

KEYWORD: Financial; Personal Conduct; Foreign Influence

DIGEST: The Applicant has addressed or is addressing all of his admitted past due debts. They were caused by circumstances largely beyond his control, an unexpected medical emergency. He now has a positive monthly cash flow. In answer to question 33 on his November 2003 Security Clearance Application (SCA), the Applicant failed to disclose his August 1997 bankruptcy as he thought seven years had passed. In answer to questions 38 and 39, he misunderstood the questions, but has subsequently disclosed all of the requested information on an October 2004 Questionnaire for National Security Positions (QNSP). The Applicant has little contact with his two Afghanistani brothers, who are carpenters. He worked for the Afghan government from March to July of 2004, but for the U.S. Army in Afghanistan from December 2004 to June of 2005. Clearance is granted.

CASENO: 04-02630.h1

DATE: 08/22/2006

DATE: August 23, 2006

In Re:)	
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)	
-----)	ISCR Case No. 04-02630
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
RICHARD A. CEFOLA**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has addressed or is addressing all of his admitted past due debts. They were caused by circumstances largely beyond his control, an unexpected medical emergency. He now has a positive monthly cash flow. In answer to question 33 on his November 2003 Security Clearance Application (SCA), the Applicant failed to disclose his August 1997 bankruptcy as he thought seven years had passed. In answer to questions 38 and 39, he misunderstood the questions, but has subsequently disclosed all of the requested information on an October 2004 Questionnaire for National Security Positions (QNSP). The Applicant has little contact with his two Afghanistani brothers, who are carpenters. He worked for the Afghan government from March to July of 2004, but for the U.S. Army in Afghanistan from December 2004 to June of 2005. Clearance is granted.

STATEMENT OF THE CASE

On July 21 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about August 11, 2005.

The case was originally assigned to another judge, but was reassigned to the undersigned on May 1, 2006. A notice of hearing was issued on May 4, 2006, and the case was heard on May 25, 2006. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called one witness to testify on his behalf. The transcript (TR) was received on June 2, 2006. The issues raised here are whether the Applicant's admitted Financial Considerations, related Personal Conduct, and alleged Foreign Influence militate against the granting of a security clearance. [The Applicant admits the Financial Considerations of Paragraph 1, but denies the Alleged Personal Conduct, also incorrectly included under Paragraph 1 of the SOR. He denies the allegations of Foreign Influence styled under Paragraph 2.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 60 years, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline F - Financial Considerations

1.i. The Applicant was involved in an accident with an uninsured motorist; and as a result, suffered numerous medical bills, which caused him to file for the protection of a Chapter 7 Bankruptcy in 1997 (TR at page 44 line 11 to page 46 line 1, and Government Exhibit (GX) 2). He has now addressed all of his admitted past due debts, and has a positive monthly cash flow of \$1,000~\$1,500 (TR at page 46 lines 2~22).

1.a. and 1.b. The Applicant is making monthly payments of \$500 to a hospital, for a past due debt totaling \$7,053.25, as of March 1, 2006 (TR at page 37 line 9 to page 40 line 15, and Applicant's Exhibits (AppX) A at pages 1~3).

1.c. The Applicant settled his debt with a telephone provider for \$537.95, to the satisfaction of the creditor (TR at page 40 lines 16~24, and AppX A at page 4).

1.d. The Applicant settled his debt with a second hospital for \$4,441.33, to the satisfaction of the creditor (TR at page 40 line 25 to page 41 line 11, and AppX A at page 5).

1.e. The Applicant has formally disputed a \$66 debt to another phone company (TR at page 41 line 12 to page 42 line 15, and AppX E at page 2).

1.f. The Applicant settled his \$156 debt with a video store, to the satisfaction of the creditor (TR at page 42 line 16 to page 43 line 16, and AppX A at page 8). He now has "a \$0 balance" (AppX A at page 8).

1.g. The Applicant settled his debt with a credit card company for \$1,600, to the satisfaction of the creditor (TR at page 43 lines 17~24, and AppX A at pages 9~10).

1.h. The Applicant has formally disputed a \$25 debt to third phone company (TR at page 43 line 25 to page 44 line 10, and AppX E at page 2).

