

DATE: July 2, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-18691

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Of the nine debts alleged as past due, six have been deleted from the Applicant's credit report, as they were determined to be not belonging to the Applicant. As to three remaining alleged past due debts, the Applicant disputes them, and has hired a financial counselor to address them. If it turns out she owes any of these remaining debts, she fully intends to pay them. As the Applicant has clearly made a good faith effort to resolve her alleged past due indebtedness, her clearance is granted.

STATEMENT OF THE CASE

On November 25, 2003, 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 January 8, 2003.

The case was received by the undersigned on May 5, 2003. A notice of hearing was issued on May 20, 2003, and the case was heard on June 11, 2003. The Government submitted documentary evidence. Testimony was also taken from the Applicant, who called one witness to testify on her behalf. The transcript was received on June 26, 2003. The issue raised here are whether the Applicant's alleged financial difficulties militates against the granting of a security clearance. [The Applicant denies all of the allegations.]

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 24 years of age, has taken some college courses, and is employed by a defense contractor who seeks a

security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline F - Financial Considerations

1.a. and 1.c. It is alleged that the Applicant owes between \$1,058 and \$1,071 in past due indebtedness to a credit card company. The Applicant disputes this debt as not belonging to her or her spouse (Transcript (TR) at page 24 line 15 to page 25 line 2, at page 26 line 16 to page 27 line 1, at page 27 line 15 to page 28 line 5, at page 55 line 18 to page 56 line 8, at page 69 line 21 to page 71 line 4, and at page 81 lines 2~12). She has hired a financial counselor to inquire into the existence of this alleged debt (*id, see also* Applicant's Exhibit (AppX) A at pages 2 and 5, and AppX B at page 2). If it turns out that it is her debt, she fully intends to pay it (*ibid*).

1.b. It is alleged that the Applicant owes a city about \$60 in past due indebtedness. The Applicant denies this debt as not being her's or her spouse's; and through the efforts of her financial counselor, it has been "deleted" from her credit report (TR at page 27 lines 2~14, and AppX A at page 5).

1.d. and 1.e. It is alleged that the Applicant owes about \$2,450 and about \$78 in past due indebtedness to her health care provider. The Applicant disputes these debts as her health care provider receives an allotment from her pay for health care; and as such, these medical expenses should have been covered (TR at page 28 line 6 to page 29 line 17, at page 71 line 5 to page 73 line 10, and at page 81 lines 13~20). She has hired a financial counselor to inquire into the propriety of these alleged debts (*id, see also* Applicant's Exhibit (AppX) A at pages 2 and 5, and AppX B at page 2). If it turns out that these are her debts, she fully intends to pay them (*ibid*).

1.f. It is alleged that the Applicant owes an auto dealer about \$2,466 in past due indebtedness. The Applicant denies this debt as not being her's or her spouse's; and through the efforts of her financial counselor, it has been "deleted" from her credit report (TR at page 29 line 18 to page 32 line 15, at page 59 lines 5~17, at page 73 line 11 to page 74 line 3, and AppX A at page 5).

1.g. It is alleged that the Applicant owes a pet service about \$123 in past due indebtedness. The Applicant denies this debt as not being her's or her spouse's; and through the efforts of her financial counselor, it has been "deleted" from her credit report (TR at page 32 line 22 to page 33 line 13, at page 60 line 21 to page 61 line 4, at page 74 lines 4~9, and AppX A at page 5).

1.h. It is alleged that the Applicant owes about \$108 in past due indebtedness to a cable television provider. The Applicant disputes this debt as not belonging to her or her spouse (TR at page 34 line 3 to page 35 line 6, at page 63 line 18 to page 64 line 3, at page 74 lines 10~14, and at page 81 lines 21~23). She has hired a financial counselor to inquire into the existence of this alleged debt (*id, see also* AppX A at pages 2 and 5, and AppX B at page 2). If it turns out that it is her debt, she fully intends to pay it (*ibid*).

1.i. It is alleged that the Applicant owes a phone company about \$647 in past due indebtedness. The Applicant denies this debt as not being her's or her spouse's; and through the efforts of her financial counselor, it has been "deleted" from her credit report (TR at page 35 lines 7~17, at page 77 lines 6~17, and AppX A at page 5).

1.j. It is alleged that the Applicant owes a final creditor about \$112 in past due indebtedness. The Applicant denies this debt as not being her's or her spouse's; and through the efforts of her financial counselor, it has also been "deleted" from her credit report (TR at page 35 lines 17~23, and AppX A at page 5).

1.k. The Applicant has a positive monthly cash flow of about \$109 (TR at page 35 line 25 to page 36 line 20, and Government Exhibit (GX) 2 at page 3).

Mitigation

The Applicant was unaware of any of the alleged past due indebtedness until the Government confronted her with copies of her credit reports (GXs 3~5). She hired a financial counselor and has addressed all of her alleged past due indebtedness (AppX A at page 2, and AppX B at page 2).

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

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

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

The Applicant was unaware of any alleged past due indebtedness until the Government presented her with copies of her credit reports. She engaged the services of a financial counselor, and has addressed all of her alleged past due indebtedness. She has thus "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," satisfying the last mitigating condition under Financial Considerations. Six of the nine alleged past due debts have been "deleted" from her credit reports, and the other three, totaling about \$3,700, are in dispute. If she owes these remaining debts, she fully intends to pay them. I therefore conclude that her alleged past financial difficulties are not of present security significance. Guideline F is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her past 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.
- g. For the Applicant.
- h. For the Applicant.
- i. For the Applicant.
- j. For the Applicant.
- k. 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