

DATE: December 23, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-15856

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Henry Lazzaro, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has a history of not meeting his financial obligations, as evidenced by a Chapter 13 bankruptcy petition in 1972, a Chapter 7 discharge in 1981, and another Chapter 7 discharge in 1998. He was also less than candid on his May 2000 Security Clearance Application when asked if he "ever had . . . access authorization denied, suspended or revoked." Due to financial considerations, his SCI access was suspended and later denied in 1985. Clearance is denied.

**STATEMENT OF THE CASE**

On June 4, 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 or about June 18, 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 August 1, 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 August 13, 2002, and Applicant's reply was received on October 2, 2002. The case was received by the undersigned for resolution on December 20, 2002. The issues raised here are whether the Applicant's financial difficulties and 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 File of Relevant Material and Applicant's Response. The Applicant is 60 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.c. The Applicant petitioned for a **Chapter 13 bankruptcy in 1972** (Item 7 at pages 1 and 6). In his answer to the SOR, the Applicant denies this allegation stating: "I do recall speaking to any attorney about bankruptcy, however, I do not recall ever signing any documentation nor, do I recall paying any attorney fees to file for bankruptcy" (Item 3 at page 1). However, this averment is contradicted by the Applicant's response to a February 1985 Letter of Intent to Deny SCI Access Eligibility (Item 7 at pages 1~3). In his response he states, "[t]he bankruptcy in 1972 was bad judgement on my part and after realizing this fact I stopped proceedings on it" (Item 7 at page 6).

In **May of 1981**, the Applicant's debts were discharged by way of a **Chapter 7 bankruptcy** (Item 7 at page 1). His liabilities totaled about \$14,797, and his total assets about \$1,235 (*id*). In **March of 1998**, the Applicant's debts were again discharged by way of a **Chapter 7 bankruptcy** (Item 6). This time his liabilities totaled about \$101,990, and his total assets about \$18,308 (*id*).

### Guideline E - Personal Conduct

2.a. In answering question 32 on his May 2000 Security Clearance Application (SCA), the Applicant knowingly and wilfully failed to disclose that his SCI access was suspended and later denied in 1985 (Item 4 at page 6, and Item 7). The Applicant avers that this was a "misunderstanding" on his part. This is not believable. In a February 1985 Letter of Intent, the Applicant was specifically informed that his SCI access was "suspended" (Item 7 at page 2); and in June 1985 Determination Letter, he was specifically informed that his SCI access was "denied" (Item 7 at page 9).

## **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;
2. Inability or unwillingness to satisfy debts;

#### Conditions that could mitigate security concerns:

None.

### 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, personal history statement, or similar form used to conduct investigations, determine employment qualifications . . . ;

#### 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, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity 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 is speculative or conjectural in nature.

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

Unacceptable personal conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. 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 financial difficulties, the Applicant has a history of not meeting his financial obligations, as evidenced by a Chapter 13 bankruptcy petition in 1972, a Chapter 7 discharge in 1981, and another Chapter 7 discharge in 1998. In 1985, the Applicant was put on notice that his financial situation was of concern to the Government when his SCI access was suspended and later denied. Despite this warning, the Applicant again went bankrupt in 1998. Simply stated he is not financially stable; and as such, Guideline F is found against the Applicant.

As to his personal conduct, the Applicant was less than candid when he answered question 32 on his May 2000 SCA. The question posited is clear and straight forward, "have you **ever** had . . . access authorization **denied, suspended, or revoked**" (Item 4 at page 6, emphasis supplied). Five years prior, his SCI access both suspended and denied, and he was informed of both occurrences. Guideline E is also found against the Applicant.

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

Paragraph 2: 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