

DATE: February 16, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0250

DECISION ON REMAND OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Sylvester D. DeLaPorte, Personal Representative

STATEMENT OF THE CASE

On June 28, 2000, 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 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 11, 2000.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 6, 2000. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on October 23, 2000, and submitted a response on November 20, 2000. This response was inadvertently filed in the case's "Correspondence File" and not in the case "Pleadings and Exhibits File." As a result, I did not notice Applicant's response in making my Decision. The case was initially received by me for resolution on November 27, 2000, and a Decision was issued on December 8, 2000.

Applicant appealed my original Decision on the basis that I did not consider her response. The Appeal Board has remanded that Decisions "with instructions to issue a new decision . . . after the Judge considers the case file (including Applicant's response to the FORM) that was compiled before the Judge was assigned the case."

The Applicant's response to which Department Counsel has no objection consists of a three page cover letter by the Applicant addressing the allegations of the SOR; a one page document addressing allegation 1.l. of the SOR; a one page document addressing allegation 1.v. of the SOR; a one page document addressing allegation 1.h. of the SOR; a two page document addressing allegation 1.s. of the SOR; another one page document addressing allegation 1.v. of the SOR; a one page document addressing allegation 1.w. of the SOR; a one page document addressing allegation 1.x. of the SOR;

and a one page document addressing allegation 1.x. of the SOR. The issues raised here are whether the Applicant's financial difficulties, personal conduct and related criminal conduct 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 File of Relevant Material, and the Applicant's response. The Applicant is 40 years of age, and is employed by a defense contractor as a software engineer. Her employer seeks a security clearance on behalf of the Applicant.

Guideline F - Financial Considerations

1.a.~aa. The Applicant, by her own admission, was indebted to 26 separate creditors in the amount of more than \$14,000.00 in past due indebtedness (Government Exhibits (GXs) 8 and 9, and Applicant's response (Response)). Most recently, however, after the issuance of the SOR in June of 2000, the Applicant in July and August has either paid off or made arrangements to pay off nearly all of this past due indebtedness (GXs 3 and 4, and Response). There is still little explanation, other than a reference to a number of failed marriages, as to how she incurred her past due indebtedness; but she avers that, due to a tax refund and her income increasing by \$20,000.00 a year, she can now address it (GX 3 at page 2, *see also* Response at page 3).

Guideline E - Personal Conduct & Guideline J - Criminal Conduct

2.a. and 3.a. In answering question 38 on her February 1999 Questionnaire for National Security Positions (QNSP) (GX 5 at page 11), the Applicant knowingly and wilfully failed to disclose any of her past due indebtedness, except for her student loan of \$472.00, listed in subparagraph 1.t. of the SOR. This lack of candor is a violation of 18 U.S.C. Section 1001.

2.b. The Applicant was arrested in August of 1996, and subsequently charged with larceny (GX 6 and GX 8 at page 1). The charge was later dismissed, as it appears it was based on a false accusation (*id*). Accordingly, this subparagraph is found for the Applicant.

Mitigation

The Applicant's response adds little in the way of mitigation, other than demonstrating that she is now addressing her past due indebtedness. In fact, all of the documents appended to her three page response cover letter address debts that I had previously given the Applicant credit for either paying or as being paid in full.

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 binding 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:

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

Condition that could mitigate security concerns:

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Personal Conduct

Condition that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form . . . ;

Conditions that could mitigate security concerns:

None.

Criminal Conduct

Condition that could raise a security concern:

1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;

Conditions that could mitigate security concerns:

None.

As set forth in the Directive, "[e]ach 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 and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age 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), Guideline E (Personal Conduct), 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 her 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.

Personal Conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or an unwillingness to comply with rules and regulations; and Criminal Conduct also creates doubt about her judgement, reliability and

trustworthiness. Furthermore, 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. If an applicant has demonstrated a lack of respect for the law in her private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

Considering first the Applicant's past due indebtedness, which was well in excess of \$14,000.00. By July of 1999, despite having a positive cash flow of nearly \$300.00 each month (GX 8 at page 4), it was not until a year later that she finally began to address this past due indebtedness. She began to pay these past due debts only after being prompted by the issuance of the SOR in June of 2000. This lack of responsible action is clearly of present security significance, and outweighs the fact that she has paid the majority of the debts. Thus Guideline F is found against the Applicant.

The Applicant was less than candid with the Government as to her financial difficulties on her February 1999 QNSP. This wilful falsification is a violation of 18 U.S.C. Section 1001. She would have the Government believe that her past due indebtedness was only \$472.00, when in fact it was well in excess of \$14,000.00. She avers she "had forgotten" all of this past due indebtedness. (Response at page 2). This is not believable. Both Guidelines E and J are therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her Personal Conduct, Financial Difficulties, and Criminal Conduct. The Applicant has thus not met the mitigating conditions of Guidelines E, F and J, and of Section E.2.2. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guidelines E, F and J.

FORMAL FINDINGS

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

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.

n. Against the Applicant.

o. Against the Applicant.

p. Against the Applicant.

q. Against the Applicant.

r. Against the Applicant.

s. Against the Applicant.

t. Against the Applicant.

u. Against the Applicant.

v. Against the Applicant.

w. Against the Applicant.

x. Against the Applicant.

y. Against the Applicant.

z. Against the Applicant.

aa. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT

a. Against the Applicant.

Paragraph 3: AGAINST THE APPLICANT

a. Against 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 not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge