

KEYWORD: Financial; Personal Conduct

DIGEST: Although Applicant's past financial problems raised security concerns because of his delay in resolving his debts of \$35,000 to ten creditors plus a \$88,000 judgment in 2002 pertaining to a foreclosure on his house, he has mitigated these issues which were largely created by circumstances beyond his control. He now has demonstrated a good-faith effort to resolve his debts and has reformed his financial practices. In addition, Applicant has a stable job where he is highly regarded. He rebutted security concerns over his past personal conduct in failing to disclose financial issues on his 2000 security clearance application as he had no intent to falsify and thought he had resolved all of his financial matters at that time. Clearance is granted.

CASENO: 03-20002.h1

DATE: 11/25/2005

DATE: November 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20002

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although Applicant's past financial problems raised security concerns because of his delay in resolving his debts of \$35,000 to ten creditors plus a \$88,000 judgment in 2002 pertaining to a foreclosure on his house, he has mitigated these issues which were largely created by circumstances beyond his control. He now has demonstrated a good-faith effort to resolve his debts and has reformed his financial practices. In addition, Applicant has a stable job where he is highly regarded. He rebutted security concerns over his past personal conduct in failing to disclose financial issues on his 2000 security clearance application as he had no intent to falsify and thought he had resolved all of his financial matters at that time. 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 February 28, 2005. 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 a notarized Answer dated March 15, 2005, where he denied 1.c., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., and 2.a. and requested a hearing.

After Department Counsel stated the case was ready to proceed on April 8, 2005, the case was assigned to me on April 21, 2005. On June 7, 2005, DOHA issued a Notice of Hearing and set this case to be heard on June 28, 2005, in a city near where Applicant lives and works.

At the hearing the government offered seventeen exhibits (Exhibits 1-17) which were admitted into evidence without objection. (TR 13-29) Applicant testified and called one witness; he offered one exhibit (Exhibit A) which was admitted into evidence without objection. (TR 30-31) He was allowed two weeks until July 12, 2005, to submit any additional evidence; the Government was allowed one week until July 19, 2005, to review the submission. (TR 83-85, 105, 129) On July 11, 2005, Applicant submitted two additional exhibits (Exhibits B & C) On July 13, 2005, Department Counsel did not object. Subsequently, the exhibits were admitted into evidence; and the record closed. The transcript (TR) was received on July 14, 2005.

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, 45 years old, has been employed by Defense Contractor #1 in State #1 since November 1998. He was granted a Secret clearance in March 1990. He completed a Security Clearance Application (SF 86) in December 2000 and again in January 2003. He served on active duty from 1979 to 1988. (Exhibits 1, 2, 3)

Applicant was divorced from his first wife in August 1987; they had one child who is 20. His second wife died in 1995; a ten-year old son also died that year. He has one child from that marriage who is 16. He married for the third time in September 1997, and has a child from that marriage who was born in 1998 and is 7. (Exhibits 1, 2, 3; TR 37, 43-44, 83-84, 97)

Personal Conduct

Applicant developed kidney problems in 1993 that were so severe that he could have been granted a permanent disability. But he wanted to keep working despite his health issues. (Exhibit B) After his second wife died in 1995, he

used the life insurance money of \$10,000 to pay off his creditors that were outstanding to "clean the slate," so he could receive a mortgage. When Applicant bought his home in 1997 and financed the mortgage with Creditor #1, no credit problems serviced. Thus he did not get a credit report in 2000 before he completed his SF 86. (TR 80-82)

Because he believed he did not have any financial issues, Applicant answered "no" to Question 38 on his financial delinquencies over 180 days when he completed his December 21, 2000 SF 86.

Applicant continued to have major health issues and trusted his third wife to handle the financial matters. He was not aware until September 2002 that she had not been doing so; and that indeed she had a problem with an addiction to prescription pain killers which started in 2000 after an injury from a fall in 1999. She admitted that she would take money out of accounts without her husband's knowledge and hid bills from him. (Answer; Exhibit 9⁽²⁾; Exhibit B; TR 48-49, 77-78, 89-90, 100)

In completing his security form in 2003 he did not believe he needed to answer Question 38 "yes" as he had filed for Chapter 13 bankruptcy in 2002 to address his delinquencies. (TR 38-39, 42-43, 48-49, 75-76)

Finances

In a November 1989 Defense Security Service (DSS) interview and statement, Applicant explained that he and his first wife had financial problems. When she left him in May 1986, he took responsibility for the bills. They were divorced in August 1987. (Exhibit 15) He took responsibility for \$15,000 in debt and paid it. (TR 44)

