

KEYWORD: Financial; Personal Conduct

DIGEST: While Applicant's financial problems raised security concerns because of his delay in resolving under \$10,000 in debts to several creditors, he re-financed his car and began a good-faith effort to resolve his debts. He has reduced his debts substantially and intends to resolve the remaining two debts. He has demonstrated his commitment to becoming financial responsible. He has a stable job and is highly regarded for his excellence and exemplary behavior. While he failed to detail his past debts on his security form, he rebutted personal conduct concerns and established this omission was a result of his haste and confusion and not from a wilful intent to falsify. Clearance is granted.

CASENO: 03-02099.h1

DATE: 08/25/2004

DATE: August 25, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02099

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant's financial problems raised security concerns because of his delay in resolving under \$10,000 in debts to several creditors, he re-financed his car and began a good-faith effort to resolve his debts. He has reduced his debts substantially and intends to resolve the remaining two debts. He has demonstrated his commitment to becoming financial responsible. He has a stable job and is highly regarded for his excellence and exemplary behavior. While he failed to detail his past debts on his security form, he rebutted personal conduct concerns and established this omission was a result of his haste and confusion and not from a wilful intent to falsify. 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 November 18, 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 December 12, 2003, and requested a hearing.

After Department Counsel stated the case was ready to proceed, on February 18, 2004, the case was assigned to me. A mutually convenient date for hearing was identified; and a Notice of Hearing issued on February 18, 2004, set the matter for March 9, 2004, at a location near where Applicant works and lives. At the hearing the Department Counsel introduced a Stipulation where the Applicant agreed to the admissibility of the Government's five exhibits (Exhibits 1-5). All were admitted into evidence. The Applicant offered six exhibits, which were admitted into evidence (Exhibits A-F), and testified himself.

At the close of the evidence Department Counsel moved to amend ⁽²⁾ the SOR by adding a second Guideline E allegation, "2.b. You falsified material facts on a security clearance application, Standard Form 86, executed by you under date March 26, 2002, when you answered 'No' to Question 20 on your employment record, 'Has any of the following happened to you in the last seven years?' when you failed to indicate that you had been fired from your employment." Applicant objected to this amendment as he argued that he had been transferred, not fired from the

position. I denied the amendment to the SOR as it was not in conformity with the evidence admitted as the evidence did not establish that Applicant had willfully falsified his answer to Question 20. (TR 74-75)

Applicant was given an additional seven days until March 16, 2004, to submit additional evidence; and the government had three days until March 21, 2004, to review the document. (TR 29-30, 81-82) On March 11, 2004, Applicant forwarded an additional exhibit (Exhibit G) to Department Counsel for her review; her office forwarded it to me on March 16, 2004, with no objection. Exhibit G was admitted into evidence, and the record then closed. The transcript (TR) was received on March 17, 2004.

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, 33 years old, has been employed by a defense contractor in State #1 since March 2002. He completed a Questionnaire for National Security Position (SF86) on March 26, 2002. (Exhibit 1) He received an interim clearance in April 2002. He has worked in security for a total of ten years. Previously, he had worked until 1998 for Contractor #2, the non-government arm of Contractor #1. He served in the military from August 1990 to November 1993 and received an honorable discharge. (Exhibit 1; TR 22, 27, 31, 43; Exhibits A, C, D)

Applicant is married and has a child born in 1998. (TR 21-23, 69-70, 73)

Personal Conduct

Applicant signed his SF 86 in March 2002 and certified that the statements on the form were true and correct. (Exhibit 1; TR 32) However, when Applicant started his job he was given a short time to complete the security form and was given no guidance. He explained he rushed through the questions and admits he made mistakes in answering a question on his finances on the form. He misread Question 28⁽³⁾ about any financial delinquencies as he thought he was being questioned about bankruptcy which is Question 27. Since his debts stemmed from 1998, he misunderstood the question as covering only current debts. He credibly established he had no intent to deceive by his omissions as he demonstrated his earnestness in his testimony and his willingness to co-operate. He also demonstrated how he is easily confused. He graduated from high school in 1990, but has no further education. (Exhibit 1; Exhibit A; TR 19, 32-34, 37-38)

