

DATE: April 28, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21428

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Enquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has a history of not meeting her financial obligations, as evidenced by a foreclosure on her house in 1996, resulting in \$5,709 in past due indebtedness. More recently, since September 2000, she had a \$828 credit card debt that was also more than 180 days past due. The Applicant paid her credit card debt in September of 2001. She was also less than candid in answering question 35 on her March 2000 Security Clearance Application (SCA). She failed to list her 1996 foreclosure. However, she did truthfully answer questions 38 and 39 as to her past due indebtedness. Her credit card debt was not 90 or 180 days past due when she executed her SCA. Clearance is denied.

STATEMENT OF THE CASE

On August 8, 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 or about October 30, 2002.

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 January 30, 2003. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on February 6, 2003, and Applicant's Response was received on March 3, 2003. The case was received by the undersigned for resolution on March 21, 2003. The issues raised here are whether the Applicant's financial difficulties and 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 48 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 and her former spouse defaulted on their mortgage in September of 1996 (Government Exhibit (GX) 6 at page 1, and GX 9 at page 2). As a result of this foreclosure, they incurred \$5,709 in indebtedness that became past due (*id*). In her February 2001 sworn statement, she avers that she was unaware of any such past due indebtedness, "as I have heard nothing more from the mortgage company" (GX 9 at page 2). In October 2002, she avers that the mortgage company "has been covered for their loss," but offers nothing to support this averment which is contrary to her July 2002 credit report (GX 6). I must assume this past due debt is still outstanding.

1.b. In September of 2000, the Applicant became more than 180 days past due for a credit card debt in the amount of \$828 (GX 6 at page 2, and GX 9 at page 3). In September of 2001, she closed her credit card account, after the creditor accepted her offer of settlement; and as such, has no more past due indebtedness on this account (Response at pages 4 and 5).

Guideline E - Personal Conduct

2.a. and 2.b. In answering question 35 on her March 2000 SCA, the Applicant knowingly and wilfully failed to disclose her 1996 foreclosure (GX 4 at page 8). The question posited is straight forward, "In the last 7 years have you had **any property** repossessed for any reason" (*id*, emphasis supplied). The Applicant avers, unconvincingly, "Guess I never really thought that walking away from my house was in fact repossession" (GX 3 at page 3). This is not believable.

In answering questions 38 and 39 on her SCA, the Applicant was truthful (GX 4 at page 8). She avers, "I didn't think I had any debt that was that old" (GX 9 at page 4). She is correct, as her debt did not become more than 90 or 180 days past due until about 90 or 180 days after executing her SCA; i.e., she was current with this indebtedness on or about the time she executed the SCA.

Mitigation

The Applicant avers, "I am a good person, ask anyone," but offers little, if anything, to support her prayer (Response).

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 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:

1. A history of not meeting financial obligations;
2. Inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns:

None.

Personal Conduct

Condition that could raise a security concern:

2. The deliberate omission, concealment; or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications . . . ;

Conditions that could mitigate security concerns:

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 that is speculative or conjectural in nature.

The Government must make out a case under Guidelines E (personal conduct), and 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.

Unacceptable personal conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. 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 financial difficulties, the Applicant has a history of not meeting her financial obligations, as evidenced by a 1996 foreclosure on her house, and a past due debt to a credit card company. In February of 2001, when she executed her sworn statement, the Applicant was put on notice that her financial situation was of concern to the Government. It is laudable that she has taken care of one of her two past due debts, but, in the intervening two years, she has done little to address \$5,709 foreclosure that her July 2002 credit report notes as still being outstanding. Simply stated, she has not demonstrated that she is financially stable; and as such, Guideline F is found against the Applicant.

As to her personal conduct, the Applicant was less than candid when she answered question 35 on her March 2000 SCA. The question posited is clear and straight forward, "In the last 7 years have you had **any property** repossessed for any reason" (GX 4 at page 8, emphasis supplied). A foreclosure of one's house is clearly a repossession of one's property. Guideline E is also found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her financial considerations, and her personal conduct. The Applicant has thus not met the mitigating conditions of Guidelines E and F, and of Section E.2.2. of the Directive. Accordingly, she has not met her 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: AGAINST THE APPLICANT

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

Paragraph 2: AGAINST THE APPLICANT

- a. For the Applicant.
- b. Against 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