

DATE: March 30, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-12802

ECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant has mitigated security concerns about his alcohol-related arrests and problem drinking by providing credible evidence that he has reformed his conduct, he failed to mitigate security concerns over his financial issues. He has paid or challenged some debts, but the a large portion of his debt remains unresolved with no payment plan in place. Also, one unresolved debt is for a corporate credit card that he used, in part, for personal expenses in 2002. 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 June 29, 2006. 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 alleged specific concerns in paragraph 1 over financial concerns (Guideline F) and in paragraph 2 over alcohol consumption (Guideline G). Applicant responded to these SOR allegations in an Answer notarized on July 21, 2006, where he admitted many of the allegations, but denied paragraph 1, subparagraph 1.a., 1.h., and requested a hearing.

On October 12, 2006, Department Counsel indicated the case was ready to proceed. The matter was assigned to me on October 16, 2006. Subsequently, a mutually convenient date for hearing was agreed to. A Notice of Hearing, issued on October 21, 2006, set the matter for November 14, 2006, at a location near where Applicant works and lives.

At the hearing the Government offered three exhibits which were admitted into evidence without objection. (Exhibits 1-3) Applicant testified and submitted Exhibits A through J, which were admitted without objection. Applicant requested two weeks additional time to submit additional documents and was granted until November 28, 2006, to submit his evidence; the Department Counsel was given until December 5, 2006, to review the documents. (TR 34-35; 91-92) On November 28, 2006, Applicant requested another week's extension, until December 5, 2006, to submit his evidence, which I granted. Subsequently, Applicant submitted Exhibits K through N. Department Counsel submitted his response

on December 8, 2006; he offered no objection except to a reference letter that was unsigned. I admitted all of these documents, but gave limited weight to the unsigned letter. The transcript (TR) was received on November 29, 2006.

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, 31 years old, has worked as a senior network professional for Defense Contractor #1 in State #1 from May 2004 to present. He completed a Security Clearance Application (SF 86) in February 2005. Previously, he worked for Defense Contractor #2 and was assigned overseas from November 2003 to February 2004; he left under special circumstances. Applicant served in the military from October 1997 to October 2001, where he had been granted a Secret clearance in November 1997. He has a security clearance in his current job. (Exhibit 1; Exhibits H, M; TR 22-23; 55-57)

Applicant was married in 1999 and has two children born in 1994 and 1998. (Exhibit 1, TR 25) For a period he and his wife were separated geographically as he moved to accept a new job opportunity. (TR 55-56)

Financial Considerations

Applicant's financial difficulties began when he was in the military and lived paycheck to paycheck. After he married and had two children, he began to change his approach. He initially had trouble finding private sector employment but eventually chose to go overseas with Defense Contractor #2 with the hope of earning enough money to resolve his debts. However, after promising not to forward deploy him, Applicant had a difficult experience when they did forward deploy him in a dangerous area. He was very nervous, had alcohol abuse issues (as discussed below), and requested that he be allowed to leave as he anticipated a different assignment. He asked for psychological help when he returned, but the employer did not provide that help. When he returned, he was unemployed for two months and could not address his credit issues. Once he joined Defense Contractor #1 in 2004, he began to work incrementally to resolve his outstanding debts. His annual salary is now \$55,400. (TR 21-25; 41-42; 44-48; 80-81; Exhibits H, I) He has \$4,900 in his matched asset plan. (Exhibit N)

Finally, in July 2006, Applicant began working with an internet law firm to attempt to resolve his debts; he agreed to pay them \$59 per month to negotiate with the creditors as he was not having success when he called the creditors himself. He works with the firm on-line and hopes to resolve all of his debts within two years. However, neither he nor the firm have established any payment plan with any of his large creditors as indicated below. (Exhibits G, K; TR 28; 31; 42; 62-63) Now he and his wife work on the finances together; he wants to save to send his children to college and to own a home. (TR 51-51)

Applicant denied a debt to Creditor #1 for \$240 for a judgment entered in November 1999 as he could not document this debt. He had it deleted from his credit report. (SOR 1.a.) (Answer; Exhibit 2; Exhibits A, B; TR 25; 58-59)

He admitted his debt to Creditor #2 for \$257 for a judgment entered in January 2000, but he believed he had paid it even though he could not document that payment. (SOR 1.b.) (Answer; Exhibit 2; TR 25-26; 60)

He admits his debt to Creditor #3 for \$341, but he is contesting the amount of the debt as he provided notice of intent to vacate and paid them \$147.98; he has notified credit bureaus of the dispute. (SOR 1.c.) (Answer; Exhibits 2, 3; Exhibits F, J; TR 26-28; 60-61)

