

DATE: December 28, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-01642

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On August 17, 2001, 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 September 19, 2001.

The case was received by the undersigned on November 1, 2001. A notice of hearing was issued on November 19, 2001, and the case was heard on December 6, 2001. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant. The transcript was received on December 18, 2001. The issues raised here are whether the Applicant's financial considerations, criminal conduct, and related personal 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 documents and the live testimony. The Applicant is 38 years of age, and is employed by a defense contractor as a Facility Security Officer (FSO). His employer seeks a security clearance on behalf of the Applicant.

**Guideline J - Criminal Conduct & Guideline E - Personal Conduct**

1.a.~1.c. In June of 1993, the Applicant was arrested, and subsequently pled guilty to Assault 3<sup>rd</sup> Degree, a misdemeanor (Transcript (TR) at page 34 line 19 to page 37 line 15, and Government Exhibit (GX) 5). In April of 1999, the Applicant was arrested a second time, and subsequently pled guilty to Disorderly Conduct, also a misdemeanor (TR

at page 24 line 18 to page 28 line 18, GX 6, and Applicant's Exhibit (AppX) A). In March of 2000, the Applicant was charged with Assault 3<sup>rd</sup> Degree and with Harassment, both misdemeanors (TR at page 29 line 2 to page 33 line 14). These charges were subsequently dismissed, as the alleged victim "was subpoenaed and she didn't show up" (TR at page 32 lines 19~25). All three of the above offenses involved the same individual as their alleged victim, an individual with whom the Applicant had a long time on going, extra-marital relationship (TR at page 34 lines 7~18).

1.d. The Applicant was also charged in November of 1999 with Driving Under the Influence of Alcohol (TR at page 42 line 2 to page 44 line 12). The Applicant admits to consuming "quite a bit" of alcohol prior to his arrest (TR at page 42 lines 2~6).

2.a. In answering questions 23.d. and 23.f. on his December 1998 Questionnaire for National Security Positions (QNSP), the Applicant knowingly and wilfully failed to disclose the June 1993 3<sup>rd</sup> Degree Assault charge to which he pled guilty (GX 1 at page 7). The Applicant avers, unconvincingly, that he was confused with the terminology (TR at page 50 line 18 to page 53 line 19). This is not believable. The questions are straight forward, and the Applicant, as a FSO, clearly should have known what responses were required. This lack of candor is a violation of 18 U.S.C. Section 1001.

2.b. In a February 2000 interview with a Defense Security Service (DSS) Agent, the Applicant knowingly and wilfully failed to disclose that he had had an extra marital affair (TR at page 54 line 12 to page 55 line 19, GX 2 at pages 5~6, and GX 4 at pages 6 and 8). He specifically swore "I have never participated in any extra-marital affairs" (GX 4 at page 2). This lack of candor is also a violation of 18 U.S.C. Section 1001.

#### Guideline F - Financial Considerations

3.a. The Applicant testified credibly that he has paid off a \$64.00 to Creditor 1 (TR at page 66 line 25 to page 68 line 1).

3.b. The Applicant owes about \$5,353.00 in past due indebtedness to Creditor 2 (TR at page 68 line 2 to page 71 line 21). The Applicant had been paying this debt down by way of a \$75.00 allotment, each pay period (TR at page 68 line 6 to page 69 line 24). Creditor 2 has informed Applicant that they consider his payments to be insufficient to pay down this debt; and as such, he is negotiating with them to set up another payment plan (TR at page 69 at line 25 to page 71 at line 21).

#### Mitigation

The Applicant was honorably discharged from United States Air Force as a Sergeant after 15 years of service (AppX C). His employer's Security/Training anager has known the Applicant for five years, and thinks highly of the Applicant (AppX B).

### **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:

#### Criminal Conduct

##### Conditions that could raise a security concern:

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

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, personal history statement, or similar form used to conduct investigations, determine employment qualifications . . . ;
3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security or trustworthiness determination;

Conditions that could mitigate security concerns:

None.

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.

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 that are speculative or conjectural in nature.

The Government must make out a case under Guidelines F (financial considerations), E (personal conduct), and 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.

Unacceptable personal conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations; and criminal conduct also creates doubt about a person's judgment, reliability and trustworthiness. 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, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

## CONCLUSIONS

Considering the Applicant's criminal conduct and related personal conduct, he has been charged on four separate occasions with criminal conduct, which has resulted in two convictions, one in 1993 and the other in 1999. When asked about his past criminal record on his 1998 QNSP, the Applicant denied the existence of his 1993 criminality. This wilful falsification of his QNSP is a violation of 18 U.S.C. Section 1001. The Applicant was also less than candid with the Government when he denied, in a February 2000 signed sworn statement, that he had had an extra-marital affair. This is also a violation of 18 U.S.C. Section 1001. Both guidelines are therefore found against the Applicant.

Considering the Applicant's financial situation, the Applicant has paid off one debt, and has initiated a good-faith effort to repay the other. This guideline is found for the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his personal, and criminal conduct. The Applicant has thus not met the mitigating conditions of Guidelines E and J, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines E 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

- a. Against the Applicant.
- b. Against the Applicant.

### Paragraph 3: 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 not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge