

DATE: April 21, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-16579

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has no past due indebtedness. He avers, credibly, that he had filed his Federal Income Tax returns for tax years 2000 and 2001. Clearance is granted.

STATEMENT OF THE CASE

On December 19, 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 January 13, 2003.

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 February 5, 2003. 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 February 14, 2003, and Applicant's initial Response was received on March 21, 2003. The case was received by the undersigned for resolution that same day, March 21, 2003. An additional Response, to which the Government had no objection, was received on April 9, 2003. The issues raised here are whether the Applicant's past financial difficulties and alleged 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 54 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. The Applicant co-signed on a car loan for his son (Government Exhibit (GX) 7 at page 2). His son fell behind in the payments; and as such, the Applicant incurred \$939 in past due indebtedness (*id*). This past due debt has been satisfied (Applicant's second Response (Response) at page 5).

1.b. The Applicant had been indebted to the Internal Revenue Service (IRS) in the amount of about \$4,511 in past due indebtedness (GX 7 at page 1). The Applicant "cashed out" a retirement fund in 1993, but the IRS found that his 1993 return was incorrect; and as a result, he incurred the back taxes (*id*). This tax debt has been satisfied (Response at page 12).

Guideline E - Personal Conduct

2.a. It is alleged that the Applicant failed to file his Federal Income Tax returns for tax years 2000 and 2001. This Allegation is allegedly based on the Applicant's November 2000 sworn statement (Form at page 4, and GX 6 at page 2). There is absolutely no basis for basing this allegation on an uncorroborated statement made in November of 2000, when the 2000 tax return was not due for another four months, and tax year 2001 had not even begun. Furthermore, the Applicant denies this allegations in both his Answer to the SOR (GX 3 at page 1, and Response at pages 2 and 12).

Mitigation

The Applicant a has held a security clearance for 26 years, and attributes his past IRS difficulties to a "bad marriage" (GX 3 at page 2). His most recent credit report shows that all of his accounts are "in good standing" (Response at page 4).

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 ConsiderationsConditions 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.

Personal ConductConditions that could raise a security concern and may be disqualifying include:

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 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 the malfeasance of his son, and as a result of the dissolution of his marriage, the Applicant incurred about \$5,400 in past due indebtedness. Most recently, however, the Applicant has paid all of his past due indebtedness, thus satisfying the last mitigating condition under Financial Considerations. Furthermore, his most recent credit report shows that all of his accounts are in good standing. I therefore conclude that his past financial difficulties are not of present security significance.

As to the Applicant's alleged Personal Conduct, I can find none. The evidence upon which it is alleged he failed to file Federal Income Tax returns for tax years 2000 and 2001, is suspect, at best. He denies the allegations, and I find his denial to be credible. This allegation is also found in the Applicant's favor.

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

- a. For the Applicant.

b. For the Applicant.

Paragraph 2: FOR THE APPLICANT

a. 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