His debt to Creditor #4 for \$6,953 was to a collection agency for a credit union debt placed for collection in October 2001 for a car he could not afford after he left the military when he was only earning \$15,000 annually. He initially made payments on that debt and reduced it to \$4,554. He has notified credit bureaus of the dispute. He is hoping they will agree to payments of \$100 per month, but he documented no approved re-payment plan. (SOR 1.d.) (Answer; Exhibits 2, 3; Exhibit E; TR 28-29, 32; 61-62)

His debt to Creditor #5 for \$4,494, he stated, is the same debt as Creditor #4 for a car he still owns, but no payment plan is in place as discussed above. (SOR 1.e.) (Answer; Exhibit 2; Exhibit E; TR 29-30, 32; 61-62)

Applicant has been making arrangements with the law firm to make payments on his debt to Creditor #6 for \$2,036 for debts charged off in March 2002 from a corporate credit card. Not all of the charges were business related. That was his first credit card. He did understand he should not have used it for personal expenses. He has not made any payments on this debt, and no payment plan is in place. . (SOR 1.f.) (Answer; Exhibit 2; Exhibit D; TR 32-34; 63-67)

His debt to Creditor #7 for \$7,726 was for a vehicle for his wife as she needed to go to work. He co-signed; it was involuntarily re-possessed. No re payment plan is in place. (SOR 1.g.) (Answer; Exhibits 2, 3; TR 35-37; 41)

He denied the debt to Creditor #8 for \$2,223 as he paid that debt in August 2006. That payment is confirmed by the October 2006 Equifax Credit Report. (SOR 1.h.) (Answer; Exhibits 2, 3; Exhibits A, F; TR 37-38)

His debt to Creditor #9 for \$533 for an account placed for collection by a bank in March 2004 is unresolved, no payment plan is in place. (SOR 1.i.) (Answer; Exhibit 2; Exhibit A; TR 38-39)

He paid his debt to Creditor #10 for \$190 on a personal credit card account charged off in April 2004. (SOR 1.j.) (Answer; Exhibit 2; Exhibits A, F; TR 40-41; 74)

To better himself, Applicant is taking classes on-line at a technical university to work towards a degree. He pays \$545 per month for his tuition by money order. Sometimes in the past he has used his current corporate credit card for supplies for this class. He currently owes \$1,200 on his corporate account. (TR 68-72) His wife was working but lost her job in September 2006. (TR 73-74) Applicant participates in his company's 401K plan. (TR 75; Exhibit N)

Applicant documented only some of his current expenses, such as \$875 in rent, payments of \$130 for cable, and payments of \$500 per month on a new car for his wife which cost \$13,000 in August 2006. He has no personal credit cards. (TR 75-76)

Alcohol

Applicant began to drink at age 22 and continued to drink until July 2004 in order to deal with stress, especially when he was assigned overseas. On his SF-86 he disclosed one alcohol-related arrest for Driving Under the Influence (DUI) in December 1998, when he was in the military service and pleaded guilty to driving while impaired. He also admitted an arrest and charge of Disorderly Conduct in 2004 while working overseas where he was subsequently returned to the U.S. in February 2004. He disclosed another arrest in July 2004 when he was drinking heavily after he returned from the stressful overseas assignment. He pleaded guilty to DUI, was fined \$1,000, and given two year's court supervision in February 2005. He also attended twelve sessions plus ten hours of alcohol counseling which he found helpful. He completed this counseling in December 2005. After taking the class he no longer drank to the point of intoxication. (Answer; Exhibits 1, TR 49-50; 78-79; 81-89) Applicant has been sober since January 2006. At the time of the hearing, he stated he has no intent to drink again. (Answer; TR 50-51; 89)

References

The manager who has known him since 2003 has been pleased with Applicant's professionalism and handling of classified information. He stated Applicant goes above and beyond what is expected of him and is a valuable member of the team. (Exhibit L)

A vice-president of a corporation who has known Applicant for thirty years assessed him as a "well grounded respectable young man." (Exhibit L)

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 G --Alcohol Consumption

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

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⁽²⁾ 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. After leaving military service, he had a period of lower income where he and his wife developed debts. After Applicant got a job in the private sector, he developed a plan to resolve all his debts but has only addressed some of them. Any have remained unresolved. One especially troubling debt is the one to Creditor #6 for \$2,036 for debts charged off in March 2002 from a corporate credit card. He conceded that he used this business card for personal expenses when he should not have done so. He has not made any payments on this debt.

