

DATE: August 4, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-01960

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

As a result of an earthquake in 1994, and a long and contentious divorce, 1997~1999, the Applicant experienced financial difficulties. Although he used 1995 monies to repair his damaged house, the IRS disallowed this write off on his 1995 income tax return. As a result of his divorce, he under withheld for his 1999 and 2000 income tax returns. He thus owes about \$40,500 to the IRS. He has engaged the services of a tax advisor, and is paying \$1,000 each month towards this tax debt. He disputes the \$725 debt to a health care provider. His past financial difficulties also resulted in a 1996 bankruptcy and a 1998 foreclosure. He did not list the tax delinquencies on his Security Clearance Application (SCA), as he had already reached an agreement with the IRS as to a payment plan; and as such, he thought he was no longer delinquent. Clearance is granted.

**STATEMENT OF THE CASE**

On February 19, 2003, 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 or about March 17, 2003.

The case was received by the undersigned on May 5, 2003. A notice of hearing was issued on May 20, 2003, originally setting this case for hearing on June 10, 2003. Pursuant to an uncontested request by the Applicant for a continuance, however, the case was continued to and heard on July 9, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on July 25, 2003. The issues raised here are whether the Applicant's past financial difficulties and related alleged personal conduct militates against the granting of a security clearance. [The Applicant disputes the debt to the health care

provider, 1.f., and denies any wilful falsification, 2.a. and 2.b.]

## 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 53 years of age, has a Bachelor of Science degree, and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline F - Financial Considerations

1.a.~1.c. As a result of an earthquake that occurred in 1994, the Applicant suffered about \$75,000 in damage to his home (Transcript (TR) at page 28 lines 12~22, and Applicant's Exhibit (AppX) A). He used both 1994 and 1995 monies to repair his house, but as the loss occurred in 1994, the IRS did not permit the Applicant to deduct the 1995 monies spent on his 1995 income tax return (*id.*, and AppX D). From 1997~1999, the Applicant also went through a long and contentious divorce, which ultimately resulted in his under withholding for his 1999 and 2000 income tax returns (TR at page 56 line 22 to page 59 line 3). As a result of these three filings, 1995, 1999 and 2000, the Applicant owes about \$40,500 to the IRS. In February of 2002, the Applicant engaged the services of a tax advisor, and is presently paying \$1,000 each month towards his tax debt (TR at page 61 line 25 to page 62 line 12, AppXs I and K and Answer at page 5).

1.d. and 1.e. The Applicant incurred a great deal of debt in order to repair his damaged home. This coupled with a distraught spouse, who could not work, and a disallowed deduction on his 1995 income tax return, forced the Applicant to seek the protection of bankruptcy in 1996 (TR at page 39 line 8 to page 40 line 8, at page 62 lines 13~18, and Government Exhibit (GX) 9). With his pending divorce, the Applicant was also unable to keep up with his house payments; and as a result, he suffered a foreclosure in 1998 (TR at page 41 line 9 to page 42 line 23).

1.e. The Applicant disputes a \$725 debt to a health care provider (TR at page 42 line 24 to page 43 line 21, and at page 48 lines 5~19). He thought that his medical insurance covered this charge for a "botched" vasectomy (*id.*). Despite numerous attempts, the Applicant has been unable to contact the health care provider (*ibid.*).

### Guideline E - Personal Conduct

2.a. and 2.b. In answering questions 36 and 38 on his April 2000 SCA, it was impossible for the Applicant to list his tax liens, as they did not exist until February of 2002, nearly two years later (TR at page 25 lines 11~22, and GX 1 at page 8). The Applicant did not list any financial delinquencies, as he was paying the IRS pursuant to a payment plan; and as such, did not think he was delinquent (TR at page 44 line 2 to page 46 line 11, and at page 62 line 19 to page 63 line 12). He did not list the health care provider debt as he disputes that he owes any such debt (*id.*).

### Mitigation

The Applicant's "significant other," and two other individuals who know the Applicant well in the work place, think most highly of his character and trustworthiness (AppX J).

## **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:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment, . . . divorce or separation);
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Personal Conduct

Conditions that could raise a security concern:

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 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.

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**

The Applicant's financial difficulties were caused by conditions largely beyond his control: an earthquake, a distraught

spouse with the loss of her income, and a long and contentious divorce. He currently owes the IRS \$40,500, but has initiated a good faith effort to address this debt. Through the auspices of a tax advisor, he has set up a payment plan by which he pays \$1,000 each month towards his tax debt. He has thus satisfied the third and sixth mitigating conditions under financial considerations. As to his alleged wilful falsification, I can find none. Obviously he could not disclose tax liens that had not yet occurred when he executed his April 2000 SCA. Furthermore, he credibly avers that he did not think he was delinquent with the IRS, as he was current with his payment plan to them. He disputes the allegation that he owes any monies to the health care provider. Both guidelines are therefore found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his financial considerations and his personal conduct. The Applicant has thus met the mitigating conditions of Guidelines E and F, and of Section E.2.2. of the Directive. Accordingly, he has met his 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: 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.

#### Paragraph 2: 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