

KEYWORD: Financial; Personal Conduct

DIGEST: While Applicant's past financial problems raised security concerns because of his delay in resolving his debts, he has now paid one debt and challenged his responsibility for the other debts, a number of which were allocated to his former wife in their 1998 separation agreement. While belated, he has now made a good-faith effort to resolve all his debts. Significantly, Applicant has a stable job where he is highly regarded as a person of integrity and trustworthiness. Applicant established that he had no intent to falsify his Security Clearance Application in 2002, so no security concerns over his past personal conduct persist. Clearance is granted.

CASE NO: 04-07343.h1

DATE: 06/12/2006

DATE: June 12, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07343

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel, 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 paid one debt and challenged his responsibility for the other debts, a number of which were allocated to his former wife in their 1998 separation agreement. While belated, he has now made a good-faith effort to resolve all his debts. Significantly, Applicant has a stable job where he is highly regarded as a person of integrity and trustworthiness. Applicant established that he had no intent to falsify his Security Clearance Application in 2002, so no security concerns over his past personal conduct persist. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant on May 26, 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 date June 17, 2005, with attachments, where he denied all the allegations and initially stated he did not want a hearing. Later he requested a hearing.

After Department Counsel stated the case was ready to proceed on September 20, 2005, the case was assigned to me on that date. On September 27, 2005, DOHA issued a Notice of Hearing and set this case to be heard on October 14, 2005, in a city near where Applicant lives and works.

Procedural Issue

At the hearing the government offered a Motion to Amend to add allegation 2.c. to assert that in his 2002 Security Clearance Application (SF 86) Applicant falsely listed his first wife as deceased on June 8, 1999, when in fact that was the date of their divorce. Department Counsel provided Applicant a copy of this proposed amendment to the SOR on September 14, 2005. On September 26, 2005 Applicant answered. He admitted that he made a mistake on the SF 86 which was not intentional, but a typographical error on his part: he was divorced in 1999 from Wife #1. He erroneously marked her as deceased. At the hearing, the motion to amend the SOR was granted; the amendment to the SOR and Applicant's Supplemental Answer in response were made part of the record. (TR 9-10)

Subsequently, at the hearing the Department Counsel offered seven exhibits (Exhibits 1-7) which were admitted into evidence without objection. (TR 14-19) Applicant testified and offered 11 exhibits (Exhibits A-K) which were admitted into evidence without objection. (TR 20-27) Applicant asked for two additional weeks until October 28, 2005, to submit supplemental information which was granted over Department Counsel's objection. (TR 13; 63-65; 74) On October 28, 2005, Applicant submitted seven additional pages which was marked as Exhibit L; Department Counsel did not object to these documents, so they were admitted into evidence and the record closed.

On December 12, 2005, Applicant submitted an additional document which was marked as Exhibit M; Department Counsel objected to the admission of this document as it was submitted after the record closed. Her objection was sustained. Consequently, Exhibit M was not admitted and not considered in this matter. The transcript (TR) was received on October 26, 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, 66 years old, has been employed by Defense Contractor #1 for twenty years. He has worked in State #1 as a production coordinator since September 1996. He completed a Security Clearance Application (SF 86) on December 11, 2002. He also worked for Contractor #1 in State #2 from November 1986 to September 1996 when the plant was closed. Later he was transferred to State #2. He was first granted a security clearance in 1958 and subsequently has been granted other clearances. He was granted a Secret clearance in 1997. He served in the military from 1958 to 1962. (Exhibit 1; TR 54)

Applicant married Wife #1 in 1963, separated in December 1998 and signed a Marital Settlement Agreement, and the marriage was dissolved in June 1999. He has children born in 1964 and 1969. He re-married in December 2001 to Wife #2 and has three stepchildren born in 1965, 1967, and 1972. (Answer; Supplemental Answer; Exhibit 1; Exhibit A; TR 10, 44)

