

DATE: February 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00863

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's financial difficulties, state tax liens for \$57,000, were caused by circumstances beyond his control, a business downturn; and his being held responsible, although he was only a limited partner, for the tax liens of the other partners. He has recently retained legal representation to address the outstanding tax liens. Clearance is granted.

*The Applicant's first name is "Michael" and not "Brian," as it appears in the caption of the SOR.

STATEMENT OF THE CASE

On August 9, 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 24, 2002.

The case was received by the undersigned on November 18, 2002. A notice of hearing was issued on November 26, 2002, and the case was heard on January 9, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant who called three witnesses to testify on his behalf. The transcript was received on January 17, 2003. The issue raised here is whether the Applicant's 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 54 years of age, has a master's Degree in business administration, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline F - Financial Considerations

1.a. and 1.b. The Applicant is the subject of outstanding state tax liens, filed in 1997, 1998 and 1999, for an amount totaling \$57,333.59 (Transcript (TR) at page 57 lines 10~20, and Applicant's Exhibits (AppXs) F and K). The genesis of these tax liens are that the Applicant was a limited partner in two restaurant ventures (TR at page 57 line 24 to page 62 line 6). The two restaurants folded, due to lack of business, and the state came after the Applicant with the tax liens as his were the "deep . . . pockets" (*id*). As a limited partner, he thought that his liability was limited, a view shared by his two partners, who ran the day to day operations of their respective restaurants (*ibid, see also* AppX B). The Applicant has recently retained legal representation, with the "intention to expeditiously clear these liens once and for all" (AppX O).

As of January 6, 2003, the Applicant has \$257,872 in current indebtedness, with \$302,442 in current assets, and a positive monthly cash flow of \$1,036 (AppX H at pages 1~2). His daughter, who lives under the Applicant's roof, has a positive monthly cash flow of \$2,172; and is ready, willing and able to help the Applicant rectify his financial situation (TR at page 76 line 4 to page 81 line 8, and AppX H at pages 3).

Mitigation

The Applicant called as a witness a Special Agent with the Federal Bureau of Investigation, who averred in no uncertain terms that the Applicant was both honorable and trustworthy (TR at page 48 line 7 to page 55 line 23). His employer's financial and business manager had a like view of the Applicant (TR at page 71 line 20 to page 74 line 16, see also AppX A at pages 2~3). The President of the Applicant's federal credit union notes that the Applicant is a member of its board, and "is as honest and dependable as the day is long" (AppX A at page 5). The Applicant is also a highly respected official in his church (AppX A at pages 7 and 8, and AppX M).

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:

2. It was an isolated incident;
3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., . . . a business downturn, . . .);
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 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

Due to a business downturn, the Applicant, even though only a limited partner, incurred state tax liens, which he was initially unable to address. Most recently, however, the Applicant has engaged legal representation, with the specific warrant to address this financial difficulty, thus satisfying the last mitigating condition under Financial Considerations. Furthermore, as this was clearly an isolated incident, as testified to by all who know the Applicant, he has thus also satisfied the second mitigating condition. The Applicant now has a positive cash flow, a positive net worth of about \$45,000; and as such, is clearly on the road to financial solvency. I therefore conclude that his financial difficulties are not of present security significance.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his past financial difficulties. The Applicant has thus met the mitigating conditions of Guideline F, and of Section E.2.2. of the Directive. Accordingly, he has 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: FOR THE APPLICANT

- a. For the Applicant.

b. 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