, 5) Applicant attended college in State #2 in 1996. (Exhibits 4, 5) Applicant is not married. (Exhibits 4, 5)

Personal Conduct

Applicant signed his SF 86 in March 2000 and certified that the statements on the form were true and correct. (Exhibit 4) However, Applicant admits he failed to disclose any of his financial delinquencies on the SF 86. (Exhibit 3) At the time of his Defense Security Service (DSS) interview in May 2002, he denied he had any intent to falsify the financial questions as he "did not see any question that referenced past due accounts." While in the DSS interview in May 2002 Applicant cooperated and provided information about his financial circumstances, he did so after the agent showed him the credit report with the adverse information. (Exhibit 6)

Finances

A February 2001 credit report documented Applicant's delinquencies. (Exhibit 7) Applicant provided no explanation as to why his financial problems developed except to detail his termination from a previous employer in 1998 for tardiness. In May 2002 his net income was \$1,217 per month; he had monthly expenses of \$745 and made monthly payments of \$617 on a car loan and other debts creating a negative remainder of \$145. (Exhibit 6)

In April 2003 in response to DOHA's financial interrogatories, he reported his net income was \$830 per month, his monthly expenses were approximately \$1,145 with a negative net remainder. He did not point out how he had resolved any of his debts. (Exhibits 3, 8)

SOR 1.a. Applicant admits his debt to Creditor #1 of \$203 is unresolved. (Exhibits 3,7, 8, 9) He stated, "I have no intention to pay it because I see no reason to." (Exhibit 6, page 3)

SOR 1.b. Applicant admits his debt to Creditor #2 for \$652 is unresolved. (Exhibits 3, 7, 8, 9)

SOR 1.c. Applicant admits his debt to Creditor #3, a credit card, for \$1,575 is unresolved. (Exhibits 3, 7, 8, 9) He stated, "I have no intention of paying this back because I do not feel a need to do so." (Exhibit 6, page 3)

SOR 1.d Applicant denies a debt to Creditor #4 for \$1,266. (Exhibit 3) However, initially he admitted to this debt but stated, "I see no reason to pursue this matter or pay it off." (Exhibit 3, page 3) The debt is listed twice on three credit reports. (Exhibit 7, 8, 9)

SOR 1.e. Applicant admits a debt to Creditor #5 of \$48 is unresolved; the debt was listed on two credit reports. (Exhibits 3, 8, 9)

SOR 1.f. Applicant denies a debt to Creditor #6 for \$866. (Exhibit 3) Applicant opened this account for a friend but stated, "I will not pay this bill because it is her responsibility, not mine." (Exhibit 6, page 3) However, the debt is listed on three credit reports. (Exhibit 7, 8, 9)

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:

No

Guideline E - Personal Conduct

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 subsequently has shown (3) an inability or unwillingness to satisfy any of his debts. At the time of the investigation he had several debts that totaled under \$5,000; however, he took a firm stand that he had no intention of paying these debts. Further, he has limited means to do so as his expenses outpace his limited income. He offered no special circumstances that led to these debts.

Applicant failed to mitigate⁽²⁾ these concerns as did not make it a priority to resolve any of these debts. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 1; I conclude that he has failed to mitigate the allegations in SOR subparagraphs 1.a. through 1.f.

Personal Conduct

Applicant failed to reveal any of his personal debts on his SF 86 form when he completed it, and the Government established that this omission constituted a willful intent to falsify so as to raise security concerns under Personal Conduct. Applicant's explanation as to why he did not list his debts was not credible. Applicant's failure to detail his debts in Question 28a and 18b falls within Guideline E.

Applicant failed to overcome these Government's security concerns by demonstrating any of the mitigating⁽³⁾ factors. While in the DSS interview in May 2002 Applicant cooperated and provided information about his financial circumstances, he did so after the agent showed him the credit report with the adverse information. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 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: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.ab.: 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. Clearance is denied.

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 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.
3. **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.