

KEYWORD: Criminal Conduct, Financial, Personal Conduct

DIGEST: Security concerns persist over Applicant's misdemeanor criminal conduct, his finances, and his personal conduct. While his misdemeanor arrests from 1989 to 1994 can be mitigated, his disregard for the law was again demonstrated by his June 2000 arrest and guilty plea to driving when his privileges were suspended. While in 2002 he finally obtained a driving license, that corrective action is not sufficient evidence of rehabilitation in light of security concerns that persist over his demonstrated disregard for the law: he had a pattern for ten years where he chose to drive even when he did not have a license. While he developed a plan to resolve his state and federal tax liens, he provided no evidence of financial counseling; debts to other creditors remain unresolved despite his good income and limited expenses. Clearance is denied.

CASENO03-13853.h1

DATE: 01/11/2005 DAT: January 11, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13853

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns persist over Applicant's misdemeanor criminal conduct, his finances, and his personal conduct. While his misdemeanor arrests from 1989 to 1994 can be mitigated, his disregard for the law was again demonstrated by his June 2000 arrest and guilty plea to driving when his privileges were suspended. While in 2002 he finally obtained a driving license, that corrective action is not sufficient evidence of rehabilitation in light of security concerns that persist over his demonstrated disregard for the law: he had a pattern for ten years where he chose to drive even when he did not have a license. While he developed a plan to resolve his state and federal tax liens, he provided no evidence of financial counseling; debts to other creditors remain unresolved despite his good income and limited expenses. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) of Reasons (SOR) on March 29, 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. [\(1\)](#) (Item 1) The SOR alleges specific concerns over criminal conduct (Guideline J) in paragraph one, financial considerations (Guideline F) in paragraph two, and personal conduct issues (Guideline E) in paragraph three. Applicant received the SOR on April 20, 2004, and responded to these SOR allegations in an Answer notarized on April 26, 2004. He requested a decision without a hearing.

Department Counsel on October 15, 2004, prepared a File of Relevant Material (FORM) and forwarded the FORM to Applicant on October 22, 2004. She advised Applicant that he had 30 days from receipt of the letter to respond. Applicant received the FORM on November 2, 2004. He provided a response (Exhibit A) on November 26, 2004, to which Department Counsel did not object. On December 15, 2004, the case was assigned to me.

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, 37 years old, has worked for a defense contractor since September 2001. In November 2001 he completed a Security Clearance Application (Standard Form 86) (SF 86) and requested a security clearance which he needs for his position. He was unemployed from June to November 2001. From 1999 to 2001 he worked for Company #2. (Exhibit 4) Applicant married in 1996. (Exhibit 4)

Criminal Conduct, Financial Considerations and Personal Conduct

Applicant admits he has had a series of ten arrests and convictions beginning in 1989 and continuing until June 2000 (SOR 1.b .through 1.k) (Exhibit 3: Answer):

In December 1989 he was convicted of Driving Under the Influence of Alcohol and/or Drug (DUIA) and placed on summary probation for three years, fined \$964, and sentenced to 48 hours confinement. (SOR 1.k.)

In March 1990 he was arrested and charged with assault. (SOR 1.j.)

In June 1991 he was issued two citations and failed to appear on February 1993, so a warrant was issued in July 1994: Count I, the open alcoholic container count was dismissed with a \$50 fine; Count II was dismissed. (SOR 1.i.)

In June 1991 he was arrested and charged with three counts; he pled built to being an unlicensed driver and was sentenced to three years summary probation and fined \$300. In May 1992 he did not comply with the public service given in lieu of fine; his probation was revoked and a warrant issued. In October 1992 his probation was reinstated and modified. (SOR 1.h.)

In September 1992 he was arrested for three counts; he pled guilty to Driver's License Suspended or Revoked in a plea bargain and was sentenced to three years summary probation and fined \$811. In July 1995 probation was revoked and a warrant issued; in July 2000 the warrant was purged unserved; and his probation was reinstated and terminated. (SOR 1.g.)

In January 1993 he was arrested and charged with Driver's License Suspended or Revoked. He pled guilty and was sentenced to three years summary probation, eight days confinement and fined \$1,351. In July 1995 probation was revoked and a warrant issued; in July 2000 the warrant was purged unserved; and his probation was reinstated and terminated. (SOR 1.f.)

In February 1993 he was arrested and charged with four counts; he plead guilty to two counts, Driving with Measurable Amount of Alcohol in Blood and Driving with Suspended License and the remaining charges were dismissed. He was sentenced to pay at \$1,350 fine with credit of \$400 for time served in custody; he was sentenced to serve five days in jail with credit for time served and fined \$500; he was given an 18 months First Conviction Program for Driving with

Suspended License. (SOR 1.e.) However, he never completed this program. (Exhibit 10)

In February 1994 he was arrested and charged with falsely identifying himself as a peace officer. In June 1994 he pled guilty and was sentenced to 30 days in jail and was given credit for time served in custody. (SOR 1.d.)

