

DATE: July 1, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21243

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has past due indebtedness to the Internal Revenue Service (IRS) in excess of \$53,000. The Applicant disputes this tax debt, and filed bankruptcy petitions in 1998 and again in 2000 to prevent Federal Income Tax levies. Because of the Applicant's current annual income of about \$37,000, "the IRS has chosen not to pursue any collection activity. Penalty and interest continue to accrue," however. The Applicant's current financial situation is of current security significance; and as such, clearance is denied.

STATEMENT OF THE CASE

On March 12, 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 April 14, 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 and called one witness to testify. Testimony was also taken from the Applicant. The transcript was received on June 26, 2003. The issue raised here is whether the Applicant's current financial difficulties militate against the granting of a security clearance. [The Applicant admits the three bankruptcy filings, 1.a.~1.c., but denies the three alleged debts, 1.d.~1.f.]

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 63 years of age, is retired from practicing law for 35 years, 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.~1.e. While the Applicant practiced law, he also had a computer business (Transcript (TR) at page 34 line 1 to page 37 line 23). He ceased lawyering; and when he filed his Federal Income Tax return for tax year 1994, the IRS disallowed the business deductions he claimed on his personal income tax return (TR at page 19 line 21 to page 21 line 14, at page 27 line 15 to page 28 line 13, at page 34 line 1 to page 37 line 23, at page 40 lines 12~21, and page 43 line 24 to page 44 line 25). The Applicant disputes the IRS claim, but the IRS does not agree with his position (*id*). The State followed up on the IRS claim, and collected \$6,630 from the Applicant by levying his wages (TR at page 28 line 22 to page 30 line 4, and Applicant's Exhibit (AppX) B at page 2). He currently owes nothing to the State (*id*). The Applicant filed for bankruptcy protection in 1998 and again in 2000 in an effort to stop potential Federal Income Tax levies (TR at page 30 line 20 to page 32 line 13, at page 33 lines 15~21, at page 37 line 24 to page 38 line 25, and Government Exhibits (GX) 3~5). As of June 16, 2003, the IRS's position is the following:

With penalty and interest, computed through June 30, 2003, the current balance due on tax year 1994 is \$53,365.10. At present time the IRS has elected not to pursue any collection activity. **Penalty and interest continue to accrue on this debt and will continue to do so until paid in full** (AppX C at page 2, emphasis supplied).

1.f. The Applicant credibly disputes a \$115 debt to an alleged creditor, that, despite his best effort, he has been unable to contact (TR at page 25 line 1 to page 27 line 14, and AppX C at page 3). He and his spouse have absolutely no recollection of this alleged past due debt (*id*).

Mitigation

The Applicant submits "Points and Authorities In Opposition" to the Government's position disputing the three alleged debts (AppX A).

POLICIES

Enclosure 2 and Section E2.2. of the 1992 Directive set forth both policy factors and conditions that could raise or mitigate a security concern, and 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 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:

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, 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

The Applicant owes in excess of \$53,000 in past due indebtedness to the IRS. He disputes this debt which was incurred in 1995; and as the Applicant earns only about \$37,000 each year, the IRS has "elected not to pursue any collection activity" at present. However, as the Applicant is financially unwilling or unable to do anything to address this financial responsibility, disqualifying conditions 1 and 3 are applicable in this case, as the Applicant has a "history of" and an "inability" to satisfy this significant past due debt. His current financial difficulties are clearly of concern to the Government; and as such, are of present security significance. Guideline F is therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his financial difficulties. The Applicant has thus not met the mitigating conditions of Guideline F, and of Section E2.2. of the Directive. Accordingly, he has not 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: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. For the Applicant.

e. Against 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 not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge