

DATE: April 16, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-02420

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On October 9, 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 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 or about January 5, 2002.

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 February 6, 2002. 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 March 1, 2001, and the Applicant submitted nothing in reply. The case was received by the undersigned for resolution on April 1, 2002. The issue raised here is whether the Applicant's admitted financial difficulties mitigate 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 48 years of age, and is employed as a truck driver by a defense contractor who seeks a security clearance on behalf of the Applicant (Government Exhibit (GX) 4 at page 1, and GX 5 at page 1).

**Guideline F - Financial Considerations**

1.a.~1.k. The Applicant, by his own admission, is indebted to nine different creditors in an amount of about \$19,393 in past due indebtedness<sup>(1)</sup> (GX 4 at pages 12~13, and GX 6 at pages 4~7). He avers "[t]he accounts I am delinquent with

are credit cards and I became delinquent because I allowed myself to be overcome with the ease of getting things with credit cards" (GX 5 at page 1). He further avers that he "talked to an attorney about filing bankruptcy but . . . [he] couldn't afford to do that" (GX 5 at page 2). The Applicant also states that his monthly income is such that he does "not make enough to make payments on the credit cards" (*id*).

### Mitigation

Other than stating the genesis of his past due indebtedness, the Applicant offers little in the way of mitigation.

## **POLICIES**

Enclosure 2 and Section E2.2. of the 1992 Directive set forth both policy factors and conditions that could raise or mitigate a security concern, and 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 and may be disqualifying include:

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

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

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 a case under Guideline F (Financial Considerations) 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's past due indebtedness is in excess of \$19,000. It was incurred due to his inability to handle credit cards. In his December 1999 sworn statement, the Applicant merely acknowledges the debts existence, but offers little else. In his January 2002, Answer to the SOR he repeats this mantra. He has done thus done nothing to alleviate the Government's concerns, and "is at risk of having to engage in illegal acts to generate funds," the Government's chief concern under Financial Considerations. The Applicant's continuing, excessive past due indebtedness is thus clearly of present security significance; and as such, Guideline F is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his admitted financial difficulties. The Applicant has thus not met the mitigating conditions of Guideline F, and of Section E2.2. of the Directive. Accordingly, his has not met his ultimate burden of persuasion under Guideline F.

### **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. For the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. For the Applicant.
- I. Against the Applicant.
- j. Against the Applicant.
- k. 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

1. Subparagraphs 1.a. and 1.h. refer to the same debt, and the Applicant credibly denies any knowledge of the debt alleged in subparagraph 1.d..