

KEYWORD: Financial, Sexual Behavior, Criminal Conduct

DIGEST: Applicant's financial problems continue to raise security concerns over his failure to resolve \$45,000 in debt to numerous creditors and over his sexual behavior and criminal conduct. In 2000 he was arrested for solicitation to commit prostitution which was null proseed, but he continued to engage in the conduct and to solicit relationships with prostitutes from April 2000 to 2001 in two states. Though he promised in 2003 to begin a good-faith effort to resolve his debts, he failed to do so even though he has a stable job since April 2001. Also, he failed to seek financial counseling nor did he file for bankruptcy to resolve his dated debts until May 2005. Clearance is denied.

CASENO: 03-16772.h1

DATE: 08/29/2005

DATE: August 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16772

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems continue to raise security concerns over his failure to resolve \$45,000 in debt to numerous creditors and over his sexual behavior and criminal conduct. In 2000 he was arrested for solicitation to commit prostitution which was null proseed, but he continued to engage in the conduct and to solicit relationships with prostitutes from April 2000 to 2001 in two states. Though he promised in 2003 to begin a good-faith effort to resolve his debts, he failed to do so even though he has a stable job since April 2001. Also, he failed to seek financial counseling nor did he file for bankruptcy to resolve his dated debts until May 2005. 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 November 8, 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), sexual behavior (Guideline D), and criminal conduct (Guideline J). Applicant responded to these SOR allegations in a notarized Answer received on December 1, 2004, and requested a hearing.

After Department Counsel stated the case was ready to proceed on December 28, 2004, the case was assigned to me on January 3, 2005. On March 7, 2005, DOHA issued a Notice of Hearing and set this case to be heard on March 30, 2005, in a city near where Applicant lives and works.

At the hearing the government presented eleven exhibits (Exhibits 1-11). (TR 17-40) Applicant objected to Exhibits 4, 5, 11. Exhibit 4 was not admitted but Exhibits 5 and 11 were admitted over his objection. (TR 22- 40). All other exhibits were admitted into evidence without objection. Applicant testified. Applicant's request that he be given additional time to present his evidence was granted. Initially, he was granted two weeks until April 13, 2005, to submit additional evidence; and Department Counsel was granted one week for review. (TR 40-42) Later Applicant requested more time and was granted until May 9, 2005, to submit his evidence. (TR 119-120) Applicant's counsel submitted a document (Exhibit A) on May 6, 2005. Department Counsel on May 31, 2005, stated he did not object. Consequently, Exhibit A was admitted into evidence; and the record then closed. The transcript (TR) was received on April 11, 2005.

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, 58 years old, has been employed by a defense contractor in State #1 since April 2001. He completed a Security Clearance Application (SF 86) on August 20, 2001, and was granted an interim secret clearance. He was unemployed from February to April 2001 in State #2 and worked part time for Employer #2 from December 2000 to February 2001. He was unemployed from June 2000 to December 2000. From May 1995 to June 2000 he was employed with Employer #3 in State #2. He served in the military from 1967 to 1971 and again from 1973 to 1979. He was previously granted a top secret clearance in 1967 and a secret clearance in 1989. (Exhibits 1, 2; TR 136)

Applicant received a master's degree in 1987 from a university in State #3. (Exhibit 1) Applicant married in 1973 and divorced in 1990. He married again in 1992 and separated in April 2000, and divorced in January 2003. He has two children born in 1975 and 1979 and three step children born in 1961, 1966, and 1972. (Exhibits 1, 2) He is now living with a woman who was working as a prostitute when he initially met her. (Exhibit 2)

Finances

In his SF 86 Applicant disclosed financial problems after he separated from his wife which had prevented him from being able to rent an apartment, so he lived in numerous motels and hotels in State #2. (Exhibit 1) Investigation by the Defense Security Service (DSS) disclosed adverse credit which he acknowledged in his May 2003 interview and statement. He stated he had not made any attempts to resolve his bad credit in many years, but understood that he must satisfy his debts to remain employed. (Exhibit 2, 9)

During his May 2003 interview he provided a Statement where he stated his monthly net income was \$3,211; his monthly expenses were \$2,887. Although he had a monthly net remainder of \$224, he was paying nothing on any of his delinquent accounts. He had assets of \$14,050. (Exhibit 2) In 2003 Applicant's annual salary was \$71,388; in 2004, \$72,727. (Exhibit A) In 2005 Applicant's annual salary was \$78,000. (TR 122)

