

DATE: October 20, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-00813

## **DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn D. MacKinnon, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant mitigated security concerns over criminal conduct, personal conduct, and finances. Despite his past financial problems, he finally resolved outstanding debts to most of his creditors through his 2002 discharge in bankruptcy. Although he has two small debts to other creditors not included in the bankruptcy, overall he has demonstrated that he is gaining control of his finances and has recently consulted a financial advisor. Applicant now has a good income and with limited expenses he lives within his income. He has a general reputation for being conscientious about his job and being honest and forthright in his dealings. 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 April 16, 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 personal conduct issues (Guideline E) in paragraph one, criminal conduct (Guideline J) in paragraph two, and financial issues (Guideline F) in paragraph three. Applicant responded to these SOR allegations in an undated notarized Answer on May 5, 2003, and requested a hearing.

After Department Counsel signed a "ready to proceed" form on September 10, 2003, the case was assigned to me on September 12, 2003. Subsequently, Applicant asked that the case be expedited. Thus, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on September 23, 2003, set the matter for October 6, 2003. At the hearing Applicant confirmed that he wanted the hearing expedited and had no objection to getting less than 15 days formal notice. (TR 10) The Government introduced eight exhibits which were admitted into evidence (Exhibits 1-8; TR 14-18).

Applicant testified and offered four exhibits (Exhibits A through D) which were admitted into evidence. (TR 27-33) Applicant requested that the record be kept open so he could submit additional evidence. As the Department Counsel

did not object, I allowed Applicant until close of business (COB) on October 14, 2003, to submit any additional evidence and the Government until COB October 20, 2003, to review it. (TR 33-34, 47, 99) Applicant submitted 21 pages on October 8, 2003. (Exhibits E through G) On October 10, 2003, Applicant and his supervisor wrote<sup>(2)</sup> to ask that his decision be expedited. On October 16, 2003, Applicant submitted another 5 page document. (Exhibit H) On October 20, 2003, the Department Counsel presented her additional response to the post hearing filings. I admitted Exhibits E through H, and the record closed on October 20, 2003. The transcript (TR) was received on October 15, 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, 43 years old, has worked for a defense contractor since June 2000. In July 2001 he completed a Security Clearance Application (Standard Form 86) (SF 86) and requested a security clearance which he needs for his position. Later in July 2002 he completed another SF 86 as a new contract required him to have a top secret clearance; he signed that form in December 2002. From 1992 to 2000 he worked for Company #2. From 1980 to 1986 he served in the U.S. military. (Answer; Exhibits 1, 2; TR 27-28) He requires a top secret clearance. (TR 26-27; 37-38)

Applicant was married in 1998 and has a five year old child. His wife also had a child when he married her. (Exhibits 1, 2; TR 38-39)

#### **Personal Conduct, Criminal Conduct, and Financial Considerations**

After Applicant was married, he decided he buy a house to raise his family and to buy his wife a second car even though he had a limited income and was unable to get any more raises with his previous employer. Applicant concedes he is not a good money manager. His wife called someone for credit counseling help but they did not have enough equity in the house for a loan. (TR 51-53) Thus, he decided to file for bankruptcy in July 2001 where he listed liabilities with creditors holding security claims of over \$58,000 and liabilities with creditors holding unsecured nonpriority claims of almost \$25,000.

In his July 2001 unsigned SF 86 Applicant failed to disclose in response to Questions 38 and 39 any of his financial delinquencies; in response to Question 33 he failed to disclose that he had just filed for bankruptcy. (SOR 1.a., 2.a., and 3.a.) (Exhibits 1, 4, 7) He explained that although he had met with his attorney and prepared the bankruptcy paperwork in July 2001 and signed it on July 24, 2001, he put "no" in answer to the question on the July 31, 2001 SF 86 as he was would later "turn this paperwork over to my security people and they would forward it to the proper people to let them know that. . . I have turned in all the information that I know exists on that bankruptcy." At the time he had tried to contact his lawyer to get the paperwork, but could not reach his attorney who had not provided copies of the bankruptcy records to the Applicant. While Applicant knew he had signed the forms, he did not know when his lawyer planned to file the documents; thus, he did not know the details needed to complete the form if he had answered "yes" to the bankruptcy question. Since the form required specifics, he was afraid he could not complete the form if he did not have all of the details. (Exhibit 4; TR 22; 40-44) With respect to the debts that he expected the bankruptcy to resolve, he conceded he should have answered "yes," but he decided that since he had many late debts, that once the bankruptcy paperwork was submitted that would cover those debt issues so they would not need to be listed separately. (TR 24-25; 44-46)

Ultimately, in February 2002, the bankruptcy court discharged the debts. Later he did in fact take action in May 2002 to advise his Facility Security Officer (FSO) of the bankruptcy discharge. The FSO filed the required notice under the National Industrial Security Program Operating Manual (NISPOM) in August 2002. (Exhibit E; TR 46-47) Also, in August 2002 he submitted a second SF 86 where he did include the bankruptcy details in response to Question 33 as at that point he knew his bankruptcy had been discharged. He signed that form in December 2002. (Exhibit 2; Exhibit H; TR 23; 43; 46-47) However, on that 2002 SF 86 form, he did not disclose that his house was foreclosed in February 2002 as he claimed that his wife had handled the "whole situation without [his] knowledge." (Exhibits 2, 5, 6; TR 23; 51)

Applicant was interviewed by the Defense Security Service (DSS) in December 2002 and disclosed the foreclosure. (SOR 3.b.) He also explained his finances where he had rent of \$350 per month, a personal loan of \$100 per month and a car payment of \$251 per month. Both he and his wife were working and he stated he was living within his means. He explained he had failed to include a \$2,000 debt to Creditor #1 in his bankruptcy, but intended to set up a payment plan to pay it off. (SOR 3.c.) Also, he disclosed a \$50 debt to Creditor #2 that he intended to pay "ASAP." (SOR 3.d.) (TR 23-25; 47-48; Exhibits 3, 6)

