

DATE: January 24, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04944

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems raise security concerns because of his delay in resolving his debts to five creditors-including foreclosure on his home. 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 2002. 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 March 15, 2004. 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 April 14, 2004, and admitted allegations 1.a., 1.b., 1.c., 1. e., 1.h, with explanation and admitted in part and denied in part 2.a. He requested decision with a hearing.

After Department Counsel stated the case was ready to proceed, on June 28, 2004, the case was assigned to me. After a mutually convenient date for hearing was identified, a Notice of Hearing issued on July 20, 2004, set the matter for August 12, 2004, at a location near where Applicant works and lives. At the hearing the Department Counsel offered four exhibits (Exhibits 1-4). All were admitted into evidence. The Applicant offered four exhibits (Exhibits A-D) which were admitted into evidence. He testified himself and called two witnesses. The transcript (TR) was received on August 18, 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, 40 years old, has been employed by a defense contractor in State #1 since July 2002. He completed a Security Clearance Application (SF 86) in July 2002. Previously, he was self-employed from September 2000 to July 2002 in State #2 and worked as a subcontractor to a consultant. His prior work was with various federal contractors from 1997 to 2000 in State #2, in 1997 in State #3, and from 1996 to 1997 in State #4. He served in the military from 1985 to 1989. He was granted a Defense Department Secret clearance in June 1985 and again in November 1997. (Exhibit 1; TR 18-19, 22, 26, 38-39; Exhibit A)

Applicant attended college in State #5 from 1989 to 1990. (Exhibit 1) Applicant is not married; he was divorced in 1994. (Exhibit 1) He has a "significant-other" with whom he maintained a household in State #2 who has now moved to State #1 to live with him. (Answer; TR 21; TR 53-57)

Personal Conduct

When Applicant signed his SF 86 in July 2002 and certified that the statements on the form were true and correct even though he did not list several financial delinquencies. (Exhibit 1) A credit report in August 2002 disclosed adverse credit information. (Exhibit 4) Applicant acknowledges his failure to detail his debts⁽²⁾ other than his mortgage delinquency which he did disclose as only it was in the forefront of his mind. While he maintains he did not intend to falsify his SF 86 intentionally, he admits he failed to disclose his financial delinquencies on the SF 86 with respect to debts alleged in 1. a., 1. c., 1. g., and 1. h.; and that he did know he had delinquent debts. He failed to get a credit report before he completed it to be sure it was accurate. (Answer; TR 18, 21-22, 23-25) He stated that he had no reason to deliberately falsify as he thought the debts were "events that had happened" to him. (TR 27)

Finances

Applicant's salary history from the Social Security Administration (SSA) showed a rise from \$17,000 in 1990 to \$45,000 in 1999. In 2000 his salary dropped to \$38,000; the SSA record showed no salary reported to SSA in 2001 and \$25,00 in 2002. (Exhibit B)

When Applicant was self-employed from September 2000 to July 2002, he worked as a subcontractor to a consultant who was to give him \$2,500 every two weeks; however, only the first two checks were good. Subsequent checks were only partial payments or bounced, and eventually the consultant advised Applicant that he could not pay him. Applicant stopped working for him in January or February 2002. (TR 19-20, 29-31) Thus, Applicant became delinquent on his bills even though this consultant eventually paid him in full. In the period from December 2003 to January 2004, he was still behind on his mortgage payments and behind on several other debts. As the financial situation continued to get worse, he decided to "numb" himself to creditor calls; he ignored the mail and the calls from creditors. (TR 19) He was unemployed for two months until he got a job at a grocery store. (TR 20) When he got a job offer at his current employer in State #1, he had to move from State #2 in July 2001. (TR 21)

An August 2002 credit report documented Applicant's multiple delinquencies. (Exhibit 4) Applicant was interviewed by the Defense Security Service (DSS) and asked about his financial problems during that interview, but the DSS agent did not ask Applicant to provide a statement. (TR 28-29)

Applicant responded to a Financial Interrogatory submitted to him in October 2003 where he was given the opportunity to explain the status of his debts to nine creditors. He provided two Personal Financial Statements: prior to September 2003 where he showed his net monthly income at \$1,333 and his net monthly expenses at \$1,311 with \$21 remaining, which was insufficient to resolve his financial debts as he was maintaining two homes in State #1 and State #2. After September 2003 he showed his net monthly income at \$3,312 and his net monthly expenses at \$1,1616, monthly payments to two credits which totaled \$200, with \$1,495 remaining to resolve his other financial debts. (Exhibit 3)

A March 2004 credit report documented Applicant's delinquencies persisted. (Exhibit 4)

