

DATE: November 6, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22887

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant and her spouse separated, but he agreed to pay their joint debts. He did not; and as a result, she incurred in excess of \$19,000 in past due indebtedness. In September of 2001, the Applicant filed a Chapter 7 Bankruptcy, including all of her alleged past due indebtedness in its Schedule F. The Alleged past due indebtedness was discharged through this bankruptcy filing in November of 2001. In the year following this discharge, there is no evidence of any recurring past due indebtedness, and she lives with her means. Clearance is granted.

STATEMENT OF THE CASE

On July 1, 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 August 1, 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 September 10, 2002. 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 September 17, 2002, and submitted nothing further in reply. The case was received by the undersigned for resolution on November 1, 2002. The issue raised here is whether the Applicant's alleged 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, and the File of Relevant Material. The

Applicant is 34 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline F - Financial Considerations

The Applicant and her spouse separated in January of 1999; but prior to their separation, they were released from a \$321 state tax lien (Government Exhibit (GX 3 at pages 3~5, and GX 4 at page 4). As part of their separation, the Applicant's spouse agreed to pay their remaining joint debts (GX 5 at page 2). However, he did not fulfill his promise; and as a result, she incurred in excess of \$19,000 in past due indebtedness (*id*). In September of 2001, the Applicant filed a Chapter 7 Bankruptcy, and included all of the remaining alleged past due indebtedness in its Schedule F (GX 3 at pages 11~15). The Alleged past due indebtedness was discharged through this bankruptcy filing in November of 2001 (GX 3 at page 16). Specifically, the state tax lien and the other alleged past due indebtedness were addressed in the following manner:

1.a. The Applicant and her spouse were **released** from \$321 state tax lien, for tax year 1996, in March of 1998 (GX 3 at pages 3~5).

1.b. A revolving credit card debt for \$3,391 was **discharged** by way of Chapter 7 Bankruptcy in November of 2001 (GX 3 at pages 12 and 16).

1.c. A department store debt for \$3,158 was **discharged** by way of Chapter 7 Bankruptcy in November of 2001 (GX 3 at pages 12 and 16).

1.d. A revolving credit card debt for \$3,182 was **discharged** by way of Chapter 7 Bankruptcy in November of 2001 (GX 3 at pages 14 and 16).

1.e. and 1.j. A revolving credit card debt for \$1,686 was **discharged** by way of Chapter 7 Bankruptcy in November of 2001 (GX 3 at pages 13 and 16).

1.f. A revolving credit card debt for \$745 was **discharged** by way of Chapter 7 Bankruptcy in November of 2001 (GX 3 at pages 13 and 16).

1.g. A medical debt for \$68 was **discharged** by way of Chapter 7 Bankruptcy in November of 2001 (GX 3 at pages 13 and 16).

1.h. An unspecified debt for \$2,783 was **discharged** by way of Chapter 7 Bankruptcy in November of 2001 (GX 3 at pages 15 and 16).

1.i. A phone debt for \$174 was **discharged** by way of Chapter 7 Bankruptcy in November of 2001 (GX 3 at pages 14 and 16).

1.k. A revolving credit card debt for \$1,260 was **discharged** by way of Chapter 7 Bankruptcy in November of 2001 (GX 3 at pages 14 and 16).

1.l. A revolving credit card debt for about \$2,181 was **discharged** by way of Chapter 7 Bankruptcy in November of 2001 (GX 3 at pages 13~14).

In the year following the discharge of her past due indebtedness, there is no evidence of any recurring past due indebtedness, and the Applicant lives within her means (GX 5 at pages 2~3).

Mitigation

The Applicant has addressed all of her past due indebtedness.

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., . . . 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 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

Due to a separation and a spouse's failure to pay joint debts, as promised, the Applicant incurred about \$19,000 in past due indebtedness, which she was initially unable to address. She has now addressed all of this indebtedness, as required by the last mitigating condition under Financial Considerations; and by way of bankruptcy, has had all of her past due indebtedness discharged. Since her bankruptcy, the Applicant has incurred no other outstanding indebtedness, and lives within her means. As the Applicant is now financially solvent, and has been so for the past year, I conclude that her past financial considerations are not of present security significance.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her alleged 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.
- 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