

DATE: December 20, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-16590

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant and the father of her child separated in 1989. For the "first time" she was "on . . . [her] own and responsible for paying all the expenses." The Applicant began to fall behind in her bills, and incurred about \$8,800 in past due indebtedness. She has now initiated a good-faith effort to repay or otherwise resolve all of her past due debts. Clearance is granted.

STATEMENT OF THE CASE

On May, 1, 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 May 23, 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 aterial (FORM) on August 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 her copy on August 12, 2002, and Applicant's Response was received on September 16, 2002. The case was received by the undersigned for resolution on December 19, 2002. The issues raised here are whether the Applicant's 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 File of Relevant Material and Applicant's Response. The Applicant is 37 years of age, and is employed by a defense contractor who seeks a security

clearance on behalf of the Applicant.

Guideline F - Financial Considerations

The Applicant lived with the father of her child from the age of 19 to 24 (Government Exhibit (GX) 5 at page 1). They separated in 1989, and for the "first time" she was "on . . . [her] own and responsible for paying all the expenses" (*id*). The Applicant began to fall behind in her bills, and incurred about \$8,800 in past due indebtedness (GX 7). Her past due indebtedness has now been addressed in the following manner:

1.a. The Applicant owes \$1,400 in past due indebtedness to a bank (Response at page 11). She has entered into a **payment plan** with the creditor by which she pays \$45 each month on this outstanding debt (*id*).

1.b. The Applicant owed \$3,200 in past due indebtedness to second bank (GX 5 at page 6). **Prior to the issuance of the SOR**, the Applicant entered into a **settlement agreement** with the creditor, and this past due debt has been **satisfied** (Response at pages 6~8).

1.c. The Applicant owed \$1,683 in past due indebtedness to a financial institution (GX 7 at page 5). She has entered into a **payment plan** with the creditor by which she makes regular payments of \$235 towards this outstanding debt (GX 6 at pages 6~7, and Response at pages 9~10). She has reduced this debt to \$706 (Response at pages 9~10).

1.d. The Applicant owes \$408 in past due indebtedness to a second financial institution (GX 7 at page 4). She is addressing this past due debt, but has yet to establish a payment plan (Response at page 12).

1.e. The Applicant owes \$53 in past due indebtedness to grocery store (GX 7 at page 5). She is also addressing this past due debt, but has yet to establish a payment plan (Response at page 12).

1.f. The Applicant owes \$2,000 in back taxes to the IRS (GX 5 at pages 5~6). **Prior to the issuance of the SOR**, she has been making **monthly payments** of \$65 towards this past due indebtedness (*id*).

Mitigation

The Applicant has addressed all of her past due indebtedness.

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;

Condition that could mitigate security concerns include:

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, 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 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 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.

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

At the age of 24, the Applicant, for the first time, found herself on her own, financially. As a result, she fell behind in her bills, and incurred about \$8,800 in past due indebtedness. She has now addressed all of this indebtedness, as required by the last mitigating condition under Financial Considerations. Her two largest debts, one to a bank and the other to the IRS, were, in fact, addressed prior to the issuance of the SOR. Her past due indebtedness has thus been cut almost in half to about \$4,500. As the Applicant is now on the road to financial solvency, I conclude that her past financial considerations are not of present security significance.

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

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