Personal Conduct

When Applicant completed his Security Clearance Application (SF 86) in December 2002, he did not believe he had any credit problems as he had recently purchased a new home with Wife #2 in April 2002, and no credit issues arose in getting his home loan. (Exhibit 2) He established he had no intent to falsify his SF 86 although he admits he should have had a better understanding of his credit situation and should have reviewed the form more carefully. He did not get a copy of his credit report before he completed the SF 86. (TR 43; 55-56; 59)

Applicant maintained this mistake on the SF 86 with respect to Wife #1 being deceased was not an intentional error, but a typographical error on his part. (Supplemental Answer; TR 9-10) That he had no intent to falsify is supported by his the Defense Security Service (DSS) interview in July 2003 where Applicant stated he and his first wife divorced. The DSS agent did not question him about the mistake in the SF 86 where Wife #1 was listed as deceased or attempt to establish that his SF 86 error was intentional. (Exhibit 2)

Finances

Applicant's December 1998 Marital Settlement Agreement mandated that Applicant pay alimony of \$1,300 per month to Wife #1 and also granted her one-third of all of his pension and retirement funds. The agreement also allocated who should be responsible for credit card debt; Wife #1 agreed to be solely responsible for debts to three creditors, including a Wal-Mart account, a Visa account and a Discover account. Each was to be solely responsible for debts incurred after December 1998 when the agreement was signed. Any other past obligations incurred were to be the responsibility of the party who incurred it, and the other party would be held harmless for any liability. Applicant was to be solely responsible for nine accounts which he has paid. (Exhibit A)

When interviewed by DSS in July 2003, Applicant stated that he believed that some of the credit issues might belong to his son who has the same name. He explained that he and his first wife divorced and he moved from State #2 to State #1. He surmised some of the bills should have been handled by Wife #1. He had net monthly income of \$4,119, monthly expenses of \$2,599, monthly debts of \$1,129, and a monthly net remainder of \$391. His assets totaled \$154,000 in July 2003. He challenged the accounts on his credit report; but he said if he was responsible for them, he would set up a repayment plan. (Exhibits 2, 4, 5; TR 43; 52)

In July 2004 he stated that with the help of the DSS agent he had sent letters of inquiry in July 2003 to all of the creditors on his credit report and never got any responses and had no further inquiries from these creditors, so he took no further action. (Exhibit 3; TR 41-42; 52-52) After he received the SOR, he sent out another set of inquiries to

creditors. (Exhibit C; TR 52-53)

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

SOR 1.a.. Applicant disputed the debt of \$48 to Creditor #1 which was reported as charged off as a bad debt in February 1999. (Answer; Exhibit 6, Exhibits B, K; TR 29-31)

SOR 1.b. Applicant disputed the \$4,022 debt to Creditor #2 for an credit card account charged off as a bad debt in September 1999. (Answer; Exhibit 6, Exhibits B, K; TR 31)

SOR 1.c. Applicant disputed his debt to Creditor #3 for \$6,215 for a credit card debt to Creditor #3 which was charged off as a bad debt in November 1999 as it was allocated to his former wife in a divorce settlement. (Answer; Exhibit 6, Exhibit A at pages 6-7, Exhibits B, K; TR 31; 59)

SOR 1.d. Applicant disputed his debt to Creditor #4 for \$123 for an account placed for collection in February 2000 which he believes is the same debt alleged in SOR 1.f. (Answer; Exhibits B, K; TR 31-32; Exhibit L)

SOR 1.e. Applicant disputed his debt to Creditor #5 for \$4,181 for a credit card debt which was charged off as a bad debt in March 2000 as it was allocated to his former wife in a divorce settlement. (Answer; Exhibit 6, Exhibit A at pages 6-7, Exhibits B, K; TR 31; 60)

SOR 1.f. Applicant disputed his debt to Creditor #6 for \$123 for an account placed for collection in April 2000 which he believes is the same debt alleged in SOR 1.d. (Answer; Exhibits B, K; TR 31-33)