SOR 1.a. Applicant admits his debt to Creditor #1 of \$3,424 is unresolved; it was charged off in June 1999. (Exhibits 2, 3, 4; TR 31-32) He stated, "It's currently with a collection agency" and he intends to pay it, made an agreement and made several payments. He stopped making payments because of the expenses in moving himself and his girlfriend to State #1. (TR 32) This credit card debt pre-dated his employment problems. (TR 44-45)

SOR 1.b. Applicant admits his debt to Creditor #2 for \$25,000 for his delinquent mortgage is unresolved. He was advised by a law firm that his property in State #2 was going to be auctioned in July 2004, but he had no updated information. (Exhibits 2, 3, 4; TR 33-34)

SOR 1.c. Applicant admits his debt to Creditor #3, for \$6,550 which was charged off in February 2002 is unresolved. (Exhibits 2, 3, 4; TR 45) He stated that they were creating a new loan to pay off the hold loan which was up to date. (TR 34) He made a payment plan, but was unable to live up to the plan. (TR 36)

SOR 1.d Applicant denies a debt to Creditor #3 for \$417 as he believes it is a fee linked to the debt detailed in SOR 1.c. (Exhibits 2, 3, 4; TR 35)

SOR 1.e. Applicant admits a debt to Creditor #4 of \$13,000 is unresolved to this collection agency despite their offer to reduce the debt to \$6,000. He made a payment plan, but was unable to live up to the plan. (Exhibits 2, 3, 4; TR 37, 45) He believes this debt is the same as SOR 1.a. (TR 45-46)

SOR 1.f. Applicant denies a debt to Creditor #3 for \$1,773 as it is the same debt as SOR 1.c. (Answer)

SOR 1.g. Applicant denies a debt to Creditor #5 for \$2,007 as it is a debt of his former wife's where he was merely an authorized user. (Answer)

SOR 1.h. Applicant denies a debt to Creditor #6 for \$2,160. (Answer)

Applicant testified his income in August 2004 was \$764 per week after taxes, but he did not have a formal budget. At the time of the hearing he had only \$5 in his pocket until the next payday. (TR 39-40, 43; 57) He had another delinquent bill for \$900 net alleged in the SOR which he has paid. (TR 41-42) He has one credit card which has a \$423 balance which is 57 days past due. (TR 42) Although Applicant once consulted a bankruptcy attorney in State #2, he has not consulted any consumer credit counseling service. (TR 42-43) He did not have a plan in place to resolve any of his debts. (TR 46-47)

Applicant's girlfriend recently moved to State #1 and got a job offer in State #1 in August 2004 for a position where she is to make \$32,000 per year. (TR 32-33, 54-55) Applicant's girlfriend testified that in 1999 when she moved to State #2 that Applicant's finances were very good. She too responsibility for their finances and was paying the bills regularly until his employment problems with the consultant when their financial problems "snowballed." (TR 50-52) She testified that when she moved to State #1 that Applicant was attempting to negotiate with his creditors, but their income was limited as she had difficulty finding a job. (TR 53-54,56-57)

The site manager where Applicant is currently employed testified that he had know Applicant since 1992. The manager has the highest regard for Applicant's character. He has met deadlines on an important government project and is reliable. (TR 60-64) This manager agrees with the favorable company evaluation of Application. (TR 62, 65; Exhibit C) Applicant is high regarded by the program manager where he currently works on an important project and is not seen as a security risk. (Exhibit D)

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:

None

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 resolve any of his debts. While employment problems contributed to these debts, Applicant had no explanation for why one large debt of \$3,400 was written off in 1999 when his finances were very good and he reported \$45,000 in income in 1999. Other debts from his period of a reduced salary remain unresolved even though he has been employed in his current job since July 2002. Indeed his home with over \$25,000 was foreclosed in 2004. He reports becoming "numb" to these debts and he reported no effort to seek financial counseling. Indeed, he believes that these debts were "events that had happened" to him. While he affirms that intends to pay these debts, he has developed no plan or no time table to do so.

Applicant failed to mitigate (3) these concerns as there is no evidence he made resolving any of these debts a priority; he began payments to some creditors but did not persist. While he has performed well on his job and has stable employment, that factor alone is not sufficient to mitigate these persistent financial concerns. I have mitigated one debt he denied as the responsibility of his former wife (SOR 1.g.) and two other debts he denied. (SOR 1.d. and 1.h.) 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.c, 1.e. and 1.f.

Personal Conduct

While Applicant listed one debt (SOR 1.b.) on his SF 86, he failed to reveal any of his other personal debts when he completed it. While he denies the omissions were willful, he admits he knew about the debts and should have obtained a credit report, so he could have completed the form accurately. Thus, the Government established that this omissions 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 38 falls within Guideline E.

Applicant failed to overcome these Government's security concerns by demonstrating any of the mitigating⁽⁴⁾ factors. 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.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: 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. 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. His claim simply not to have recalled his other debts is not credible given his admission that he had repeated calls from creditors about delinquencies.
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.