In June 1994 he was arrested and charged with two traffic counts and in August 1994 failed to appear in court and a bench warrant was ordered and issued in August 1994. In August 1999 the warrant was purged unserved and the case dismissed. (SOR 1.c)

In June 2000 he was arrested and charged with three traffic counts; he pled guilty to Driving When Privileges are Suspended and was fined \$100. (SOR 1.b.) He received three years unsupervised probation and was ordered to sign up for the program he had not completed in 1993. (Exhibit 10)

After his licence was revoked in June 1991, he continued to operate a motor vehicle until June 2002 without being legally licensed to do so. (SOR 1.a.) (Exhibit 10)

After Applicant completed the driving program in May 2002, he applied for and received his driver's license in June 2002. He has a current driver's license issued in October 2004, a valid motor vehicle registration card, and valid insurance. (Exhibit 10; Exhibit A)

Applicant was interviewed by the Defense Security Service (DSS) in March 2003 and confirmed delinquent financial information contained in his credit report concerning a federal tax lien of over \$12,000 and two state tax liens totaling close to \$4,000; he also had two collection accounts with a creditor totaling \$459. (SOR 2.a. through 2.e.) He explained that the federal and state tax liens began in 1994 based on problems with his 1988 and 89 returns and the amount had increased due to interest and penalties. He conceded that his irresponsibility kept him from resolving these financial issues for several years. In 2002 he began making monthly payments of \$220 to the state tax board and was trying to also resolve his federal tax obligations, but had not done so in March 2003. He had failed to resolve the debts to the creditor for past traffic fines also due to irresponsibility. He planned to resolve these issues by April 2003. (Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 15) Applicant provided a March 2003 financial statement where he was living within his means: he had a monthly net income of approximately \$2,800 and monthly expenses and debts of approximately \$2,000 with a net remainder of \$780. (Exhibit 10)

However, a September 2004 credit report showed that his credit problems remained unresolved. (Exhibit 14) By November 2004 the state tax lien had expired. His federal tax lien was released after he entered an Installment Agreement in December 2004 to make monthly payments of \$200 to resolve his \$6,619 in taxes owed from 1997, 1998. (Exhibit A)

In November 2004 Applicant's wife acknowledged that the \$221 debt to a department store in collection since October 1994 is her debt, and she would resolve it in 60 days. (SOR. 2.f.) (Exhibit A) Applicant still has an unresolved debt to Creditor #1 for \$500 in unpaid fines and owes another creditor \$262 for telephone charges. (SOR 2.g.) (Exhibits 3, 6)

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 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;
2. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

1. The criminal behavior was not recent;

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;
6. The individual initiated a good-faith effort to repay overdue creditors

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:

5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

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

Criminal Conduct

The Government established that Applicant demonstrated an utter disregard for the law: from 1989 to 2000 he was arrested nine times and also broke the law from 1991 to 2002 by driving without legally being licensed to do so. Even though these arrests were misdemeanors, Applicant falls within Disqualifying Conditions (DC) 1 & 2 because of his multiple lesser offenses.

In mitigation Applicant argues that he has matured and completed a required course in May 2002 which permitted him subsequently to obtain a valid driver's license. Many of the arrests are more than five years old and may be mitigated under MC 1, as the criminal behavior was not recent. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for him under subparagraphs 1.c. through k. under SOR Paragraph 1. However, his June 2000 arrest and conviction and his pattern of driving without a valid license for over ten years creates a heavy burden. He provided insufficient evidence to demonstrate under MC 6, clear evidence of successful rehabilitation. After his long history of disregard for the law, he needs to show more evidence of a pattern of responsible conduct than simply providing a copy of a valid driver's license. He provided no evidence of his conduct on the job nor any other personal references to establish his rehabilitation. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 1.a. and 1.b. under SOR Paragraph 1.

Financial Considerations

Applicant 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. His financial situation with respect to his federal tax lien worsened by his delay in resolving the debt for his taxes and to other creditor. His conduct raised security concerns as his failure to meet these obligations indicates that he may not meet other federal obligations.

In mitigation Applicant established that his wife is taking responsibility for one debt (SOR 2.f.); and he also established he made monthly payments of \$220 starting in July 2002 to resolve the state tax lien which expired in November 2004 as it was not extended after being in effect for ten years. Also, in November 2004 he made an agreement to make \$200 monthly payments to resolve his federal tax debt. While he delayed his efforts to resolve the federal tax debt, Applicant finally took responsibility for his tax debts and developed a plan to resolve them. Applicant demonstrated he met mitigating conditions (MC ⁽²⁾ 1 and 6 with respect to his tax debts. After considering the Appendix Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 2.c., 2.d., 2.e, and 2.f. under SOR Paragraph 3 as I conclude that he has mitigated those allegations in SOR 2.

However, Applicant provided no evidence on having resolved his debt to Creditor #1 for two debts or to another creditor for a telephone debt. Thus, he has failed to resolve all of his debts even after a March 2003 promise to DSS that he intended to do so in the future. Thus, security concerns remain over these other persistent debts despite Applicant's evidence in 2003 that he now has a sufficient income with limited expenses which provided him the means to resolve them. He provided no explanation as to why those debts remain. Further, he provided 2004 updated budget information to show he now lives within his income and currently meets all of his obligations. Applicant further provided no evidence that he received any financial counseling. Thus, security concerns remain over whether he is sufficiently financially responsible.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs under SOR Paragraph 2 as I conclude that he has failed to mitigate the allegations in SOR 2.a., 2.b. and 2.g.

Personal Conduct

As discussed above, the Government clearly established security concerns over Applicant's personal conduct. As his criminal conduct and financial mismanagement reflect questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information. Conditions that could raise a security concern and may be disqualifying include DC 5, a pattern of rule violations. He failed to provide sufficient evidence to mitigate these concerns. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs under SOR Paragraph 3 as I conclude that he has failed to mitigate the allegations in SOR 3.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 J AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against 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

Paragraph 2. Guideline F AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.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. **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.