

DATE: August 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-27022

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant's past financial problems raised security concerns because of his delay in resolving his debts, he has now demonstrated he has made a good-faith effort to resolve all his debts and has reformed his financial practices. In addition, Applicant has a stable job where he is highly regarded. Though security concerns over his past personal conduct are serious, he has matured substantially and demonstrated he has now reformed his character and conduct. 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 May 25, 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 a notarized Answer received June 14, 2004, and requested a decision be made with a hearing.

After Department Counsel stated the case was ready to proceed on September 9, 2004, the case was assigned to another judge on September 15, 2004. It was re-assigned to me on January 3, 2005, after Applicant relocated to a different region. On February 25, 2005, DOHA issued a Notice of Hearing and set this case to be heard on March 15, 2005, in a city near where Applicant lives and works.

At the hearing the government offered six exhibits (Exhibits 1-6). Exhibits 1-4 were admitted into evidence without objection; however, Applicant objected to one page of Exhibit 5. That page was removed and remarked Exhibit 6; subsequently new Exhibit 5 was admitted without objection and Exhibit 6, to which Applicant objected as not relevant, was not admitted into evidence. (TR 15-23) Applicant testified and called one witness; he offered 14 exhibits (Exhibits A-N) which were admitted into evidence without objection. (TR 24-36) The transcript (TR) was received on March 24, 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, 30 years old, has been employed by Defense Contractor #1 in State #1 since July 2003. He completed a Security Clearance Application (SF 86) on July 11, 2003. He worked for Contractor #2 in State #2 from July 2002 to June 2003 when he was terminated. He worked for Contractor #3 in State #1 from January 2001 to July 2002 when he was laid off. He worked for Contractor #4 in State #1 from May 1998 to January 2001. He worked for Employer #5 in State #1 from December 1997 to May 1998. He was unemployed from October to December 1997. He was granted a General Discharge in October 1997 after five years of active military duty. He was granted a Secret clearance in 1992. (Exhibit 1; TR 46-47; 103-104)

Applicant studied at a college in State #3 in 1996 but received no degree. (Exhibit 1) Applicant married Wife #1 in 1992 and divorced in October 1996. He has two children born in 1992 and 1993. He married Wife #2 in November 1996. He has another child born in 1998 and a stepchild born in 1991. (Exhibit 1; TR 91)

Personal Conduct

Applicant went to Captains Mast four times while serving in the military which ultimately led to his General Discharge. He initially took \$50 from a roommate when he was twenty years old and separated from his wife. Consequently, in 1994 he had non-judicial punishment imposed under Article 15 for the offense of Theft and was sentenced to forfeit one half of his monthly pay per month for two months and was reduced in rank and restricted to base for 45 days. He did not comply with the restriction of staying on base; so again in 1994 he had non-judicial punishment imposed under Article 15 for the offense of being absent from his place of duty and disobeying lawful orders. He was sentenced to be reduced in rank and sentenced to 30 days of corrective custody. Then in July 1997 he had to take his wife to medical appointments before her surgery, but left the ship without advising his chief. Again, he had non-judicial punishment imposed under Article 15 for the offense of Unauthorized Absence and was reduced in rank. In October 1997 he went home after he completed his watch without clearing it with his chief when he left. Thus, again, he had non-judicial punishment imposed under Article 15 for the offense of Abandoning Watch and was reduced in grade. Because the captain had a "two-strike rule" Applicant was recommended for discharge and given a General Discharge in 1997. He did not list these first three incidents on his SF 86 as they were beyond the seven year time period covered by the form. (Exhibits 2, 5; TR 58-67) He has considered trying to get his general discharge amended to an honorable discharge, but has not yet taken any steps. (TR 97-98)

When he was working for Contractor #2, he decided to spend time copying a few personal music compact discs (CDs) on his own personal CDs. While he was copying one, his government supervisor walked by and reported Applicant's conduct to his supervisor. Subsequently, in June 2003 Applicant was handed a termination letter for misuse of government time even though he had not had any previous misconduct there. When he left the company, he returned his company credit card, but initially he did not pay off the balance on the account. (Exhibit 2; TR 67-69; 71-73; 91-96; 107-108) Applicant has admitted this debt and paid it with proceeds from the sale of his house in June 2004. His credit reports now show a zero balance for this creditor. (Answer; Exhibit K, L, M; TR 68-70)

