

DATE: December 24, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-26218

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Mark Curry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant was less than candid about his past criminal conduct in a sworn statement, which is a violation of 18 U.S.C. 1001. He also intentionally concealed his past criminal conduct, his past employment record, and his past drug abuse on a questionnaire worksheet. Furthermore, he has failed to adequately address his current financial difficulties. Clearance is denied.

**STATEMENT OF THE CASE**

On March 15, 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 April 24, 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 October 15, 2002. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on October 25, 2002, and submitted nothing in reply. The case was received by the undersigned for resolution on December 20, 2002. The issues raised here are whether the Applicant's admitted past criminal conduct, personal conduct, and 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 30 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the

Applicant.

### Guideline J - Criminal Conduct 7 Guideline E - Personal Conduct

1.a., 1.b., and 2.a. The Applicant was involved in a forgery scheme in 1998, by which co-conspirators illegally acquired the PIN's and ATM cards of others, and deposited the ill gotten gains in the Applicant's bank account (Item 7 at page 3). As a result of the Applicant's involvement, in September of 1998, he accepted punishment under Article 15 of the Uniform Code of Military Justice (Item 6 at pages 1~2, and Item 7 at pages 3~4). As part of his punishment, the Applicant was administratively separated from the United States Navy (*id*). In a signed sworn statement, executed by the Applicant on April 30, 1998, he denied his involvement in the forgery scheme (Item 5 at page 2). This is a falsehood, which he admits to in a subsequent sworn statement (Item 7 at page 3). His wilful falsification is also a violation of 18 U.S.C. 1001.

1.b.~1.c. In answering questions 20 and 24 on his April 1999 Questionnaire for National Security Positions Worksheet (Worksheet), the Applicant failed to disclose that he was separated from the Navy under unfavorable circumstances, as a result of his Article 15 punishment (Item 4 at page 17). The Applicant avers, "I had just gotten the job with . . . [his employer] and was afraid that I would be let go if they knew of my prior job history" (Item 3 at 1). In answering question 27 on

his April 1999 Worksheet, the Applicant also failed to disclose that he had used marijuana eight times in 1998 (Item 4 at page 18, and Item 7 at pages 4~5).

1.e., and 1.f. In August of 2000, the Applicant received a verbal warning for being absent from work without authorization (Item 10). In October of 2000, the Applicant also received a written warning for failure to repay cash travel advances he owed to his employer (Item 11).

### Guideline F - Financial Considerations

1.a.~1.e. The Applicant owes in excess of \$22,400.00 in past due indebtedness on five separate accounts (Item 12). He avers that he is addressing three of the five accounts (Item 7 at pages 6 and 8), but offers nothing in support of his bare assertion.

### Mitigation

The Applicant is well thought of at his current place of employment (Item 3 at pages 3~7).

## **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:

### Criminal Conduct

#### Conditions that could raise a security concern:

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

#### Conditions that could mitigate security concerns:

None.

### Personal Conduct

#### Conditions that could raise a security concern:

- (2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form . . . ;
- (3) Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security or trustworthiness determination;
- (5) A pattern of dishonesty or rule violations . . . ;

#### Conditions that could mitigate security concerns:

None.

### Financial Considerations

#### Conditions that could raise a security concern:

- (1) A history of not meeting financial obligations;
- (3) Inability or unwillingness to satisfy debts;

#### 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 which is speculative or conjectural in nature.

The Government must make out its case under Guideline F (financial considerations), Guideline E (personal conduct) and Guideline J (criminal conduct); 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.

Personal conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations; and improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. 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. If an applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

## **CONCLUSIONS**

The Applicant has a history of not meeting his financial obligations, as is evidenced by in excess of \$22,400.00 in past due indebtedness. Apart from his bare assertions as to three of the five debts, he has done nothing to address this significant financial consideration. His financial situation, which is mired in past due indebtedness, is thus clearly of present security significance; and as such, Guideline F is found against the Applicant.

The Applicant's personal conduct and criminal conduct is even more troubling. He was involved in a forgery scheme in 1998, for which he received non-judicial punishment and was separated from the Navy under less than desirable circumstances. When asked about his past, he intentionally concealed this information from the Government in executing a sworn statement in April of 1998. He continued this ruse a year later in answering three separate questions on his April 1999 Worksheet, in fear of losing his job. The falsification of his sworn statement is also a violation of 18 U.S.C. Section 1001. Furthermore, in 2000, the Applicant demonstrated that he could not be trusted as he was twice warned for violating his company's rules. The Applicant's criminal conduct, wilful falsifications, and repeated rule violations, are clearly of security significance; and as such, Guidelines E and J are also found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his financial situation, his personal conduct, and his criminal conduct. The Applicant has thus not met the mitigating conditions of Guidelines E, F and J, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline E, F and J.

## **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.

### **Paragraph 2: AGAINST THE APPLICANT**

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.

Paragraph 3: AGAINST THE APPLICANT

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