

DATE: November 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06864

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although Applicant's past financial problems raised security concerns because of his delay in resolving his debts of \$30,000 to four creditors, he has mitigated these issues and now has demonstrated a good-faith effort to resolve his debts and reform his financial practices. In addition, Applicant has a stable job where he is highly regarded. He rebutted security concerns over his past personal conduct in failing to disclose financial issues on his 2003 security clearance application as he had no intent to falsify. 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 28, 2005. 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 dated April 22, 2005, where he admitted all allegations and requested a hearing.

After Department Counsel stated the case was ready to proceed on May 18, 2005, the case was assigned to me on May 23, 2005. On June 7, 2005, DOHA issued a Notice of Hearing and set this case to be heard on June 27, 2005, in a city near where Applicant lives and works.

At the hearing the government offered seven exhibits (Exhibits 1-7) which were admitted into evidence without objection. Applicant testified and called two witnesses; he offered three exhibits (Exhibits A-C) which were admitted into evidence without objection. He was allowed three weeks until July 18, 2005, to submit any additional evidence; the Government was allowed until July 22, 2005, to review the submission. (TR 71) On July 14, 2005, Applicant submitted an additional exhibits of 22 pages. (Exhibit D) On August 23, 2005, Department Counsel forwarded the documents and indicated he did not object. Subsequently, the exhibits were admitted into evidence; and the record closed. The transcript (TR) was received on July 14, 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, 34 years old, has been employed by Defense Contractor #1 in State #1 since April 2003. He completed a Security Clearance Application (SF 86) in April 2003. (Exhibits 1, 2)

Applicant received a B.S. degree from a university in State #1 in June 1996. He married in April 2000 and has a child born in September 2003 and two step-children born in 1990 and 1992. (Exhibits 1, 2, 3)

Personal Conduct

With respect to financial issues, Applicant answered "yes" to Question 34 and revealed a wage garnishment in January 2002 for a \$5,500 student loan. He answered "no" to Questions 38 and 39 with respect to financial delinquencies over 180 days or over 90 days when he completed his 2003 SF 86. He denied any intent to falsify and explained that when he first completed the form, he did not have all of the information and saved the EPSQ to get the new information and add it. When he went back to complete the EPSQ, he was unable to find his first form, so he completed another EPSQ. He believed that the wrong form was forwarded as he had gone back and added information on his finances and on his two step-children and his parents in-law, but that information was not included on the final form. He was never asked about any intent to falsify in his initial Defense Security Service interview in February 2004. He had no intent to falsify, but admitted he failed to review the SF 86 carefully before he signed it. (Answer; Exhibits 1 ⁽²⁾, 2; TR 38-42, 58-61)

Finances

During his DSS interview Applicant explained that he agreed to a \$245 per month garnishment to pay the outstanding debt of \$7000 for a school loan; in 2005 he owed \$2,500. In the DSS statement, Applicant explained that his debts resulted from the time he was studying at a community college from 1990 to 1993 and at a university from 1993 to 1996. He admitted that when he was in school he was "immature, unable to prudently manage the financial resources" as he had no budget. From 2001 to 2004 he stated that he worked to establish a good credit rating and had not applied for any new credit cards. However, he was unemployed from January to March 2003 and received unemployment compensation. His wife was employed. In February 2004 he stated he would contact all his creditors and begin repayment in July 2004. In 2004 he had total net monthly income of \$4,350, monthly expenses of \$2,926, and monthly debts of \$1,241 with a \$184 monthly remainder. He had \$30,000 in real estate assets. In 2005 he only had one car loan of \$425. (Exhibit 3; 52-55)

Applicant purchased a home in February 1999 and made his mortgage and utility payments his first priority. (TR 45-47) Applicant explained the following concerning his steps to resolve his past debts:

SOR 1.a. Applicant admits he owes Creditor #1 \$3,466 and has made some intermittent payments. (Exhibit 4; TR 36-37, 51-52) Subsequently, he settled his debt to Creditor #1 with a \$3,000 payment in July 2005. (Exhibit D)

SOR 1.b. Applicant explained he had previously made payments to resolve his debt to Creditor #2 for \$74. (Exhibit 4; TR 37)

SOR 1.c. Applicant admitted his second debt to Creditor #1 for \$12,482. (Exhibit 4; TR 37, 48) Subsequently, he settled his debt to Creditor #1 with a \$12,000 payment in July 2005. (Exhibit D)

SOR 1.d. Applicant has made \$250 monthly payments to resolve his debt to Creditor #3 for \$14,783 which was reduced to \$8,500. (Exhibit 4; TR 38, 47-48) While Applicant paid several debts from the proceeds of his re-finance, it is not clear that he paid this creditor. However, his budget stated that he was going to make a \$3,000 to \$4,000 payment to this creditor from his re-finance, and then he would make monthly payments of \$160 to resolve this debt. (Exhibit D)

SOR 1.e. Applicant admits he owes Creditor #4 \$4,601. (Exhibit 4; TR 38, 44-45) Subsequently, Applicant settled his debt to Creditor #4 with a \$3,000 payment in July 2005. (Exhibit D)