Applicant filed a voluntary petition for bankruptcy in May 2005 which documented his assets included \$36,000 in a 401k plan. Overall his personal property assets totaled \$44,829.10 and his debts to creditors totaled \$42,707.58. He listed no payments to creditors within 90 days or within one year immediately preceding the commencement of the bankruptcy case. He included debts to other creditors claims for \$349, \$3,573, \$1,301, \$285, \$4,391, \$34, \$164 in his Chapter 7 bankruptcy claim as well as the debts to creditor's detailed below. (Exhibit A)

SOR 1.a.. Applicant denied his debt to Creditor #1, a bank, for \$669 as he claimed he had paid it. At the hearing he was not sure if he had contested the debt or paid it by garnishment. (Answer; Exhibits 3, 9; TR 46-49, 55-56) However, he accepted responsibility as he included Creditor #1's claim of \$669 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.b. Applicant denied a debt to Creditor #2, a hospital, for \$551 for treatment for his son; he claimed a lawyer got the judgment vacated. (Answer; Exhibits 2, 3, TR 49-51) However, he accepted responsibility as he included Creditor #2's claim of \$551 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.c. Applicant admits his debt to Creditor #3, a credit card, for \$1,202, but claims he was married and should only be responsible for half. He has not made any effort to resolve this debt. (Answer; Exhibits 2, 3; TR 52-53) He included Creditor #3's claim of \$1,202 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.d. Applicant admits his debt to Creditor #4, a utility, for \$66, placed for collection in 1998. He stated his wife should have paid this bill but did not. At the hearing he stated he had paid them \$50, but now only owes them \$16 which he has not paid. He intended to pay this bill, but had not done so as he was ill in March 2005. (Answer; Exhibits 2, 3, 7, 8; TR 53-54) He included Creditor #4's claim of \$66 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.e. Applicant admits his debt to Creditor #5 for \$11,547 for a judgment entered against him in June 1998 for a repossessed automobile. (Answer; Exhibits 2,3, 6, 7, 8, 9; TR 56-59) He included Creditor #5's claim of \$11,547 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.f. Applicant admits his debt to Creditor #6 for \$906 for dental work which was placed for collection in December 1998. He thought the bill should have been paid for by insurance but did not pursue his claim in a timely fashion. (Answer; Exhibits 2, 3, 6, 7, 8; TR 59-61) He included Creditor #6's claim of \$906 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.g. Applicant denied his debt to Creditor #7 for \$164 for an account placed for collection by a telephone company in December 1998. (Answer; Exhibits 2, 3, 6, 7, 8, 9; TR 61-62)

SOR 1.h. Applicant denied his debt to Creditor #8 for \$3,614 for an account placed for collection in 2001 for a department store bill. However, he has been making \$200 monthly payments electronically. (Answer; Exhibits 2,3,6, 7, 8; TR 62-64; 65-66) He included Creditor #8's claim of \$3,755 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.i. Applicant denied his debt to Creditor #9 for \$349 for an account placed for collection in 2001. He did not know what this debt was for. (Answer; Exhibits 2, 3, 7, 8; TR 68)

SOR 1.j. Applicant admits his debt to Creditor #10, but denies the debt is \$2,296 as the phone was used without his permission by another party. He believed this is the same debt as SOR 1.i. where the collection agency is pursuing the debt where he is paying \$200 a month electronically. (Answer; Exhibits 2,3, 6, 7, 8, 9; TR 68-69)

SOR 1.k. Applicant denied his debt to Creditor #11, for \$273 for an account charged off in 2001 which he is disputing. (Answer; Exhibits 2, 3, 6, 7, 8; TR 70-72) He included Creditor #11's claim of \$273 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.l. Applicant denied his debt to Creditor #12 for \$2,640 for an account placed for collection in 2001. However, he claimed he was making payments on this account and had paid \$400; he did not provide documentation. (Answer; Exhibits 2,3,6, 7, 8; TR 62-64)

SOR 1.m. Applicant denied his debt to Creditor #13 for \$287 for an account placed for collection in 2001 which he is disputing. (Answer; Exhibits 2, 3, 6, 7, 8; TR 72-74) He included Creditor #13's claim of \$287 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.n. Applicant denied his debt to Creditor #14 for \$194 for an account placed for collection in 2001 which he disputes. (Answer; Exhibits 2, 3, 6, 7, 8; TR 74-75) However, he included Creditor #14's claim of \$194 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.o. Applicant denied his debt to Creditor #15, for \$8,769 for an account placed for collection in 2003 which he is disputing. He thought he had paid off this debt in 1992, but did not have any documentation from that period. (Answer; Exhibits 2, 3, 6, 7, 8; TR 79-80) However, he included Creditor #15's claim of \$8,769 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.p. Applicant denied his debt to Creditor #16, for \$1,107 for a judgment entered in January 2004. (Answer; Exhibits 2, 3, 6, 7, 8; TR 80-82) However, he included Creditor #16's claim of \$1,236 in his Chapter 7 bankruptcy claim. (Exhibit A)