Finances

Applicant explained his strategy to rebuild his credit after the bankruptcy in 1998 included buying a new car in 1999 and making timely payments. He then bought a home in 2000 with a Veterans Administration (VA) loan. However, he again developed financial problems when his child support was raised dramatically in 2001. He then worked two jobs and his wife worked full time. Then he was laid off by Contractor #3 for six weeks before he found a job with Contractor #2. He asked for help from his church community when he had car troubles and borrowed around \$2,000. Finally, he agreed to a transfer to his current location in State #4 in order to further reduce his expenses because of a lower cost of living in that state. He now understands he needs to have a buffer for unexpected expenses. (TR 52-58) Finally, Applicant sold his house in State #1 in June 2004 and received \$54,000 in profit from the sale which he used to pay off closing costs of \$2,500 to \$3,000, past creditors, and to purchase furniture and a second vehicle for \$21,000. He has \$2,500 to \$3,000 in savings. (TR 81-82; 89-90; 109-111; Exhibit A)

Applicant in 2003 had a net monthly remainder of only \$287 to resolve his debts. (Exhibit 2) In 2005 he has a monthly take-home pay of \$4,418; his wife is not currently working. Applicant detailed his expenses which total \$4,114 including a \$625 monthly mortgage payment. While he has only \$273 remaining he has no debts or loan payments beyond his mortgage. (TR 51-54; 99-101; 104-105; Exhibit J)

Applicant explained the following concerning his steps to resolve his past debts:

SOR 1.a.. On his SF 86 Applicant disclosed that he had filed for bankruptcy in July 1998. (Exhibit 1) Court records disclosed liabilities of over \$50,000⁽²⁾ were discharged in Chapter 7 in December 1998. (Answer; Exhibit D) During the investigation by the Defense Security Service (DSS) in 2003, Applicant explained he had financial problems as a result of his divorce from Wife #1 and Wife #2's divorce. As a result, they had debt remaining from their prior marriages. Also, Applicant had to repay a \$11,000 signing bonus when he was discharged from the military after only 18 months of service. His second wife had health problems during her pregnancy and could not work. (Exhibit 2; TR 37-38)

SOR 1.b. Applicant explained his debt to Creditor #2 for \$459 for a balance on a repossessed vehicle was included in the 1998 bankruptcy, and the debt was discharged. (Answer; Exhibit D; TR 39-40)

SOR 1.c. Applicant explained his debt to Creditor #3 for \$258 for an arrearage for utility bills was included in the 1998 bankruptcy, and the debt was discharged (Answer; Exhibit D; TR 40)

SOR 1.d. Applicant explained his debt to Creditor #4 for \$59 for an item unknown to him was included in the 1998 bankruptcy, and the debt was discharged. (Answer; Exhibit D, TR 40-41)

SOR 1.e. Applicant explained his debt to Creditor #5 for \$1,273 for furniture was included in the 1998 bankruptcy, and the debt was discharged. (Answer; Exhibit D; Tr 41)

SOR 1.f. Applicant admits his past debt to Creditor #6 for \$384 for an arrearage in child support was not a result of negligence and has been paid through State #1 courts through payroll deduction. In fact, he in September 2004 had a surplus in his account. Initially, he paid the arrearage in 2000 when he bought a home as his lender required it. (Exhibit 4; Answer; Exhibit F; TR 42-46; TR 80-81; 98) In January 2001, the courts in State #4 had re-evaluated his child support payments, and his child support was increased from \$300 to \$900 with \$90 in arrearage. Even though he had not received notice of the court hearing, the judge would not reconsider his order. His spouse also has a \$250 child support payment. These sums put his personal finances into a "tailspin." However, he paid his child support automatically from his paycheck. (Exhibit 2; TR 43-44)

SOR 1.g. Applicant admits his debt to Creditor #7, a bank, for \$2,7000 was an amount his wife had charged. (Answer; TR 85-86) He challenged this account of his wife's, and it was removed from his credit report; however, he still takes responsibility for it. She has been trying to resolve this debt but the firm has gone bankrupt; she will pay a settlement amount. (TR 47-48; 86-88; 96-97; 105-106)