In June 2005 Applicant explained that he recently was approved for refinancing as his credit score had improved. Applicant had been pre-approved in June 2005 and was waiting for an appraisal on the home. In July 2005 he was able to refinance his mortgage in order to resolve the debts to his creditors. His new mortgage payment is approximately \$1,000. (Exhibit C; TR 42-43, 49-51, 54)

Applicant has changed his financial practices and no longer uses credit cards; he pays for everything by cash. Since he has been married, he has lived within his means and is more financially responsible than he was in college. (TR 55-56) He has paid off other bills not mentioned in the SOR. (Exhibits A, B, D) In July 2005 Applicant had total net monthly income of \$4,300, monthly expenses of \$3,419, and monthly debt payments of \$265 with a \$616 monthly remainder.

Applicant has received awards and commendations at work. He has four "Caught You" commendation awards. He also gets thank you letters for his work. (TR 58) He was rated as employee of the quarter for October to December 2003. (Exhibit D)

References

Applicant's supervisor has known him since 1999 and hired him in April 2003 because of his favorable impression of Applicant's work. He sees Applicant daily and himself has held a security clearance since December 2001. On a scale of one to ten, he would rank Applicant as a nine. He would give him the same rating for honesty and character. In his formal evaluation this supervisor gave Applicant an excellent rating. He recommended that Applicant's security clearance be granted. With respect to Applicant's problem with his security clearance application, he reported that several other people also had problems with the computerized application process. Applicant used his supervisor's computer to complete the form and had to come back several times to get it completed. (TR 23-28, 29-30, 63-64)

Applicant's second level supervisor has known Applicant for over two years and interacts with him daily. The supervisor himself has had a clearance for 25 years and assesses Applicant as an honest person who would not willfully misrepresent information. He reported that a number of people have had technical problems with the EPSQ paperwork. The supervisor appreciates Applicant's "hard work and honesty." Applicant revealed his financial problems during the hiring process to this supervisor. He assesses Applicant as "an excellent, excellent worker." He rated Applicant as a ten on a scale of one to ten for his performance and a ten for his character. (TR 31-35)

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

Applicant ultimately developed a plan to pay all his debts in July 2005 to mitigate concerns over financial considerations after the Government established disqualifying conditions⁽³⁾ 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 to four creditors..

With limited finances Applicant took small steps to address his debts from his college days and to demonstrate that he could live within his means. He was able to improve his credit score sufficiently so that in July 2005 Applicant was able to re-finance his home. With that money he was able to resolve a majority of his debts in order to mitigate⁽⁴⁾ these financial concerns. To his credit, Applicant has now demonstrated that he is financially responsible as he followed through on his plan to resolve the remaining debts. While Applicant did not show that he has received or is receiving counseling for the problem, he has developed a budget. Now under MC 4, there are clear indications that the problem is being resolved or is under control; and under MC 6, Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In considering the record evidence as a whole to determine whether Applicant's overall conduct can be mitigated, I have also evaluated his conduct and considered the following factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E.2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E.2.2.1.3. The frequency and recency of the conduct; E.2.2.1.4. The individual's age and maturity at the time of the conduct; E.2.2.1.5. The voluntariness of the participation; E.2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E.2.2.1.7. The motivation for the conduct; E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E.2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

To his credit he has stable employment and is highly regarded by his supervisors both for the quality of his work and his character. He has several commendations also for his work. While he was slow to resolve his college debts, he shrewdly stopped using credit cards and bought property that appreciated sufficiently for him to refinance in July 2005 to resolve these debts. He made progress by incrementally resolving his smaller debts, including his student loan, until his credit score improved enough for him to be able to re-finance his mortgage. This shows increasing maturity on his part; thus, I conclude there is little likelihood that these financial problems would recur.

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.e.

Personal Conduct

Applicant rebutted concerns over his failure to disclose any financial problems on his 2003 SF 86, in response to concerns under Guideline E (Personal Conduct) Disqualifying Condition E2.A5.1.2.2. (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.) Applicant and his supervisors testified persuasively of problems Applicant and others had with completing the EPSQ and attested to his honesty. He had no intent to falsify his SF 86 as indicated by his having revealed his financial garnishment regarding his student loan. In addition, Applicant's supervisor assesses Applicant as an honest person who would not willfully

misrepresent information. He believed that Applicant along with a number of people had technical problems with the EPSQ paperwork. The supervisor respects Applicant for his "hard work and honesty." Indeed, Applicant revealed his financial problems during the hiring process to this supervisor. In addition, the supervisor assesses Applicant as "an excellent, excellent worker."

In considering the record evidence as a whole to determine whether Applicant's overall conduct can be mitigated, 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)

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

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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: 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. Exhibit 1 was submitted with three blank pages as a result of clerical error when the document was FAXed. (TR 64-65)

3. **E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:** E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.2. Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust; E2.A6.1.2.3. Inability or unwillingness to satisfy debts; E2.A6.1.2.4. Unexplained affluence; E2.A6.1.2.5. Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

4. **E2.A6.1.3. 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.