

KEYWORD: Financial

DIGEST: While Applicant's financial problems raised security concerns because of his delay in resolving under \$10,000 in debts to several creditors, he has shown a good-faith effort to resolve his debts. He has reduced his debts substantially and is consistently making monthly payments to resolve the remaining three debts. He has demonstrated his commitment to becoming financially responsible. He has invested in two homes and lives modestly. He has a stable job and is highly regarded for his excellent work ethic. Clearance is granted.

CASENO: 03-14665.h1

DATE: 02/17/2005

DATE: February 17, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14665

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

While Applicant's financial problems raised security concerns because of his delay in resolving under \$10,000 in debts to several creditors, he has shown a good-faith effort to resolve his debts. He has reduced his debts substantially and is consistently making monthly payments to resolve the remaining three debts. He has demonstrated his commitment to becoming financially responsible. He has invested in two homes and lives modestly. He has a stable job and is highly regarded for his excellent work ethic. 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 March 2, 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). Applicant responded to these SOR allegations in an undated, notarized Answer with attachments (Exhibit A) and requested a hearing. (Answer; TR 15, 20)

After Department Counsel stated the case was ready to proceed, on June 2, 2004, the case was assigned to me. A mutually convenient date for hearing was identified; and a Notice of Hearing issued on July 20, 2004, set the matter for August 9, 2004, at a location near where Applicant works and lives. At the hearing the Department Counsel offered the Government's three exhibits (Exhibits 1-3) which were admitted into evidence. The Applicant offered two exhibits, which were admitted into evidence (Exhibits A-B), called one witness, and testified himself. The Government did not object to leaving the record open. Applicant was given until an additional seven days until August 16, 2004, to submit additional evidence as several of his witnesses could not appear. Department Counsel was given additional time until September 1, 2004, to review the documents he submitted. (TR 76-77) On August 15, 2004, Applicant forwarded an additional exhibit of five pages. (Exhibit C) Department Counsel made with no objection. Exhibit C was admitted into evidence, and the record then closed. The transcript (TR) was received on August 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, 35 years old, has been employed by a defense contractor in State #1 since November 2001. He completed a Security Clearance Application (SF86) in November 2001. (Exhibit 1) He was unemployed from August to November 2001. Previously, he had worked from December 2000 to August 2001 for Contractor #2 until they went bankrupt and from September 1997 to December 2000 for Contractor #3. He served in the military reserve from July 1996 to July 2001, in the active military from June 1989 to July 1996, and in national guard from October 1987 to June 1989. He previously received a Secret clearance in arch 1988. (Exhibit 1; TR 57-59; 61-63)

Applicant attended college from 1988 to 1989; he was married in 1990. (Exhibit 1) He has three children born in 1989, 1991, and 1996. (Exhibit 2; TR 57)

Finances

Applicant disclosed on his SF86 that he had financial problems in 1997 and refinanced his home to pay off his credit card debts in full. (Exhibit 1) After he left military service, Applicant worked for a neighbor, who did not pay him the promised \$750 per week salary; in fact he made only \$17,000 from August 1996 to August 1997. In addition, he was injured on the job and was out of work for several weeks. He used credit cards to feed his children, but was able to get a second mortgage to resolve the majority of those debts. However, some creditors were not paid as discussed below. (Answer; Exhibit 2, at 3; TR 47-48, 52-53, 58-61)

In November 2001 Contractor #2 closed without any notice to Applicant; he received two months severance pay but did not file for unemployment. His wife was working part-time. (Exhibit 2)

In April 2003 Applicant and his wife qualified for a home valued at \$189,000 with a \$1,109 monthly mortgage payment. He planned to sell his previous home after spending \$5,000 to fix it up for sale. He anticipated a \$2,000 federal tax refund and considered his financial situation as fair as he was trying to resolve his past financial problems. His net family income was \$4,984 per month; he had monthly expenses of \$1,575 and was current in his monthly payments of \$2,772. He had a net remainder of \$637. (Exhibit 2)

Applicant reported his many efforts to resolve his debts: he was able to resolve debts to several creditors.