SOR 1.h. Applicant admits his debt to Creditor #8, a dentist, for \$428 from 2000. He paid it in full in February 2005. (Answer; Exhibit G; TR 49-50)

SOR 1.i. Applicant admits his debt to Creditor #8, a credit card issued by a bank, for \$866. He paid a settlement amount of \$570 in June 2004. (Answer; Exhibit H; TR 50)

SOR 1.j. Applicant admits his debt to Creditor #8, a credit card, for \$353 . He paid a settlement amount of \$253 in March 2005. (Answer; Exhibit I; TR 51-51)

References

Applicant's friend who has known him for fourteen years and who has worked with Applicant attests he takes pride in his work. (TR 75; Exhibit N) Applicant's friends from church attest he acted responsibly in that community. (TR 76-79;

Exhibit N)

Applicant's supervisor since July 2004 who is also the Facility Security Officer (FSO) and president of the company stated that Applicant acted responsibly with respect to the company credit card and other company matters. He reported that Applicant was hired during a crisis situation and has performed "admirably." Applicant has met and exceeded all expectations. He was assessed as "self-motivated, self-directed." He operates without any oversight. Applicant often goes beyond what the supervisor expects him to do and is an asset to the company. (Exhibit N; TR 112-128; 198-132)

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 E - Personal Conduct

The Concern: 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.

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 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 all of his debts. Even after his 1998 bankruptcy that discharged over \$50,000 in debt, he developed additional debts that initially remained unresolved.

On the other hand Applicant had many challenging circumstances including periods of unemployment for himself and his wife. Among the conditions that mitigate these security concerns include: 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). Both he and his wife were divorced, Wife #2 was ill, and Applicant has had uneven employment. While he has had extremely limited income to handle his current financial obligations, Applicant ultimately developed a plan to resolve all his debts and now has mitigated⁽³⁾ these financial concerns as he has provided evidence that he resolved all but one of these debts. In fact, that debt is in his wife's name solely; and she is in the process of resolving that matter. Applicant has now demonstrated that he is financially responsible as he followed through on his plan to resolve the remaining debts which he was able to do with the proceeds from the sale of his home

in 2004. While Applicant did not show that he has received or is receiving counseling for the problem, he has developed a budget and there is now a clear indications that the problem is being resolved or is under control. In sum, under MC 6. Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under SOR Paragraph 1 as he mitigated the allegations in SOR subparagraphs 1.a. through 1.k..

Personal Conduct

The government established its concerns under Guideline E under Personal Conduct Disqualifying Condition E2.A5.1.2.5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency. Applicant had a series of Article 15 violations in the military which led to his General Discharge in 1997 when he was 23. He again showed poor judgment in 2003 when he worked for Contractor #2 when he copied personal music compact disks while at work and then failed to immediately pay the balance on his company credit card.

On the other hand, the record evidence as a whole must be considered to determine whether Applicant's overall conduct can be mitigated. Thus, I have evaluated his conduct and considered the following factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

While Applicant's conduct in the military was serious enough to lead to a General Discharge in 1997 when he was 23, he subsequently made efforts to reform and has substantially matured. Also during that period of upheaval he was going through a divorce. Those rehabilitation efforts were far from perfect as demonstrated by his transgressions again in 2003 while working for Contractor #2. However, his copying music CDs while at work is a relatively minor transgression and demonstration of poor judgment. Subsequently, he paid off his company credit card and has demonstrated substantial behavioral changes. Thus, I conclude that there is little likelihood of a continuation or recurrence of these earlier infractions. As discussed above, he has matured in his handling of his financial matters and has also demonstrated an outstanding work ethic with his current employer. His supervisor testified Applicant has met and exceeded all expectations as he is "self-motivated, self-directed." He reported that Applicant now operates without any oversight and often goes beyond what the supervisor expects him to do.

Thus, Applicant has demonstrated significant changes in his conduct and character and has mitigated the security concern under Personal Conduct. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. through 2.g. 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: 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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: 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. He misstated to DSS that the bankruptcy was for \$36,000 in debt which was discharged.

3. Conditions that could mitigate security concerns include: E2.A6.1.3. 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); E2.A6.1.3. 4. . . . there are clear indications that the problem is being resolved or is under control; and E2.A6.1.3. 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.