However, he did not follow through and pay these debts as his company had "pulled" his interim secret clearance, and he did not know from one week to another whether he would have a job. (Exhibit 8; TR 24, 48-51) Applicant at the time of the hearing did not have a budget, but he subsequently met with a financial adviser who created one for him. (TR 53; Exhibit F) With his current job he makes \$11 to \$17 per hour. His monthly salary is approximately \$2,100. His rent is \$325 per month; his utilities average \$120-140 per month; his groceries are \$150-200 per month; his car payment is \$250 per month. He usually has no money left at the end of the month. His wife no longer works as their child is not yet in school. (TR 54-62)

After the hearing Applicant consulted a financial specialist who reviewed his budget and made recommendations for how to economize. (Exhibit F)

### **Awards and References**

When he first set up his office and got it running, he received an Award of Excellence in November 2002 in recognition of his "outstanding achievement" in providing support to the facility. (TR 29; Exhibit A)

Applicant's supervisor who is a senior manager testified on his behalf. The supervisor met Applicant in 2001 when he was working for his company in another area and asked him to transfer to his contact as Applicant did an excellent job. Applicant got a 17% increase in pay when he moved to this new assignment. The supervisor assesses Applicant as conscientious about his job and honest and forthright in his dealings. He is extremely knowledgeable in his field. This supervisor had no doubt that Applicant would follow the rules as, for example, he is very conscientious in reporting his time. The supervisor thought that Applicant might have been confused by the SF 86 forms, but is in general an honest person. (TR 65-77)

A friend who has known Applicant since 1972 and was the best man at his wedding testified that he believes Applicant to be completely trustworthy. (TR 78-84)

The company's procurement coordinator stated he has known Applicant for four years and found him to be hard working, extremely honest, conscientious, always reliable with good work ethics. (Exhibit B)

A senior system analyst who has known Applicant for a year recommended him for a security clearance and attested that he had always followed security policies and regulations required of a person in his position. He stated that Applicant has been "a great asset to the entire work force and has become a key member" of their program support because of his dedication to his job and concern for fellow workers. (TR 33; Exhibits C, G)

Several co-workers recommended Applicant for a security clearance as he has an outstanding character and work ethics. (Exhibit B)

A vice-president from Company #2 who knew Applicant for the seven years he worked there stated that Applicant was "a person I could depend on to get the job done either working together with someone else, or completely on his own." She would have confidence in him to handle matters of a sensitive nature. (TR 33; Exhibits D, G)

### **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 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:**

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;

### **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;

**Conditions that could mitigate security concerns include:**

1. The criminal behavior was not recent;

6. There is clear evidence of successful rehabilitation.

### **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;

4. [T]here 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**

### **Personal Conduct and Criminal Conduct**

Applicant mitigated Personal Conduct concerns over his omission of relevant and material information on his 2001 SF 86 of his financial problems when he failed to disclose his July 2001 decision to file for bankruptcy. The question read, "Have you ever filed for bankruptcy?" While he had signed the papers, he did not know whether or not his attorney had actually filed them at the time he completed the SF 86 form and thus he did not know whether or not he a duty to disclose this adverse information. I am persuaded by his testimony that he was confused by the form and had no intent to conceal these financial issues. After his bankruptcy was discharged, he voluntarily disclosed the details to his security officer in May 2002 who filed the required adverse information reports in August 2002. He also included the bankruptcy details on a 2002 SF86 he completed for a security clearance upgrade. He voluntarily disclosed this information before he was interviewed by DSS.

Subsequently, Applicant fully cooperated with the DSS agent in his interview in December 2002 and disclosed further adverse financial information on the foreclosure of his home and other debts.

To his credit he provided several references who spoke convincingly of his good character and his general reputation for honesty in the workplace. For example, Applicant's current supervisor assesses Applicant as being consistently honest and forthright; he had no doubt that Applicant would follow the rules as he is very conscientious in the workplace in general. The supervisor thought that Applicant might have been confused by the SF 86 forms, but is in general an honest person.

Thus, conditions that mitigate these security concerns include: MC 2., The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; and MC 3, the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. SOR Paragraph 1.

As discussed under personal conduct above, Applicant has similarly mitigated the concern over his criminal conduct for this same omission which was alleged as an 18 U.S.C. Section 1001 violation as he had no criminal intent by this omission on his 2001 SF 86. 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 under Financial Considerations 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 that were not included in his bankruptcy. His conduct raised security concerns by his 2001 bankruptcy where his debt was discharged in February 2002 (SOR 3.a.), by the foreclosure of his home in February 2002 (SOR 1.b.) and by his subsequent failure to address sufficiently and promptly pay two debts from that were not included in the bankruptcy. (SOR 3.c.-3.d.)

While he still has neglected to resolve all of his debts, after reviewing him as a whole person, I accept Applicant's explanation and his reasons for his failure to resolve these debts but accept his intent to do so in the future. The remaining outstanding debt is not substantial in light of Applicant's current overall recovery and his positive financial

circumstances. Applicant lives modestly and has developed no new debts. Thus, Applicant demonstrated he met mitigating conditions (MC <sup>(3)</sup>). Security concerns may be mitigated under 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. While some of his debts remain unresolved, Applicant has recently consulted a financial advisor and 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.d.

### **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 E: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline J 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

### **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.

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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 they addressed their letters to the state judge whose courtroom we had borrowed for the hearing, I concluded I was the intended recipient.
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.