SOR 1.q. Applicant admitted his debt to Creditor #17, for \$1,200 for a judgment entered against him by a bank. However, he does not have the resources to pay this judgment and the creditor refused Applicant's offer to pay him \$100 per month. (Answer; Exhibits 2, 3, 6, 7, 8; TR 82-86)

During his second divorce, his wife got the house, and the decree did not allocate any of the debts to her. Applicant does not know why these dated debts "popped up." While he said he would try to resolve them, he stated he was not in a position to pay over \$40,000 in delinquent debts. (TR 103-105) He has had a clearance since 1967 and would not allow his financial problems to create a security risk. (TR 106) He has not paid on these debts in the past two years because of his divorce and the expenses of moving to a new state. (TR 108-111)

Sexual Behavior

Applicant was arrested in April 2000 in State #1 and charged with Solicitation to Commit Prostitution after he agreed to pay money for a sex act. In June 2000 he was approved to participate in a pre-trial diversion program where the charge was deferred for six months and would be dismissed if he completed the program. He attended an education program. In January 2001 the state attorney's office filed a Nolle Prosequi and the charge was dismissed. (SOR 2.a.) (Answer; Exhibits 1, 2; TR 86-88)

After he was separated from his wife in April 2000, Applicant acknowledged he sought the services of prostitutes weekly for one year. (SOR 2.b.) Later he developed a relationship with one of the prostitutes with whom he now lives; he does not have a relationship now with any other prostitute. (Answer; Exhibit 2; TR 90-97) He advised his supervisor of this relationship when he interviewed for this job. (TR 100-103) Since moving to State #1 in August 2001, Applicant sought the services of a prostitute on one or two occasions. (SOR 2.c.) (Answer; Exhibit 2; TR 98-99)

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

***The Concern:* 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.**

Guideline D - Sexual Behavior

***The Concern:* Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to coercion, exploitation, or duress or reflects lack of judgment or discretion. ⁽²⁾ Sexual orientation or preference may not be used as a basis for or a disqualifying factor in determining a person's eligibility for a security clearance.**

Guideline J - Criminal Conduct

***The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

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

The Government established disqualifying conditions (DC) that could raise a security concern and may be disqualifying including Applicant's (1) history of financial problems and his (3) inability or unwillingness to satisfy his debts. Applicant has several long-standing debts that total over \$40,000 and remain unresolved. Applicant disputed several debts; however, the government provided supporting evidence and several of the debts Applicant disputed he accepted when he included them in his bankruptcy filing in May 2005. Realizing the security significance of these debts, he promised in 2003 to make arrangements to pay some of these debts. However, he provided little evidence he has done so even though he has been in a senior position since 2001 and currently earns \$78,000 annually. He filed a voluntary petition for bankruptcy in May 2005 which documented his assets as totaling over \$44,000 and his debts of over \$42,000; he included a majority of the creditors detailed in the SOR as well as other creditors in his Chapter 7 bankruptcy claim; however, the court has not yet taken action on this claim. SOR 1.q. is not included in the bankruptcy claim.

While he has had income to handle his current financial obligations and to resolve his prior debts since 2001, Applicant overall failed to mitigate⁽³⁾ these financial concerns as he has provided no evidence that he resolved these multiple debts except for his testimony that he is making electronic payments on the debts detailed in subparagraphs 1.j. and 1.l. to resolve this \$2,296 debt and this \$2,640 debt. Despite his favorable testimony on those debts, his bankruptcy petition did not identify any claims where he had been making payments.

Overall, Applicant failed to demonstrate that he is now financially responsible as he failed to follow through and develop a plan to resolve these debts even after he advised DSS in 2003 that he understood that he must satisfy his debts. Neither did Applicant show that he has received or is receiving counseling for these long-standing problem. While he finally filed a bankruptcy petition in May 2005, the debts have not yet been discharged. Thus, there is as yet no clear indications that the problem is being resolved or is under control as the court may or may not discharge all these debts. Also, even a discharge in bankruptcy does not immunize an applicant from these financial concerns as the applicant still has a responsibility to demonstrate that he has changed the financial habits that led to the debts. While Applicant was separated in 2001 and later divorced, he did not establish that he faced substantial circumstances that were beyond his control that could be mitigated under MC 3.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 1. as he failed to mitigate the allegations in SOR subparagraphs 1.a. through 1.q., except I rule for him on subparagraphs 1.g. and 1.i., where he disputed the debts and 1.j. and 1.l. where he testified he is making payments to resolve these debts.

