

DATE: September 23, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-09038

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has failed to demonstrate that she has initiated a good-faith effort to repay overdue creditors or otherwise resolve her debts. She was also clearly less than candid about the repossession of her vehicle when she answered question 35 on her June 1999 Security Clearance Application. This wilful falsification is a violation of 18 U.S.C. Section 1001. Clearance is denied.

STATEMENT OF THE CASE

On January 31, 2002, 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 March 7, 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 arial (FORM) on April 25, 2002. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. In the FORM, the Department Counsel explained, in no uncertain terms, the following:

The Applicant responds that she has already paid some debts and has consolidated the remaining debts in order to make regular payments to a collection agency. For the Applicant to benefit from mitigating condition E2.A6.1.3.6, however, she must demonstrate proof that she has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." She may for example submit copies of payment receipts or creditor agreements indicating that she has satisfied her debts or initiated repayment plans.

Applicant received her copy of the FORM on May 8, 2002, and Applicant's one page unsworn Response was received on or about June 10, 2002. The case was received by the undersigned for resolution on September 17, 2002. The issues raised here are whether the Applicant's admitted financial difficulties, lack of candor 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, the File of Relevant Material and Applicant's Response. The Applicant is 32 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.o By her own admission, the Applicant is indebted to 13 different creditors in the amount of about \$8,100.00 in past due indebtedness (Item 2, and Item 6 at pages 1~3). She avers that \$4,000.00 of this indebtedness is due to the unexpected illness of her son, and the remainder is due to her loss of employment (Item 2 at page 1). She claims to be addressing all of her past due indebtedness, but offers nothing to support this bare allegation (Item 2, and Response).

Guideline E - Personal Conduct & Guideline J - Criminal Conduct

1.a. In answering question 35 on her June 1999 Security Clearance Application (SCA), the Applicant knowingly and wilfully failed to disclose that her vehicle was voluntarily repossessed in 1995 (Item 4 at page 11). She only disclosed the existence of the repossession to the Government nine months later when she executed a sworn statement in March of 2000 (Item 5 at page 3). This lack of candor is a violation of 18 U.S.C. Section 1001.

1.b. In answering questions 38 and 39 on her June 1999 SCA, the Applicant, relying on the bad advice of a "general clerk" working for her employer, failed to disclose any of her past due indebtedness (Item 2 at page 4). Although this clerk was not authorized to give such advice, I find that the Applicant's intent was not to deceive the Government in answering "No" to the posited questions. She thought the clerk was authorized to give such advice, and relied upon it in filling out the SCA (Item 2 at page 4, and Item 5 at page 1).

Mitigation

In her Response, the Applicant avers she "will soon have a free financial slate," but again offers nothing in support of this bare assertion.

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;

Condition that could mitigate security concerns:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, . . . unexpected medical emergency . . .);

Personal Conduct

Condition 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 . . . ;

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 a 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 her 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 an unwillingness to comply with rules and regulations. Furthermore, 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

Considering first the Applicant's in excess of \$8,000.00 in past due indebtedness, in her March 2000 sworn statement, the Applicant averred she intended to resolve her outstanding indebtedness. In the April 2002 FORM, Department Counsel candidly informed the Applicant what she may submit to satisfy her burden of proof and rebut the Government's case. Despite having more than two years to garner the suggested documentation, in answering the

FORM, the Applicant offers no documentation, whatsoever. In a one page unsworn letter, she merely avers that she is addressing the Government's concern. Clearly the Applicant has not met her burden; and as such, Guideline F is found against the Applicant.

Although the Applicant unwittingly relied upon bad advice in responding to questions regarding her Financial Delinquencies on her June 1999 SCA, she was clearly less than candid with the Government in answer to question 35, as to her voluntary repossession. The posited question is clear and unequivocal, but her answer was "No." This wilful falsification is also a violation of 18 U.S.C. Section 1001. Guidelines E and J are therefore also found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her Financial Difficulties, Personal Conduct and 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, she has not met her ultimate burden of persuasion under Guidelines 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. For the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. For the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.
- o. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT

- a. For the Applicant.
- b. 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