

KEYWORD: Financial; Criminal Conduct

DIGEST: The Applicant has either paid, or is in the process of addressing, all of his admitted past due debts. He has sold his house; and as a result, has \$100,000 in the bank to address the remaining \$10,000 of debt. The Applicant has also made arrangements to have his financial status professionally monitored. His financial difficulties stemmed from conditions largely beyond his control, an unexpected medical emergency and a resulting period of unemployment. Under Criminal Conduct, the Applicant pled no contest to Driving Under the Influence of Alcohol (DUI) in 2004, more than two years ago. The Applicant has the unqualified support of those who know him, and is a Reserve Deputy Sheriff. Mitigation is shown. Clearance is granted.

CASENO: 06-20281.h1

DATE: 04/12/2007

DATE: April 12, 2007

In Re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-20281
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Jeff A. Nagel, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

## SYNOPSIS

The Applicant has either paid, or is in the process of addressing, all of his admitted past due debts. He has sold his house; and as a result, has \$100,000 in the bank to address the remaining \$10,000 of debt. The Applicant has also made arrangements to have his financial status professionally monitored. His financial difficulties stemmed from conditions largely beyond his control, an unexpected medical emergency and a resulting period of unemployment. Under Criminal Conduct, the Applicant pled no contest to Driving Under the Influence of Alcohol (DUI) in 2004, more than two years ago. The Applicant has the unqualified support of those who know him, and is a Reserve Deputy Sheriff. Mitigation is shown. Clearance is granted.

## STATEMENT OF THE CASE

On October 11, 2006, 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 November 6, 2006.

The case was received by the undersigned on December 22, 2006. A notice of hearing was issued on January 19, 2007, and the case was heard on February 5, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on February 13, 2007. Pursuant to the Applicant's request, however, the record was left open until March 16, 2007. The issues raised here are whether the Applicant's past Financial Considerations and one incident of Criminal Conduct militate against the granting of a security clearance. [The Applicant admits the underlying factual basis for subparagraphs 1.a., 1.f., 1.g., 1.i. and 2.a.]

## 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 47 years of age, 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

The Applicant's financial difficulties stemmed from conditions largely beyond his control, an unexpected medical emergency and a resulting period of unemployment, of "[f]ive and a half months" (TR at page 28 lines 15~22, and at page 30 lines 16~24). He has since sold his house; and as a result, has \$100,000 in the bank to address the remaining \$10,000 of debt (TR at page 48 line

20 to page 49 line 13). The Applicant has also made arrangements to have his financial status professionally monitored (TR at page 46 line 22 to page 47 line 18, and Applicant's Exhibit (AppX) A at page 9).

1.a., 1.g. and 1.k. The Applicant has paid tax liens to his city/county government totaling \$157 (TR at page 35 line 6 to page 36 line 1, at page 41 line 25 to page 42 line 14, at page 44 lines 7~12, and AppX A at pages 3~8).

1.b.~1.e. The Applicant is in the process of addressing student loans in an amount totaling about \$10,000 (TR at page 37 line 3 to page 41 line 2). He is unable to get an exact accounting of what he owes (*Id*).

1.f. The Applicant disputes a debt to a communications provider in the amount of about \$53 (TR at page 41 lines 3~20). He will pay this debt once the provider demonstrates the debt is the Applicant's (*Id*).

1.h., 1.j., 1.m., 1.o., and 1.p. The Applicant has paid his debts to various medical providers totaling about \$1,600 (TR at page 42 line 15 to page 43 line 1, at page 43 line 25 to page 44 line 6, at page 45 lines 12~20, at page 46 lines 7~21, and Government Exhibit (GX) 2).

1.i. and 1.n. The Applicant has "satisfied in full" a judgment to a bank for a credit card debt in the amount of about \$2,600 (TR at page 43 lines 13~24, at page 45 line 21 to page 46 line 6, and AppX A at page 10).

1.l. The Applicant disputes a debt to another communications provider in the amount of about \$121 (TR at page 44 line 13 to page 45 line 11). He will pay this debt once the provider demonstrates the debt is the Applicant's (*Id*).

#### Guideline J - Criminal Conduct

2.a. In September of 2004, the Applicant was arrested and subsequently pled no contest to DUI (TR at page 31 line 14 to page 32 line 19, at page 49 line 14 to page 50 line 11, and AppX B at page 1). He describes what happened in the following colloquy:

Q[uestion] You said you had a dispute with your wife and you wanted to leave the scene and you brought a bottle with you. Did you consume the alcohol in the driveway and just passed out in your car?

A[nsWER] No, I actually went up the street to a cul de sac that looks over my house and the valley. It was 10:00 o'clock at night. I shut off my car, parked the vehicle and had a couple of drinks. I pulled the seat back and went to sleep.

Q[uestion] So, you never actually drove your car while you were drunk?

A[nsWER] Absolutely not, but it's still against the law (TR at page 49 line 17 to page 50 line 7).

As part of his sentence, the Applicant was placed on summary probation for five years (TR at page 31 line 14 to page 32 line 19, at page 49 line 14 to page 50 line 11, and AppX B at page 1).

## 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 which is speculative or conjectural in nature.

The Government must make out a case under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct), 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.

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. 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

The Applicant has a “history of not meeting [his] financial obligations,” and an “[i]nability . . . to satisfy debts.” These are the first and third disqualifying conditions under Financial Considerations. His financial difficulties, however, were caused by circumstances “largely beyond the . . . [Applicant’s] control (e.g. loss of employment . . . medical emergency . . .),” the second mitigating condition. The fourth mitigating condition is also applicable as the Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve [his] debts.” He now has \$100,000 in the bank to address any future financial claims

As to his past Criminal Conduct, the first disqualifying condition is applicable, as there is arguably “a single serious crime.” The fourth disqualifying condition is also applicable, as the Applicant “is currently on . . . probation.” These are countered, however, by the first mitigating condition, as “so much time has elapsed [more than two years] since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.”

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. Here, the Applicant is a Reserve Deputy Sheriff with an unrestricted driver’s license (AppX B at pages 1~2). Those who know the Applicant, in law enforcement, at the workplace, and in the community, speak most highly of his character, credibility and trustworthiness (AppX C). The totality of the Appellant’s conduct and circumstances, as set forth at length above, clearly warrants a favorable Decision under the “whole person concept.” Mitigation is shown; and as such, Guidelines F and J are found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government’s case regarding his past financial difficulties, and his isolated Criminal Conduct. The Applicant has thus met the mitigating conditions of Guidelines F and J, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines F and J.

## FORMAL FINDINGS

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

Paragraph 1:

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.

- j. For the Applicant.
- k. For the Applicant.
- l. For the Applicant.
- m. For the Applicant.
- n. For the Applicant.
- o. For the Applicant.
- p. For the Applicant.

Paragraph 2:

FOR THE APPLICANT

- a. For the Applicant.

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

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**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