SOR 1.a..1.b. His debt to Creditor #1, a credit card, of \$4,292, was a delinquent account placed for collection. He has been making \$100 monthly payments for 18 months; the balance as of March 2004 was \$3,917. (The debt to Creditor #2 is the same as #1.) (Answer; Exhibit 3, Exhibit A; TR 19-20, 22-29)

SOR 1.c. He paid the debt to Creditor #3, a credit card, of \$4,268, a debt acquired in 1997. (Answer; Exhibit 3, Exhibit A)

SOR 1.d. He paid the debt to Creditor #4, for medical expenses, of \$354. (Answer; Exhibit 3, Exhibit A)

SOR 1.e., 1.f. His debt to Creditor #5, a hospital for emergency room treatment and other medical bills, for \$398 and \$319 was not covered by insurance. This debt is being resolved through a \$100 per month payment plan. The payments are electronically debited from their account and began in March 2004. Applicant's wife reported the total debt is \$1,000 and she anticipated resolving the debt in less than a year. (Answer; Exhibit 3, Exhibit A; TR 20-21, 29-30, 49)

SOR 1.g. He paid the debt to Creditor #6 for medical expenses, of \$718. (Answer; Exhibit 3, Exhibit A)

SOR 1.h. His debt to Creditor #7 for a credit card debt was placed for collection for \$5,183. He is resolving this debt by \$100 monthly payments which began in March 2004 and are electronically debited from their account. (Answer; Exhibit 3, Exhibit A; TR 21, 32-33)

Applicant's wife handles the budget. (TR 34, 50-51) His net family income was \$4,984 per month in April 2003: his wife in August 2004 earns \$300 more per month and he earns \$750 more per month. In April 2003 he had monthly expenses of \$1,575 and was current in his monthly payments of \$2,772. He had a net remainder of \$637. In August 2004 their mortgage had increased to \$1,575 as of October 2003. (TR 35-41, 43-44) They have payments for two cars, one a 1994 model and the other a 1996 model. (TR 40) The current home is estimated to be worth \$240,000 with approximately \$50,000 in equity. They have owned a second home for eleven years, but they could not sell it when they moved to the new home; it has been rented since October 2003 for an amount that covers the mortgage payment. (TR 44-46) They had hoped to sell the first family home to resolve all past debts, but were unable to do so. (TR 53-54) Applicant's current annual salary is over \$65,000. (TR 73)

Applicant has developed no new delinquencies. He has a corporate credit card he uses for business expenses. (TR 64)

References

Applicant's supervisor for three years reported he has been a "stellar employee zero security incidents." He is key to the company's organization. He recommended Applicant for a position of trust. (Exhibit B)

The current manager has known Applicant on a daily basis for three years and attested that Applicant performs well in a very demanding, high-stress job. "His work ethics are perfect" as he never "cuts corners." His work is "so universally accepted and sought after that he is constantly asked for, by name, to complete special projects." He views Applicant as "a rare individual with the vast technical knowledge required . . .and the drive to use it to the best advantage." He recommended Applicant for a position of trust. (Exhibit C)

A co-worker who has know Applicant on a daily basis since February 2004 attested that he always puts the customer first in his priorities and is willing to learn new things. (Exhibit C)

His team supervisor for two years states that Applicant is always willing to take on a task and complete it with little or no direction. (Exhibit C)

A friend who has known Applicant for 17 years attested that he is an "honest, responsible, hardworking and trustworthy person." (Exhibit C)

The direct manager who has supervised Applicant for three years attested that Applicant has the respect of all of his military and civilian government customers as well as other contractor personnel. He recommended Applicant for a position of trust. (Exhibit C)

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.

Initially, the Government has the responsibility to present evidence under the disqualifying conditions that demonstrate 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

During the 1997 period when he was underemployed and injured on the job, Applicant developed financial conditions that could disqualify him for a security clearance: (1) a history of financial problems and subsequently he demonstrated (3) an inability or unwillingness to satisfy all of his debts. In 2001 he was briefly unemployed when his company went bankrupt. At the time of the investigation he had several debts that totaled under \$10,000. In part, conditions that resulted in this behavior were largely beyond Applicant's control (e.g., loss of employment, a business downturn). Applicant has now mitigated⁽²⁾ these financial concerns as he is making it a priority to resolve these dated debts. Initially, in 1997 Applicant chose to resolve a majority of these debts by re-financing his house and taking a second mortgage. Some debts were not resolve in that period and persisted ; also he developed some new medical debts that were unresolved. He has now made arrangements directly with all of his creditors either to pay them off completely or

to set up a payment plan where the amount is electronically transferred to these creditors. While he still owes money to three creditors, he has credibly stated his intent to resolve all those debts. He has enough income to handle his current financial obligations, including the payments for two houses- one is rented and the other is valued at over \$240,000. He is moderate in his spending. Thus, Applicant has sufficiently demonstrated he is now financially responsible as he is following through on his plan to resolve these debts.

Thus, he has effectively mitigated security concerns over his debts alleged in SOR 1.a. through 1.h. In addition he is in a very stable position at his job where he is highly regarded by all of his supervisors and managers. One called him a "stellar employee." 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.h.

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

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. **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.