

DATE: April 24, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-09782

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant was either unemployed or underemployed from 1989~1996. As a result, he suffered financial difficulties, and each year was unsure if he earned enough income to file a tax return. As to his Federal Income Tax returns for tax years 1989~1995 and 1997, they "have been filed and processed" by the IRS. He owes no past due tax debt to the IRS. As to his State Income Tax returns for tax years 1989~1994 and 1997, the Applicant need only file for tax years 1991 and 1992. The State, however, has agreed to a payment by the Applicant in lieu of these filings. He owes about \$9,000 in back taxes to the State, and is paying off this past due debt at double the rate required by the State. As to the other three past due debts, these have been paid in full. Clearance is granted.

**STATEMENT OF THE CASE**

On July 12, 2002, 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 August 22, 2002.

The case was received by the undersigned on January 22, 2003. A notice of hearing was issued on February 28, 2003, and the case was heard on March 28, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on April 11, 2003. The issues raised here are whether the Applicant's alleged past criminal conduct and financial difficulties militate against the granting of a security clearance.

**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 49 years of age, has a Bachelor's Degree, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

### Guideline F - Financial Considerations & Guideline J - Criminal Conduct

1.a., 1.c., 1.e., 1.g., 1.i., 1.k., 1.m., 1.n. and 2.e. The Applicant was unemployed or underemployed from 1989~1996 (Transcript (TR) at page 62 line 17 to page 63 line 2). As a result, he was unsure if had to file Federal Income Tax returns for tax years 1989~1995 (TR at page 44 line 22 to page 47 line 5). In this regard, the Applicant has been working with the Internal Revenue Service (IRS) "for the last 10 to 12 years on an ongoing basis" to resolve the issue of his alleged tax delinquencies (TR at page 68 line 18 to page 69 line 2, and at page 74 line 20 to page 75 line 8). According to the IRS, the Applicant has no current duty to file any of the alleged past tax returns, as his past due tax debt to the IRS for tax years 1989~1995 and 1997 has been paid (Applicant's Exhibit (AppX) K and AppX N at page 2).

1.b., 1.d., 1.f., 1.h., 1.j., 1.l., 1.o., 2.a. and 2.f. Again, due to being unemployed or underemployed, the Applicant was unsure if had to file State Income Tax returns for tax years 1989~1994 (TR at page 44 line 22 to page 47 line 5). At present, the Applicant need only file for tax years 1991 and 1992. The State, however, has agreed to a payment by the Applicant in lieu of these filings (AppX N at page 4). He owes about \$9,000 in back taxes to the State, and is paying off this past due debt at double the rate required by the State (TR at page 49 line 19 to page 51 line 5). This past due State tax debt will be satisfied by June or July of next year, 2004 (TR at page 70 line 16 to page 71 line 14).

2.b., 2.c. and 2.d. The Applicant has paid in full the three remaining past due debts totaling about \$5,253 (TR at page 51 line 6 to page 53 line 1, and AppXs C, H, I and J).

### Mitigation

There are 12 statements from those who know the Applicant on either a professional or personal basis (AppX A). All speak most highly of the Applicant (*id*).

## **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; which must be given consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

### Financial Considerations

#### Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts;

#### Conditions that could mitigate security concerns include:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, . . .);
6. The individual initiated a good faith effort to repay overdue creditors or otherwise resolved debts.

### Criminal Conduct

#### Conditions that could raise a security concern and may be disqualifying include:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses;

Condition that could mitigate security concerns include:

6. There is clear evidence of successful rehabilitation.

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**

Due to an extensive period of unemployment or underemployment, the Applicant failed to file both Federal and State returns for a number of years, and also incurred about \$21,700 in past due indebtedness, which he was initially unable to address. Most recently, however, the Applicant has satisfied both the Federal and State taxing authorities, and has paid off of his past due indebtedness, save \$9,000 owed to the State. Pursuant to an agreement with the State, this last past due debt will be paid off by June or July of next year, 2004. He has thus satisfied both the last mitigating conditions under Financial Considerations and under Criminal Conduct. Furthermore, those who work with or know the Applicant on a personal basis speak most highly of him. I therefore conclude that his alleged past criminal conduct and financial difficulties are not of present security significance.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his past criminal conduct and

financial difficulties. 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.

#### Paragraph 2: 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.

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