

DATE: February 12, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-21386

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant's past criminal conduct is distant enough in time so as to not to be of present security significance. The same can not be said of his present financial difficulties, however. The Applicant had past due indebtedness in excess of \$12,000 to eleven different creditors. In 2001, he did pay a total of \$185 towards this past due indebtedness; but other than most recently enrolling in a debt management program, he has done little else. Clearance is denied.

**STATEMENT OF THE CASE**

On August 22, 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 18, 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 8, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on January 22, 2003. The issues raised here are whether the Applicant's past criminal conduct and present 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 28 years of age, has a bachelors degree in computer sciences, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

## Guideline F - Financial Considerations

In July of 2001, the unwed mother of his child left their 18 month old daughter in the Applicant's care for "a few months" (Transcript (TR) at page 18 line 10 to page 21 line 4). This unexpected occurrence cause the Applicant financial difficulties:

- 1.a. The Applicant owed \$108 in past due indebtedness to a health care provider (TR at page 21 lines 12~22, and Government Exhibit (GX) 3 at page 11). In 2001, he paid \$5 toward this past due indebtedness (TR at page 21 lines 12~22, and Applicant's Exhibit (AppX) A at page 9).
- 1.b. The Applicant owed \$37 in past due indebtedness to a water company (TR at page 21 line 23 to page 22 line 2, and GX 3 at 11). He has paid off this debt (TR at page 21 line 23 to page 22 line 2, and AppX A at page 9).
- 1.c. The Applicant owed \$3,500 in past due indebtedness to a bank (TR at page 22 lines 3~15, and GX 3 at page 10). In 2001, he paid \$74 toward this past due indebtedness (TR at page 22 lines 3~15, and AppX A at page 9).
- 1.d. The Applicant owed \$87 in past due indebtedness to the city in which he resides (TR at page 22 line 16 to page 23 line 1, and GX 3 at page 10). In 2001, he paid \$10 toward this past due indebtedness (TR at page 22 line 16 to page 23 line 1, and AppX A at page 9).
- 1.e. The Applicant owed \$237 in past due indebtedness to a health club (TR at page 23 lines 2~7, and GX 3 at page 10). In 2001, he paid \$15 toward this past due indebtedness (TR at page 23 lines 2~7, and AppX A at page 9).
- 1.f. The Applicant owes \$1,320 in past due indebtedness to a financial institution for a car that was repossessed (TR at page 23 line 9 to page 24 line 3, and GX 3 at page 10).
- 1.g. The Applicant owed \$279 in past due indebtedness to a bank for a credit card (TR at page 24 lines 4~9, and GX 3 at page 10). In 2001, he paid \$10 toward this past due indebtedness (TR at page 24 lines 4~9, and AppX A at page 9).
- 1.h. The Applicant owed \$1,248 in past due indebtedness to an investment company (TR at page 24 lines 10~16, and GX 10 at page 1). In 2001, he paid \$29 toward this past due indebtedness (TR at page 24 lines 10~16, and AppX A at page 9).
- 1.i. The Applicant owes \$50 in past due indebtedness to another health care provider (TR at page 24 lines 17~18, and GX 3 at page 11).
- 1.j. The Applicant owed \$211 in past due indebtedness to a utility company (TR at page 24 lines 19~22, and GX 3 at page 10). In 2001, he paid \$5 toward this past due indebtedness (TR at page 24 lines 19~22, and AppX A at page 9).
- 1.k. Finally, the Applicant owes \$5,000 in past due indebtedness to another bank (TR at page 24 line 23 to page 25 line 2, and GX 3 at page 10).

## Guideline J - Criminal Conduct

2.a.~2.d. In August of 1999, the Applicant was arrested twice for shoplifting (TR at page 27 lines 5~17, and GX 1 at page 1, GX 2 at page 1, Gx 6 at page 2, and GX 7). He entered an Adult Diversionary Program (*id*).

In February of 2000, the Applicant received two speeding citations, and in October of 2000, was arrested for Driving on a Suspended License (TR at page 25 line 5~24, GX 5, and GX 6 at pages 1~2). As a result of this last arrest, the Applicant spent one day in jail (*id*).

## Mitigation

The Applicant has enrolled in a Debt Management Program by which he intends to begin making monthly payments of \$325 towards his past due indebtedness in March of 2003 (AppX A at page 5). The Applicant's supervisors and a co-

worker think highly of the Applicant (AppX A at pages 1~3).

## **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

### Criminal Conduct

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

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

#### Condition that could mitigate security concerns include:

1. The criminal behavior was not recent;

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 J (Criminal Conduct) and 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**

Considering first the Applicant's past criminal conduct, the Applicant was arrested twice in 1999 for shoplifting, and once in 2000 for Driving on a Suspended License. As a result of these three arrests, the Applicant spent a total of one day in jail. Although his conduct can not be condoned, it last occurred more than two years ago; and as such, I find that the Applicant's past criminal conduct is not recent enough in time so as to be of present security significance. Guideline J is found for the Applicant.

The same can not be said as to his current financial situation, however. The Applicant has in excess of \$12,000 in past due indebtedness. Other than paying \$185 in 2001 towards his past due debts, the Applicant had done little if anything else to address his financial responsibilities. He is to be commended for his recent enrollment in a debt management program, and one hopes he will follow through with his repayment plan, but it is too soon to say that his current financial difficulties are not of present security significance. Guideline F is therefor 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. For the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- I. Against the Applicant.

j. Against the Applicant.

k. Against the Applicant.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. 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