At the time of his Defense Security Service (DSS) interview in July 2002, he cooperated in discussing his financial issues, and no omissions from his security form (personal conduct) were explored as issues and documented in the Statement. (Exhibit 4; TR 36-37)

Finances

Applicant's financial problems developed in the 1998 after he was transferred from a position making \$19/hour for Contractor #2 after he refused to train someone his manager wanted to place in his position at the site where he was assigned. After he was transferred⁽⁴⁾ back to the office from his site, they had no new assignments for him. He then had a number of different jobs which paid less (\$10/hour), and also took a part-time job at a school making \$9/hour. He also had to support his son born in January 1998. He is still trying to recover from the debts incurred during that period. (Answer; TR 21-23, 38-39; 43) He has acquired no new debts. (TR 71)

In July 2002 his income was \$2,200 per month; he had monthly expenses of \$2,550 and could not make monthly payments for any of his debts. (Exhibit 4)

In August 2003 he reported his income was \$4,000 per month as he had married and added his spouse's salary of \$2,000 per month; they had monthly expenses of \$3,850 with a net remainder of \$150. He indicated he still could not make monthly payments for any of his debts. (Exhibit 5) He is now making \$21/hour and is attempting to reduce his expenses; for example, he negotiated a lower rent. (TR 46, 64-67)

At the hearing, he reported his many efforts to resolve his debts: finally, he persuaded a credit union to re-finance his 1999 car valued at \$6,600; so he was able to resolve debts to several creditors. He now owes \$145 a month to resolve that car debt. (Exhibits A, B; TR 27, 67-68)

SOR 1.a.. His debt to Creditor #1, a credit card, of \$2,191 was charged off in March 1998. It remained unresolved at the time of the hearing. (Exhibit A; TR 25-26) He purchased items for his son on this credit card. (TR 44-47) He is expecting a settlement from a car accident that occurred in October 2003, and will use those proceeds to resolve this debt. (TR 47-48)

SOR 1.b., c, d. His had debts to Creditor #2, a credit card, of \$1,123; \$396; and \$358; he settled those debts for \$656. (Exhibits B, F; TR 27; 48-52)

SOR 1.e. His debt to Creditor #3 was placed for collection for \$566 in January 1999; he settled that debt for \$365. (Exhibits F, G; TR 27, 52-56)

SOR 1.f His debt to Creditor #4 was placed for collection for \$444 in January 1999; he settled that debt for \$300 in December 2003. (Exhibit F, G; TR 27, 52-53)

SOR 1.g. His debt to Creditor #5 was placed for collection for \$556 in May 1998; he settled the debt for \$400. (Exhibit B; TR 26, 56)

SOR 1.h. His debt to Creditor #6 was placed for collection for \$1,750 in June 2003; he settled that debt for \$1,584 in December 2003. (Exhibit F; TR 26-27, 57)

SOR 1.i. His debt to Creditor #7 was placed for collection for \$410 in June 2003; he settled that debt. (Exhibit B; TR 57-60)

SOR 1.j.. His debt to Creditor #8, for phone service, of \$399 was charged off in April 1998. It remained unresolved at the time of the hearing. (Exhibit A; TR 25-26) He has attempted to resolve this debt, but to do so he needs to find the

original account number with the original company where he obtained service. He plans to resolve this debt. (TR 61)

SOR 1.k.. His debt to Creditor #9 of \$377 was placed for collection in December 1999; he testified he settled that debt. (Exhibit B; TR 61-62)

Applicant is expecting a settlement from a car accident that occurred in October 2003 and will use those proceeds to resolve his two remaining debts. (TR 47-48, 71-72)

References

The previous senior security administrator for a defense contractor who is the client that Applicant serves with Contractor #1 affirms that Applicant does an excellent job: "He took on new challenges and revamped and streamlined our security procedures. . . ." He recommended Applicant for a position of trust. (Exhibit E)

The current senior security administrator for a defense contractor who is the client that Applicant serves with Contractor #1 maintains that Applicant does an excellent job as the supervisor. "He has demonstrated that he is trustworthy and reliable in his position here." He recommended Applicant for a position of trust. (Exhibit E)

