

DATE: April 15, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-04198

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On December 3, 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 January 10, 2002.

The case was received by the undersigned on February 27, 2002. A notice of hearing was issued the next day on February 28, 2002, and the case was heard on arch 19, 2002. The Government submitted documentary evidence, and testimony was taken from the Applicant. The transcript was received on March 27, 2002. The issues raised here are whether the Applicant's admitted past 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 50 years of age, and is employed by a Government Contractor as a computer technician (Transcript (TR) at page 4 lines 20~24).

Guideline F - Financial Considerations

The Applicant had about \$15,000 in past due indebtedness (Government Exhibits (GXs) 2~7). The genesis of this indebtedness was a divorce, a tax dispute resulting from the divorce, and a period of unemployment. The Applicant was divorced in October of 1992 (TR at page 25 lines 7~9). As result of the divorce decree, half of his retirement account, from a prior employer, was decreed to his former spouse. As a result, he only paid income taxes on his half of the proceeds from the retirement account. Subsequently, however, the state and Federal taxing authorities held him

responsible for the income taxes on all of the proceeds from the account (TR at page 42 line 20 to page 43 line 11). The Applicant was also unemployed from "July of 1997 to April of 1998," a period of about "10 months," when his income was "minimal" (TR at page 25 lines 10~19). He has since addressed all of his past due indebtedness:

1.a. The Applicant owed about \$755 in past due indebtedness to a clinic (GX 2 at page 2, and GX 7 at page 16). Through an agreement with the clinic he pays \$50 each month towards this debt, and now owes about \$455 (TR at page 27 line 3 to page 28 line 11, and Applicant's Exhibit (AppX) A).

1.b. The Applicant owed about \$1,273 in past due indebtedness to a financial institution (GX 2 at page 2, and GX 7 at page 8). This debt has been completely satisfied (TR at page 28 line 14 to page 29 line 4, and AppX B).

1.c. The Applicant owed about \$555 in past due indebtedness to a bank (GX 4 at page 1). This debt has also been completely satisfied (TR at page 29 line 9 to page 30 line 3, and AppX C).

1.d. The Applicant owed about \$1,562 in past due indebtedness to another bank (GX 2 at pages 2~3, and GX 7 at page 12). This debt has been completely satisfied (TR at page 30 lines 9~24, AppX D, and AppX F at page 4).

1.e. The Applicant owed about \$7,500 in past due indebtedness to automobile manufacturer for the balance due on a repossessed automobile (GX 3 at page 2). Through an agreement with the manufacturer, he pays \$75 each month towards this debt, and now owes about \$6,283 (AppX F at pages 1~3).

1.f. The Applicant owed about \$105 in past due indebtedness to company that has since gone out of business (GX 2 at pages 2~3, and TR at page 35 line 9 to page 36 line 3). This debt has been completely satisfied (TR at page 35 line 9 to page 36 line 3).

1.g. The Applicant owed about \$4,384 in past due indebtedness to a state taxing authority (GX 3 at page 3, GXs 5 and 6, and GX 7 at page 18). This debt has also been satisfied (TR at page 36 line 10 to page 37 line 7, and AppX E).

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, . . . divorce);
6. The individual initiated a good faith effort to repay overdue creditors or otherwise resolved 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 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

Due to a divorce and a loss of employment, the Applicant incurred about \$15,000 in past due indebtedness, which he was initially unable to address. He has since addressed all of this indebtedness, as required by the last mitigating condition under Financial Considerations, and has reduced the indebtedness to about \$6,700, owed to two creditors. He has further agreed, with the concurrence of the two remaining creditors, to pay down the balance of his debt through monthly payments. As the Applicant is clearly on the road of financial solvency, I conclude that his past financial considerations are not of present security significance.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged financial difficulties. The Applicant has thus met the mitigating conditions of Guideline F, and of Section E.2.2. of the Directive. Accordingly, he has 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: 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.

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