

DATE: February 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19229

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's financial difficulties were caused by conditions beyond his control, medical emergencies and loss of employment. He has now addressed all of his past due indebtedness, and has a positive monthly cash flow of over \$400. Clearance is granted.

STATEMENT OF THE CASE

On July 30, 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 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 September 2, 2002.

The case was received by the undersigned on November 12, 2002. A notice of hearing was issued on November 26, 2002, and the case was heard on January 7, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on January 15, 2003. The issues raised here are whether the Applicant's past 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 documents and the live testimony. The Applicant is 41 years of age, has three years of college, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline F - Financial Considerations

The Applicant had about \$26,400 in past due indebtedness (Government Exhibits (GXs) 1~7). The genesis of this indebtedness was three high risk pregnancies during the period 1996~2000, which caused unforeseen medical expenses and a reduction in his wife's income; a loss of employment in 1998; and a brief period of separation from his spouse (Transcript (TR) at page 54 line 22 to page 57 line 6). He has now taken on a second job, has a positive cash flow of over \$400 each month (TR at page 43 line 22 to page 44 line 6, and AppX E at page 1), and has addressed all of his past due indebtedness:

1.a. The Applicant owed about \$10,000 in past due indebtedness on student loans (GX 3 at page 5). This debt has been paid (TR at page 28 line 16 to page 32 line 23, and Applicant's Exhibits (AppXs) A and K).

1.b. (1) The Applicant owes about \$1,063 to a financial institution (GX 4 at page 6). Through the auspices of a consumer credit counseling service, the Applicant will make payments of \$24 each month towards this past due indebtedness (TR at page 33 line 4 to page 38 line 1, and AppX B at page 4).

1.d. (2) The Applicant owes about \$3,924 to another financial institution (GX 4 at page 6). He has reached a settlement agreement with this creditor, and since August of 2002, has been making monthly payments of \$100 towards this past due indebtedness (TR at page 38 line 6 to page 39 line 15, and AppX C).

1.e. The Applicant owes about \$5,440 to a bank (GX 4 at page 6). He has reached a settlement agreement with this creditor through it's intermediary, and since August of 2002, has been making monthly payments of \$117 towards this past due indebtedness (TR at page 40 lines 13~19, and AppX D).

1.f. The Applicant owes about \$2,563 to another bank (GX 4 at page 6). Through the auspices of a consumer credit counseling service, the Applicant will make payments of \$52 each month towards this past due indebtedness (TR at page 41 line 14 to page 42 line 19, and AppX B at page 4).

1.h. The Applicant owes about \$1,145 to a third financial institution (GX 7 at page 2). Through the auspices of a consumer credit counseling service, the Applicant will make payments of \$29 each month towards this past due indebtedness (TR at page 45 lines 2~15, and AppX B at page 4).

1.i. The Applicant owed about \$84 to a fourth financial institution (GX 4 at page 6). This debt has been paid (TR at page 45 line 16 to page 47 line 2, and AppX L).

1.j. The Applicant owes about \$203 to a fifth financial institution (GX 4 at page 6). He has reached a settlement agreement with this creditor through it's intermediary, and since August of 2002, has been making monthly payments of \$25 towards this past due indebtedness (TR at page 46 line 23 to page 47 line 2, and AppX F).

1.k. The Applicant owed about \$1,501 to the Internal Revenue Service (IRS) (GX 4 at page 6). He currently owes about \$283 to the IRS, and is paying this amount down (TR at page 48 line 1 to page 51 line 5, and AppXs E and G).

1.l. Finally, The Applicant owed about \$480 to his state's income taxing authority (GX 4 at page 6). This debt has been paid (TR at page 52 line 18 to page 53 line 21, and AppX H).

Mitigation

Those with whom the Applicant works, to include two of his managers and his supervisor, speak most highly of the Applicant (AppX J).

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;

Conditions that could mitigate security concerns include:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, . . . unexpected medical emergency, . . . separation);
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 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 loss of employment, a brief period of separation from his spouse, and repeated unexpected medical emergencies, the Applicant incurred about \$26,400 in past due indebtedness, as evidenced by ten debts, which he was initially unable to address. Most recently, however, the Applicant has secured additional employment; and with a positive monthly cash flow of more than \$400, has either reached a settlement for paying or has paid all of his past due debts. He has thus reduced his past due indebtedness to about \$14,600, and has satisfied the last mitigating condition under Financial Considerations. As the Applicant is now on the road to financial solvency, I conclude that his past financial difficulties are not of present security significance.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his past financial difficulties. The Applicant has thus met the mitigating conditions of Guideline F, and of Section E.2.2. of the Directive. Accordingly, he has met his 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.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- h. For the Applicant.
- I. For the Applicant.
- j. For the Applicant.
- k. For the Applicant.
- l. 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

1. SOR subparagraph 1.c. covers the same debt as is alleged in subparagraph 1.b.; and as a result, pursuant to a Motion to Strike by the Government, subparagraph 1.c. was struck from the SOR.
2. SOR subparagraph 1.g. covers the same debt as is alleged in subparagraph 1.d.; and as a result, pursuant to a Motion to Strike by the Government, subparagraph 1.g. was struck from the SOR.