Sexual Behavior

The government established security concerns over his sexual behavior⁽⁴⁾ as his conduct falls within Disqualifying Conditions (DC) 1 & 4: Applicant was arrested in April 2000 in State #1 and charged with Solicitation to Commit Prostitution after he agreed to pay money for a sex act. In June 2000 he was approved for a pre-trial diversion program where the charge was deferred for six months and would be dismissed if he completed the program. He attended an education program. In January 2001 the state attorney's office filed a Nolle Prosequi and the charge was dismissed. After he was separated from his wife in April 2000, Applicant sought the services of prostitutes weekly for one year and developed a relationship with one of the prostitutes. He now lives with her and supports her and states he no longer has a relationship with any other prostitute. However, when he first moved to State #1 in August 2001, Applicant sought a relationship with a prostitute on one or two occasions.

Applicant failed to mitigate⁽⁵⁾ these concerns. As a 58-year old man, his conduct cannot be mitigated by his age. While he successfully completed a pre-trial diversion program, he continued the conduct for another year, not only in State #2 but also in State #1 after he moved to accept a new job. Thus, he does not meet the mitigating condition, E2.A4.1.3.2. (The behavior was not recent and there is no evidence of subsequent conduct of a similar nature.) While he testified he has established a relationship with one of the women he met through his participation in prostitution, he failed to establish that his behavior no longer serves as a basis for coercion, exploitation, or duress as required by MC E2.A4.1.3.4.

After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a., 2.b. and 2.c. under SOR Paragraph 2.

Criminal Conduct

The government established security concerns over his criminal conduct. Conditions that could raise a security concern and may be disqualifying include: E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; and E2.A10.1.2 .2. A single serious crime or multiple lesser offenses. As discussed above, in April 2000 in State #1 Applicant was charged with Solicitation to Commit Prostitution after he agreed to pay money for a sex act. To his credit he was approved for a pre-trial diversion program where the charge was deferred for six months and was dismissed after he completed an education program. He did not explain what concepts were covered in the program nor how they impacted his behavior. In January 2001 the state attorney's office filed a Nolle Prosequi, and the charge was dismissed. However, despite this arrest and his required education in the pre-trial program, after he was separated from his wife in April 2000, Applicant sought the services of prostitutes weekly for one year in State #2 and again in State #1.

Thus, Applicant failed to mitigate ⁽⁶⁾

these security concerns under MC 2 because the crime was not isolated and because under MC 6 he failed to show sufficient evidence of rehabilitation. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 3.a. under SOR Paragraph 3

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.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o. Against Applicant

Subparagraph 1.p. Against Applicant

Subparagraph 1.q. Against Applicant

Paragraph 2. Guideline D: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline J: 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. The adjudicator should also consider guidelines pertaining to criminal conduct (Guideline J); or emotional,

mental, and personality disorders (Guideline I), in determining how to resolve the security concerns raised by sexual behavior.

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. E2.A4.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A4.1.2.1. Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

E2.A4.1.2.2. Compulsive or addictive sexual behavior when the person is unable to stop a pattern of self-destructive or high-risk behavior or that which is symptomatic of a personality disorder;

E2.A4.1.2.3. Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

E2.A4.1.2.4. Sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

5. E2.A4.1.3. Conditions that could mitigate security concerns include: E2.A4.1.3.1. The behavior occurred during or prior to adolescence and there is no evidence of subsequent conduct of a similar nature;

E2.A4.1.3.2. The behavior was not recent and there is no evidence of subsequent conduct of a similar nature;

E2.A4.1.3.3. There is no other evidence of questionable judgment, irresponsibility, or emotional instability;

E2.A4.1.3.4. The behavior no longer serves as a basis for coercion, exploitation, or duress.

6. E2.A10.1.3. Conditions that could mitigate security concerns include: E2.A10.1.3. 1. The criminal behavior was not recent; E2.A10.1.3. 2. The crime was an isolated incident; E2.A10.1.3.3. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;

E2.A10.1.3. 4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; E2.A10.1.3. 5. Acquittal; E2.A10.1.3. 6. There is clear evidence of successful rehabilitation.