

DATE: May 20, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 01-04486

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Applicant has an outstanding judgement in excess of \$96,000.00. Despite having a positive income flow of nearly \$900.00 each month, the Applicant has done nothing to address his judgement. Clearance is denied.

### **STATEMENT OF THE CASE**

On November 5, 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 December 10, 2001.

The case was received by the undersigned on March 13, 2002. A notice of hearing was issued on March 27, 2002, and the case was heard on May 2, 2002. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant. The transcript was received on May 9, 2002. The issues raised here are whether the Applicant's admitted financial difficulties militates 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 59 years of age, has a Bachelor's degree, and is employed as program estimator by a defense contractor who seeks a security clearance on behalf of the Applicant (Transcript (TR) at page 5 line 19 to page 6 line 2).

#### **Guideline F - Financial Considerations**

1.a. and 1.b. The Applicant, by his own admission, is indebted by way of a default judgement in excess of \$96,000.00 (TR at page 32 lines 11~14, at page 33 lines 1~3, and Government Exhibit (GX) 1). The Applicant had a franchise business. Despite his best efforts to make the business a going concern, it soon became evident that the franchise would not be profitable (TR at page 29 lines 9~21). He decided to quit the business (*id*). By the Applicant's accounting, he owed the franchiser at least \$59,000.00 (TR at page 33 lines 1~19, *see also* Applicant's Exhibits (AppXs) A~C). The Applicant considered filing for bankruptcy, but decided against it (TR at page 56 line 19 to page 57 line 7). The franchiser sued the Applicant for \$91,038.54, plus \$5,000.00 in attorney's fees (GX 1). The Applicant did not appear on his court date; and as such, he suffered a default judgement (*id*). The Applicant has a monthly positive cash flow of about \$878.00, but has no intention of addressing his default judgement (TR at page 44 line 1 to page 47 line 6, and GX 3 at page 3).

### Mitigation

The Applicant is very active in his church, with his church duties including fiduciary responsibilities (TR at page 31 line 11 to page 32 line 10).

## **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:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. . . . a business downturn . . . ;

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 has an outstanding judgement against him in excess of \$96,000.00. Due to a business downturn, he lost his franchise business. This is understandable and will not be held against the Applicant, as the third mitigating condition under Financial Considerations recognizes that business downturns do occur. What is problematic, however, is what the Applicant has done vis-a-vis this debt subsequent to the loss of his business. He has done nothing. He is basically just ignoring the outstanding judgement, despite having a positive monthly cash flow of nearly \$900.00 each month. This "unwillingness to satisfy" this outstanding debt clearly comes within the purview of disqualifying condition three, and he has done nothing to alleviate the Government's concerns. The Applicant's continuing, excessive indebtedness is thus 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, he 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.

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