

DATE: September 18, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0326

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant was less than candid about his past criminal conduct, his past drug abuse, and his present financial difficulties when he executed his Security Clearance Application in May of 1998. This wilful falsification is also a violation of 18 U.S.C. Section 1001. No mitigation is shown. Clearance is denied.

STATEMENT OF THE CASE

On September 13, 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 October 19, 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 March 5, 2002. In the FORM the Government moved to amend the SOR by deleting subparagraphs 2.a. and 2.e. There being no objection by the Applicant, the SOR is so amended. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on April 16, 2002, and submitted nothing in reply. On or about September 16, 2002, the Government forwarded a document that was inadvertently missing from the record case file, Item 10. The information contained in this document necessitated the Government's request for the deletion of subparagraph 2.a. of the SOR; and as such, is to the Applicant's benefit and its untimely submission constitutes harmless error. The case was received by the undersigned for resolution on September 17, 2002. 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, and the File of Relevant Material. The Applicant is 50 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline F - Financial Considerations

1.a.~1.d. In 1994, the Applicant defaulted on his mortgage (Item 8 at page 8). In 1996, a vehicle, the loan for which the Applicant co-signed, was repossessed (Item 8 at page 9, and Item 9 at page 1). There is an outstanding balance past due of about \$11,700.00 (*id*). In 1998, the Applicant had a petition for a Chapter 13 Bankruptcy dismissed (Item 8 at page 8). After the loss of employment, he filed for bankruptcy in order to save his house (*id*). Soon thereafter, he obtained new employment; and as such, sought dismissal of the bankruptcy filing. However, the Applicant is "currently behind on two months of mortgage payments" (*ibid*). He is also past due in his indebtedness to a hospital in excess of \$100.00 (Item 8 at pages 8~9, and Item 9 at page 4).

Guideline E - Personal Conduct & Guideline J - Criminal Conduct

2.b.~2.d., 2.f.~2.h. (subparagraphs 2.a. and 2.e. having been deleted from the SOR), and 3.a. In answering questions 23.a. and 23.d. on his May 1998 Security Clearance Application (SCA), the Applicant knowingly and wilfully failed to disclose that he was charged with a felony in 1969, that he was charged with another felony in 1970, that he was charged with a drug related offense in 1972, and that he was charged with an alcohol related offense in 1991 (Item 4 at page 8, Item 6, Item 7 at page 3, and Item 8 at pages 2 and 3). This wilful falsification is a violation of 18 U.S.C. Section 1001.

In answering questions 24.a. and 24.b. on his May 1998 SCA, the Applicant again knowingly and wilfully failed to disclose any of his past drug abuse (Item 4 at page 9). He used marijuana on at least one occasion in 1996, while holding a security clearance (Item 8 at page 7). This wilful falsification is a also a violation of 18 U.S.C. Section 1001.

In answering questions 28.a. and 28.b. on his May 1998 SCA, the Applicant once again knowingly and wilfully failed to disclose that he defaulted on his mortgage in 1994, and that he was past due on a hospital debt (Item 4 at page 10). This wilful falsification is again a violation of 18 U.S.C. Section 1001.

In 1996, the Applicant was terminated for violations of his company's rules (Item 5). He was found under the influence of alcohol after being admitted to company property, and was insubordinate by failing to observe company instructions (Item 5 and Item 8 at pages 5~6).

Mitigation

The Applicant offers little, if anything, in the way of mitigation.

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;

Conditions that could mitigate security concerns:

None.

Personal Conduct

Conditions 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 . . . ;

(5) A pattern of dishonesty or rule violations . . . ;

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, "[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 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 its 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 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.

Personal conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations; and improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. 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 his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant has a history of not meeting his financial obligations. In 1994, he defaulted on his mortgage, and in 1998, despite seeking the protection of a Chapter 13 Bankruptcy, he is two months past due on his mortgage payments. He also has two other outstanding debts well in excess of \$11,000.00. His financial situation, which is mired in past due indebtedness, is clearly of present security significance; and as such, Guideline F is found against the Applicant.

The Applicant's personal conduct and related criminal conduct is even more troubling. He was less than candid in answering seven separate questions on his ay 1998 SCA. This repeated wilful falsification is a clear violation of 18 U.S.C. Section 1001. Furthermore, in 1996, the Applicant demonstrated that he could not be trusted as he was terminated for violating his company's rules. The Applicant's lack of candor, coupled with his rule violations, is clearly of security significance; and as such, Guidelines E and J are also found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his financial situation, his personal conduct, and his related 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, he has not met his ultimate burden of persuasion under Guideline 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.

Paragraph 2: AGAINST THE APPLICANT

- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.

h. Against the Applicant.

Paragraph 3: AGAINST THE APPLICANT

a. Against 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