Again in September 2000 Applicant developed serious related health problems and had to have treatment three days a week; however, he still worked a 40-hour week. Because of these health issues, he let Wife #3 handle the financial matters beginning in 2000. (TR 44-46, 72-74) When he learned of his spouse's poor fiscal practices, Applicant filed for Chapter 13 Bankruptcy in November 2002. He explained in a May 2003 DSS interview and statement, he did not become aware of any financial issues until he received a registered letter from a bank that they were planning to foreclose on his property in August 2002. He then learned his wife was spending money on pain killers. He then opened a separate bank account in only his name to ensure payments were current. In 2003 they had a combined monthly take-home pay of \$4,418; expenses totaled \$2,302; he had monthly debts of \$1,577 including a \$800 monthly mortgage payment; he had \$935 remaining (Exhibits 4, 5; TR 75-79)

Subsequently, Applicant's wife went into drug rehabilitation in 2003. Because she was in a stressful work environment, she quit her teaching job. Even though it put the family under additional financial pressures, she stopped working because of concerns over her health. On the advice of their lawyer, she filed an individual Chapter 13 bankruptcy plan in 2004 to protect the house as she was a co-owner. Her husband's salary was the basis of the plan; and they make payments of \$758 for the mortgage and \$540 for the trustee. She planned to return to work in August 2005 and expected to make a salary of \$33,500 for the school year. (TR 92-100, 102-103)

In response to Interrogatories in June 2004 Applicant advised that he was no longer in Chapter 13, but was contacting individual creditors to work out the remaining debts through direct payment or through a credit counselor when required. He was arranging for automatic deductions to cover future mortgage payments. In June 2004 he had total net monthly income of \$2,868, expenses of \$1,320, and a debt to his mortgage company of \$87,000 where he was making monthly payments of \$853. (Exhibit 5)

Applicant currently earns \$77,000 per year; his weekly take home pay is \$798. His wife has not worked from 2003 to June 2005. She expected to begin work in September 2005 as she had a job offer. (TR 69-70; 75) He has medical expenses of approximately \$275 per month. (TR 73)

Applicant explained the following concerning his steps to resolve his past debts:

SOR 1.a. Applicant bought his home in 1997 and financed the mortgage with Creditor #1. Creditor #1 obtained a civil judgment in August 2002 for \$87,894 for the mortgage of Applicant's home. He has negotiated with Creditor #1 and is now making his regular mortgage payments of \$853. Applicant does not know if they have released the judgment. (Exhibit 13; Exhibit A; TR 33, 46-47, 63-64, 79)

SOR 1.b. Applicant explained he is now making payments to resolve his debt to Creditor #2 for \$8,827 for a van returned to the lender in 2004 which he had not included in his Chapter 13 bankruptcy filing. He made six payments of \$250 and negotiated a lump sum settlement of \$4,000, which he paid in July 2005. (Exhibit 4; Exhibits A, B; TR 33, 56-57, 70-72)

SOR 1.c. Applicant explained he is now making payments of \$200 to resolve his debt to Creditor #3 for \$4,289 which had been charged off. He planned to settle this debt in July 2005. (Exhibit 9; Exhibits A, B; TR 33, 56-58, 76-77)

SOR 1.d. Applicant's debt to Creditor #4 for \$837 is Wife #3's dental bill that she is trying to resolve. However, he is willing to resolve it and planned to pay this debt in July 2005. (Exhibit B; TR 34-35, 58)

SOR 1.e. Applicant was disputing his debt to Creditor #5 for \$142, but he planned to pay this debt in July 2005. (Exhibit B; TR 35-36, 58-59)

SOR 1.f. Applicant believes his past debt to Creditor #6 for \$4,994 placed for collection was a result of a debt from his previous marriage to Wife #2. Initially, he included this debt in his Chapter 13 bankruptcy filing. He settled this account in July 2005. (Exhibit B; TR 36, 47-48, 52-54, 110)

SOR 1.g. Applicant believes his past debt to Creditor #7 for \$2,423 placed for collection was a result of a debt from his previous marriage to Wife #2. He settled this account in July 2005. (Exhibit 5; Exhibit B; TR 36, 47-48, 60-62)

SOR 1.h. Applicant did not recognize his debt to Creditor #8 for \$576 placed for collection. He planned to pay this debt in July 2005. (Exhibit B; TR 37)

SOR 1.i. Applicant admitted his debt to Creditor #9 for \$576 which was placed for collection is a debt for his daughter's emergency hospitalization. He has paid this debt. (Exhibit B; TR 37, 59-60)

SOR 1.j. Applicant researched this account to establish his debt to Creditor #7, a credit card, for \$2,493, which was charged off, is a duplicate debt of SOR 1.g. (Answer; Exhibit 5; Exhibit B; TR 37, 60-62)

SOR 1.k. Creditor #1 initiated foreclosure proceedings for a past due amount of \$16,431 for the mortgage on Applicant's home. He has negotiated with Creditor #1 and is now making his regular mortgage payments and restitution to bring the mortgage current. (Exhibit A; TR 33, 37-38, 64-65)

SOR 1.l. Applicant filed for Chapter 13 Bankruptcy in November 2002 with liabilities of \$100,155 and assets of \$99,780. Initially, he made timely payments for six months, but then in January 2003 he had to make double mortgage payments of \$1,500 which was impossible for him to do at the same time as the bankruptcy payments. His lawyer advised him to allow the bankruptcy to be dismissed over his failure to make timely payments as required by 11 U.S.C. Section 1326. The bankruptcy was dismissed in May 2004. Although his lawyer advised him to re-file, he dropped that lawyer and tried to handle negotiations with creditors himself. (Exhibits 4, 8, 11, 12; TR 38-39, 54-56)

Applicant explained he took \$10,000 out of his 401(k) in January 2003 to try to resolve the debt to Creditor #1, but they refused to take the money. (TR 39-40, 66-67) Neither Applicant nor his wife use credit cards. (TR 101)

His wife has contacted a lawyer and filed for Chapter 13 in November 2004. Also, he planned to re-finance the house on July 1, 2005, so that he could resolve all of his debt with the \$10,000 he has in equity in the house. He also said that his mother has resources to resolve his debts, but he was been reluctant to ask her for assistance. (TR 40-41, 65-66, 68-69, 73-74)

References

Applicant's friend who has known him for fourteen years and who has worked with Applicant attests he takes pride in his work. (TR 75; Exhibit N) Applicant's friends from church attest he acted responsibly in that community. (TR 76-79; Exhibit N)

Applicant's supervisor since July 2004, who is also the Facility Security Officer (FSO) and president of the company, stated that Applicant acted responsibly with respect to the company credit card and other company matters. He reported that Applicant was hired during a crisis situation and has performed "admirably." Applicant has met and exceeded all expectations. He was assessed as "self-motivated, self-directed." He operates without any oversight. Applicant often goes beyond what the supervisor expects him to do and is an asset to the company. (Exhibit N; TR 112-128, 198-132)

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

***The Concern:* 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.

Guideline E - Personal Conduct

***The Concern:* 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 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

The Government established disqualifying conditions⁽³⁾ that could raise a security concern and may be disqualifying including Applicant's (1) history of financial problems and his (3) inability or unwillingness to satisfy all of his debts to ten creditors plus a 2002 foreclosure on his home.

On the other hand Applicant ultimately developed a plan to pay all his debts in July 2005. He now has mitigated⁽⁴⁾ these financial concerns as he has attested that he resolved or was resolving all of these debts. He had many challenging circumstances which provide mitigating circumstances (MC) including a divorce from Wife #1 that left him with \$15,000 in debts in 1987; serious health issues for himself and for Wife #2 who died in 1995; and serious health issues for Wife #3 beginning in 2000 who became addicted to prescription drugs. All of these conditions contributed to his financial instability, especially the drug addition of Wife #3 whom he had trusted to handle the finances while he worked and dealt with his own serious health issues. Thus, among the conditions that mitigate these security concerns is

MC 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).

While Applicant took small steps along the way to address these issues, filing for Chapter 13 bankruptcy twice to avert the foreclosure on his house, he was slow to address his past debts overall even though he was put on notice of security concerns in 2003 and again in February 2005 when the SOR was issued. To his credit, Applicant has now demonstrated that he is financially responsible as he followed through on his plan to resolve the remaining debts. While Applicant did not show that he has received or is receiving counseling for the problem, he has developed a budget. Now there are clear indications that the problem is being resolved or is under control. In sum, under MC 6. Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under SOR Paragraph 1 as he mitigated the allegations in SOR subparagraphs 1.a. through 1.l.

Personal Conduct

When Applicant failed to disclose any financial problems on his 2000 SF 86, the government raised its concerns under Guideline E under Personal Conduct Disqualifying Condition E2.A5.1.2.2. (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.) However, Applicant testified persuasively that he believed he had resolved all his past financial issues in 1997 when he successfully financed a home. He credibly established he did not know of any lingering financial issues in 2000 when he completed his SF 86. While a prudent man might have reviewed a credit report, in fact Applicant did not and had no intent to falsify.

In considering the record evidence as a whole to determine whether Applicant's overall conduct can be mitigated even if one were to believe he intentionally falsified his 200 SF 86, I have evaluated his conduct and considered the following factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E.2.2.1.8.

The potential for pressure, coercion, exploitation, or duress; and E.2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on SOR subparagraph 2.a.

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

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: 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. Clearance is granted

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. While the government argued that Applicant should have know about delinquent bills based on his February 2001 credit bureau report, there was no evidence that Applicant in fact knew and had an intent to falsify by his omission. (Exhibit 9; TR 106-107)
3. **E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:** E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.2. Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust; E2.A6.1.2.3. Inability or unwillingness to satisfy debts; E2.A6.1.2.4. Unexplained affluence; E2.A6.1.2.5. Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.
4. **E2.A6.1.3. Conditions that could mitigate security concerns include:** E2.A6.1.3.3. 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); E2.A6.1.3.4. . . . there are clear indications that the problem is being resolved or is under control; and E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.