Thus, because he he has failed to provide sufficient evidence that he resolved the majority of these debts, he has not mitigated⁽³⁾ the majority of these financial concerns. Among the conditions to mitigate (MC) these security concerns are MC 1., The behavior was not recent. While most of these debts stemmed from earlier years (1999 to 2004), several large debts have remained unresolved. MC 2. allows mitigation for an isolated incident. Appellant's debts are to numerous creditors. MC 3. Allows mitigation for conditions that resulted in the behavior largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation). Applicant did not show how special circumstances led to his debts. While he had limited income after initially leaving the service and had a challenging time when assigned overseas with a government contractor, he has been with his current company since 2004 and outlined no special circumstances in the recent period where he has earned over \$50,000 per year. Nevertheless, Applicant has only resolved his smaller debts. MC 4 highlights the importance of receiving counseling for financial problems. While he hired a law firm to challenge debts to several creditors, Applicant deals with the firm on line and did not indicate they provided any counseling to him. While the record was left open for him to provide a budget, he did not do so. Thus, he failed to show clear indications of how these financial problems are being resolved or are under control. In sum, under MC 6., Applicant failed to establish how he plans to initiate a good-faith effort to repay his overdue creditors or otherwise resolve his debts. While he has paid some debts, challenged some unsubstantiated debts, and stated an intention to resolve his debts, he outlined no specific plan to resolve his larger debts which remain outstanding.

Certainly, it is commendable that he wants to advance himself by taking on-line classes. However, these courses required a substantial investment for the tuition costs and, consequently, limited his financial resources to resolve his debts. In addition, he makes payments of \$500 per month on a new car for his wife which they purchased for \$13,000 in August

2006 in order for his wife to commute to a job which she subsequently lost. He provided no budget to show how he is now more financially stable.

To Applicant's credit he is well regarded for his professionalism and performance at work. However, assessing him as a whole person, I conclude this favorable employment assessment is an insufficient basis to eliminate security concerns over his long-standing, and largely unresolved, financial issues. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude SOR Paragraph 1 against Applicant under as he failed to mitigate the majority of the financial concerns raised in the SOR in subparagraphs 1.d., 1.e., 1.f., 1.g, and 1.i. He did mitigate the allegations in subparagraphs 1.a., 1.b., 1.c., 1.h, and 1.j.

Alcohol Consumption

The Government established security concerns over Applicant's problem drinking and his one alcohol-related arrest in 1998 and two alcohol-related arrests in 2004, one while he was assigned overseas and was charged with Disorderly Conduct, and one after he returned to the U.S., but continued to drink to excess. Thus, Applicant's conduct falls within DC 1 (4): Alcohol-related incidents away from work. While Applicant has never been diagnosed with an alcohol abuse problem, he continued to drink intermittently and to excess even after he completed court-required alcohol education.

On the other hand, Applicant mitigated the alcohol-related security concerns as he provided evidence to demonstrate that he falls within several mitigating conditions. (5) While his three arrests do indicate a pattern under MC 1, he has had no other subsequent arrests since July 2004. Thus he falls within MC 2. (the problem occurred a number of years ago, and there is no indication of a recent problem). More significant, Applicant engaged with the court-required alcohol education and counseling after his 2004 arrest and reformed his conduct. Recently, he has addressed these alcohol concerns by ending his drinking and becoming abstinent. He decided to abstain from alcohol in January 2006. While attendance at AA combined with abstinence would provide a stronger case, he provided evidence that he has approximately a year of abstinence. His work performance has been excellent for the time he has worked for his current defense contractor, and Applicant is viewed favorably by his supervisors. They documented no attendance or tardiness issues or coming to work under the influence of alcohol. Overall Applicant is viewed as an good employee. In sum, Applicant has demonstrated MC3: positive changes in behavior supportive of sobriety. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 2.a. though 2.d. 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: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For 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. **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.A6.1.2.3. Inability or unwillingness to satisfy debts.

3. **Conditions that could mitigate security concerns include (MC):** E2.A6.1.3.1. The behavior was not recent; E2.A6.1.3.2. It was an isolated incident; 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. 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; and E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

4. **E2.A7.1.1.2. Conditions that could raise a security concern and may be disqualifying include:**

E2.A7.1.1.2.1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use.

5. **E2.A7.1.1.3. Conditions that could mitigate security concerns include:** E2.A7.1.1.3.1. The alcohol related incidents do not indicate a pattern; E2.A7.1.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem; E2.A7.1.1.3.3. Positive changes in behavior supportive of sobriety; E2.A7.1.1.3.4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with after-care requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.