A co-worker who has known Applicant for two years on a daily basis attests that he is "honest, sincere and sensitive." He views Applicant as "a man of exemplary behavior." (Exhibit E)

His supervisor from the 1995 to 1997 period for Contractor #2 stated that he promoted Applicant as he was "always a diligent and professional employee." He viewed Applicant as "fair, trustworthy and. . .honorable." (Exhibit E)

A friend who has worked with Applicant attested that he is a "trustworthy, honest and caring person." (Exhibits E, 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 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:

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;
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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:

2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
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;

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

Applicant rebutted security concerns under personal conduct. While he failed to reveal any of his personal debts on his SF 86 form when he completed it, the Government failed to establish that this omission constituted a willful intent to falsify so as to raise security concerns under Personal Conduct. I found Applicant's explanation credible when he testified that he was confused and rushed to complete the form. At the hearing he emphasized that he had correctly answered Question 27 "No" as he had not filed for bankruptcy and incorrectly assumed Question 28 was for current debts. His demonstrated confusion and haste explain his omissions. His omissions do not establish he had the requisite intent to willfully falsify especially in the light of his general reputation for honesty in the workplace as his reference letters document. He has demonstrated trustworthy behavior since he received an interim clearance in April 2002.

Even if one were to conclude that Applicant's failure to detail his debts in Question 28 (not Question 38 as alleged) falls within Guideline E, he overcame these Government's security concerns by demonstrating that he has mitigated⁽⁵⁾ this concern under MC 2 as he credibly explained that he had no intent to falsify. Further, at the DSS interview in July 2002 Applicant cooperated and volunteered extensive information about his financial circumstances; the agent documented no personal conduct concerns over the omissions on the SF 86. Hence, Applicant met MC 2: the falsification was an isolated incident, and he has subsequently provided correct information voluntarily. Further, he testified credibly that he was not briefed on how to complete the SF 86 so he falls within C. 4. Applicant established he has a general reputation for trustworthiness and honesty in the workplace. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. under SOR Paragraph 2.

Financial Considerations

During the 1998 period when he was underemployed, Applicant developed (1) a history of financial problems and subsequently showed (3) an inability or unwillingness to satisfy all of his debts. At the time of the investigation he had several debts that totaled under \$10,000. Applicant has now mitigated⁽⁶⁾ these concerns as he has made it a priority to resolve these dated debts. Applicant chose to resolve a majority of these debts by re-financing his car through a credit union and making arrangements directly with a majority of these creditors. While he still owes money to two creditors (1.a. and 1.j.), he has credibly stated his intent to resolve those two debts. He has enough income to handle his current financial obligations, including the payment where he re-financed his car. Thus, Applicant has sufficiently demonstrated he is now financially responsible as he has followed through on his plan to resolve these debts and so has effectively

mitigated security concerns over his debts alleged in SOR 1.a. through 1.k . After considering the 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.l.

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

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. The Directive's Additional Procedural Guidance paragraph 17 allows the SOR to be amended at the hearing "to render it in conformity with the evidence admitted or for other good cause."
3. The SOR mistakenly alleges he falsified Question 38, not Question 28 (financial delinquencies over 180 days). (SOR 2.a.)
4. Initially, Applicant stated that he was "terminated" from employment after this incident and he also testified he was "termed" as an "at-will" employee. (Exhibit A; TR 21, 39) Later, he testified he was merely "transferred back to the office" and was kept waiting for an additional assignment for a new account. (TR 43, 74-76) Despite his confused language, I accept his clarification that he was transferred, not terminated by Contractor #2. Further supporting his contention is his explanation that his current employer, Contractor #1, is the government arm of Contractor #2 who would never have hired him if he had been a problem employee. He explained that the person who hired him for the job at Contractor #1 was someone he had known at Contractor #2 who "knew what type of work" Applicant had done. Thus, he did not consider himself "fired" from Contractor #2 and did not indicate any problems about his employment record in response to Question 22. (TR 40-43) Further, evidence to support his favorable standing at his previous employer is that his past supervisor from Contractor #2 provided a favorable reference for him. (Exhibit E)
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.

6. 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.