SOR 1.g. Applicant disputed his debt to Creditor #7 for \$8,976 for a credit card debt to Creditor #3 which was charged off as a bad debt in May 2000 as it was allocated to his former wife in a divorce settlement. (Answer; Exhibit 6, Exhibit A at pages 6-7, Exhibits B, K; TR 33)

SOR 1.h. Applicant disputed this debt to Creditor #8, for \$69 for an account placed for collection in December 2000

which he believes is the same allegation as SOR 1.j. (Answer; Exhibit K; TR 33-4)

SOR 1.i. Applicant believed his debt to Creditor #9 for \$271 was for a telephone debt incurred by his son, who has paid this debt. (Answer; Exhibit K; TR 33-34; 51)

SOR 1.j. Applicant disputed his debt to Creditor #10, for \$69 for an account placed for collection in October 2002 which he believes is the same allegation as SOR 1.h. (Answer; Exhibit K; TR 33-34)

SOR 1.k. Applicant disputed his debt to Creditor #11, for \$396 for an account placed for collection in March 2003 which he cannot identify. (Answer; Exhibit K; TR 34-35)

SOR 1.l. Applicant disputed his debt to Creditor #12, for \$397 for an account charged off as a bad debt in March 2003 as he never had an account with this creditor. (Answer; Exhibit K; TR 35-36; Exhibit L)

SOR 1.m. Applicant paid his debt to Creditor #13, for \$78 for an account placed for collection by a utility in September 2003. (Answer; Exhibits H, K; TR 36, 40-41; 50)

Applicant believes he is now a good credit risk. In 2001 he purchased a new car that was paid off in 2005. In 2005 he purchased another new car without any difficulty from the same company. In 2002 he and his current wife purchased a new home with a loan of \$58,000. (TR 36-37; Exhibit 6; Exhibit B) He has other accounts that are current and not delinquent. (TR 61-62)

In October 2005 he filed a protest with two credit reporting agencies over accounts that he claimed should have been allocated to his former wife and that he wanted removed from his credit report. (Exhibit L)

References

The director of the program at the defense contractor endorsed Applicant, whom he has known for over six years. He assessed Applicant as effectively demonstrating his knowledge, experience and integrity in an important and visible

program. Applicant has a positive reputation. (Exhibit I)

A co-worker who has known Applicant for over five years praised him as a responsible individual who is "open, honest, and forthright." He is one of the few people who can handle sensitive and difficult tasks. His work ethic is beyond reproach. (Exhibit I)

A program manager who has known Applicant for twelve years praised his very strong work ethic and valuable inputs. He views Applicant as someone who is "dependable and takes responsibility for his tasks and actions." Applicant has shown great commitment to the program and the company for twelve years. (Exhibit I)

A co-worker who has known Applicant for ten years stated that Applicant is "recognized for his dedication and commitment to the team." He has the respect of team members and management. He is a trustworthy and dependable individual. (Exhibit I)

The quality assurance team leader who has known Applicant since 1998 and worked closely with him stated the he frequently relies on Applicant's high standards for ethics, integrity and detail when making sound decisions for the program. (Exhibit I)

The production manager who has worked with Applicant for six years is currently his manager. She assessed him as having executed his responsibilities with "integrity and the highest possible ethical standards. He is a critical and dedicated member of the production team." (Exhibit I)

A co-worker who has known Applicant for four years assessed him as a hard worker and strong team player who takes pride in his work. He is "highly respected and trustworthy" and has been the security advisor for their area. (Exhibit I)

Another manager who has known him for five years stated he had never known Applicant to compromise security or his ethics. He respects Applicant as an outstanding employee. (Exhibit I)

A co-worker who has known Applicant for five years assessed him as displaying strong worker commitment and performing with a high ethical standard. He has shown integrity in all facets of the job. (Exhibit I)