Guideline E - Personal Conduct

1.a.(duplicate) In answer to question 33 on his November 2003 SCA, the Applicant failed to disclose his August 1997 bankruptcy (GX 4 at page 9). He mistakenly thought that seven years had passed since he filed the Chapter 7 Bankruptcy, when, in fact, six years and nearly three months had passed (TR at page 46 line 23 to page 52 line 19). There was no intention to deceive the Government, however, and the Applicant did disclose this filing in a subsequent October 2004 QNSP (*Id.*, and AppX B at page 8).

1.b. and 1.c.(duplicates) In answer to questions 38 and 39 on his November 2003 SCA, the Applicant failed to disclose his debts in excess of 90 days and 180 days past due (GX 4 at page 9). He testified, credibly, that he misread the questions, as English is not his native language (TR at page 52 line 20 to page 54 line 19). There was no intention to deceive the Government, and the Applicant did disclose his delinquencies in his subsequent October 2004 QNSP (*Id.*, and AppX B at page 9). His credibility is testified to by one who knows the Applicant in the community, and by those U.S. Army Officers who served with the Applicant in Afghanistan (TR at page 83 line 5 to page 91 line 17, and AppX C at pages 1 and 2).

Guideline B - Foreign Influence

2.a. The Applicant's two brothers are citizens and residents of Afghanistan (GX 4 at page 4). They are both carpenters, and have no connection with the Afghan government (TR at 54 line 25 to page 55 line 24, and at page 58 lines 6~9). Furthermore, the Applicant is not subject to coercion vis-a-vis his foreign relatives (Tr at page 105 lines 1~23).

2.b. The Applicant worked for the Afghan government, without pay, from March to July of 2004 (TR at page 56 line 4 to page 57 line 13). Most recently, however, he worked for the U.S. Army in Afghanistan from December 2004 to June of 2005 (TR at page 58 line 10 to page 60 line 16, and at page 63 lines 1~18).

Mitigation

The "Deputy Commanding General" for the U.S. Army in Afghanistan thinks most highly of the Applicant, and other U.S. Army Officers echo the General's comments (AppX C at pages 1 and 2).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guidelines B (Foreign Influence), E (Personal Conduct), and F (Financial Considerations); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

Unacceptable Personal Conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

Considering first the Applicant's Financial Considerations, the first and third disqualifying conditions are applicable as the Applicant had a "history of not meeting [his] financial obligations," and there was an "[i]nability or unwillingness to satisfy [his] debts." However, the Applicant's financial difficulties can be directly attributed to circumstances "largely beyond . . . [his] control (e.g., . . . unexpected medical emergency . . .)." The third mitigating condition is therefore applicable. Furthermore, the Applicant has now addressed all of his admitted past due debts. The last mitigating condition is therefore applicable, as he has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Mitigation is shown. Guideline F is found for the Applicant.

As to his alleged wilful falsification, I can find no intent to keep information from the Government. When the Applicant filled out his SCA, he thought seven years had passed; and as such, he did not have to disclose his bankruptcy filing. He also testified, credibly, that he misread the questions as to his past delinquencies. When he filled out his subsequent QNSP, he corrected his prior mistakes. The Applicant's trustworthiness is attested to by those who know him and served with him in Afghanistan. Guideline E is also found for the Applicant.

As to his alleged Foreign Influence, the Applicant's two sibling brothers are citizens of and reside in Afghanistan. The first disqualifying condition is therefore applicable as "[a]n immediate family member . . . is a citizen of a foreign country." This is countered, however, by the first mitigating condition, as there is no evidence that their presence in Afghanistan can "be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States." In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. Furthermore, the totality of the Applicant's conduct and the circumstances, as set forth above, including the virtually non-existent potential for exploitation, still warrants a favorable finding under the whole person standard. Mitigation is again shown. Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Financial Considerations, his Personal Conduct and his Foreign Influence. The Applicant has thus met the mitigating conditions of Guidelines B, E and F, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B, E and F.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Financial FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. For the Applicant.
- i. For the Applicant.

Paragraph 1: Personal Conduct FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Paragraph 2: Foreign Influence FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of 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.

Richard A. Cefola
Administrative Judge