An industrial security specialist who has known Applicant for six years stated that he has "always done his job in a professional manner." He is aware of the importance of security and if uncertain he always calls for guidance. He treats all employees in a fair and honest manner and demonstrates responsibility, trustworthiness and high ethical standards. (Exhibit I)

A classified hardware custodian who has known Applicant for three years stated that he can be relied on "to do the right thing" and had strong ethical beliefs. He has always complied with security guidelines. (Exhibit I)

A co-worker who has known Applicant for ten years stated that he is the security custodian for their programs and has always shown high standards and integrity. (Exhibit I)

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 which are reported on credit reports which show approximately \$25,00 in unresolved debts to more than a dozen creditors.

On the other hand Applicant explains persuasively that the majority of the debts either were the responsibility of his former wife per the separation agreement signed in 1998 or are from creditors that he cannot identify. He paid one bill to a creditor that was for a utility bill and has written to the other creditors challenging ⁽²⁾ his responsibility for these debts.

While Applicant might have taken more aggressive steps earlier to challenge adverse credit reports, he credibly explained that he believed his credit was acceptable as he was able to finance both a new car and a house. There is no evidence that any of the debts assigned directly to him in the 1998 separation agreement remain unpaid. 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). He established that several of these debts were assigned to Wife #1, and were her responsibility

under the separation agreement. Applicant has mitigated⁽³⁾ these financial concerns as he has provided evidence that he resolved one debt and challenged all of the other debts which stem from 1999, the year he was divorced, to 2003. He continues to challenge the debts detailed in the SOR with credit bureaus. Significantly, since that period of upheaval when he was divorced and transferred from one state to another, he has not developed any further credit issues. He has successfully financed a home and a car which to demonstrate that overall he is financially responsible. While Applicant did not show that he has received or is receiving counseling for the problem, there is now a clear indication that the problem is being resolved or is under control. In sum, under MC 6, Applicant initiated a good-faith effort to resolve these debts and to challenge debts to creditors where he believed he was not responsible either from the separation agreement or from creditors where he had not business relationship.

Also, I have considered the record evidence as a whole⁽⁴⁾

to evaluate his conduct. He has multiple letters of praise from co-workers and managers who applaud his conduct and integrity. I consider it significant that he has a stellar record at work where he has a reputation for integrity. His current manager assessed him as having executed his responsibilities with "integrity and the highest possible ethical standards. He is a critical and dedicated member of the production team." The director of the program at the defense contractor endorsed Applicant and assessed Applicant as effectively demonstrating his knowledge, experience and integrity in an important and visible program. Thus, 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.m.

Personal Conduct

The government failed to establish its concerns under Guideline E under Personal Conduct as Applicant credibly established he had no intent to falsify his SF 86 either with respect to his financial situation or with respect to misrepresenting his divorce from his first wife. Even if one were to conclude that a more prudent person would have reviewed a credit report before completing his SF 86, I found Applicant made a reasonable assumption that his credit was good as he was able to finance a house with Wife #2 and a car before he completed the SF 86 and revealed no financial problems. Also, I am persuaded that he made an error in reporting his first wife as deceased, instead of divorcee, in 1999. When he was interviewed by DSS, he disclosed the divorce. There was no evidence that the DSS agent was misled by his mistakenly identifying her as deceased. Indeed, he links his mitigation case on the financial issues to the separation agreement. Thus, I conclude he credibly established he had no intent to falsify his SF 86.

As discussed above under finances, I also considered him as a whole person and was persuaded of his general reputation for honesty and integrity in the workplace based on the large number of favorable letters of reference Applicant provided from individuals who had work with him over a substantial number of years. Thus, 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.c. 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

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: 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 M, not admitted into evidence as it was submitted after the record closed, documents one credit bureaus conclusion that the majority of these adverse credit matters are to be deleted from his credit file.
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.
4. 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)