

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: The Applicant has two alcohol related convictions in 1998. He has also done little, voluntarily, to pay his past due indebtedness. Furthermore, he was less than candid with the Government as to his 1998 convictions, and as to his financial delinquencies, when he executed his January 1999 Security Clearance Application. Clearance is denied.

CASENO: 02-03849.h1

DATE: 08/07/2002

DATE: August 7, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-03849

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

The Applicant has two alcohol related convictions in 1998. He has also done little, voluntarily, to pay his past due indebtedness. Furthermore, he was less than candid with the Government as to his 1998 convictions, and as to his financial delinquencies, when he executed his January 1999 Security Clearance Application. Clearance is denied.

STATEMENT OF THE CASE

On February 25, 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 April 10, 2002.

The case was received by the undersigned on May 31, 2002. A notice of hearing was issued on June 17, 2002, and the case was heard on July 18, 2002. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant. The transcript was received on July 29, 2002. The issues raised here are whether the Applicant's financial difficulties, criminal conduct 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 documents and the live testimony. The Applicant is 56 years of age, has a high school education, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline J - Criminal Conduct & Guideline E - Personal Conduct

1.a.~1.c. The Applicant was arrested in September of 1997 for Soliciting for the Purpose of Prostitution (Solicitation) (Government Exhibit (GX) 7). The Applicant consistently denies any culpability, and the case against him was ultimately dismissed (Transcript (TR) t page 23 line 20 to page 27 line 21). Twice in 1998, however, he was arrested, in part, for Driving Under the Influence - Liquor (DUI) (TR at page 27 line 25 to page 34 line 25, at page 35 line 1 to page 37 line 9, and GXs 8 and 9). He was convicted of these allegations, the sentences to run concurrently (*id*).

2.a. In answering question 24 on his January 1999 Security Clearance Application (SCA), the Applicant listed only his second 1998 conviction (GX 1 at page 5). He testified credibly that as the sentences resulting from the two convictions ran concurrently, he thought that by listing the second conviction in time, he was in fact referring to both convictions (TR at page 39 line 14 to page 42 line 25).

2.b. In answering question 26 on his January 1999 SCA, the Applicant knowingly and wilfully failed to disclose his September 1997 arrest for Solicitation (TR at page 43 line 1 to page 45 line 15, and GX 1 at page 5).

Guideline F - Financial Considerations & Guideline E - Personal Conduct

3.a.~3.q. By his own admission, the Applicant is indebted to nine different creditors in excess of \$41,000 in past due indebtedness (TR at page 57 line 20 to page 61 line 5, at page 64 line 2 to page 69 line 25, at page 70 line 17 to page 71 line 23, and GX 3~6). In June of 1999, he averred that he intended to file for bankruptcy (GX 2 at pages 3~4). He repeated this claim in August of 2000 (GX 3 at page 1), and again in October of 2001 (GX 4 at page 2). The Applicant has done little, if anything, to address his past due indebtedness.

2.c. In answering questions 38 and 39 on his January 1999 SCA, the Applicant knowingly and wilfully failed to disclose

any of his past due indebtedness (TR at page 45 line 16 to page 50 line 13, and GX 1 at page 7).

Mitigation

The Applicant offers little in the way of mitigation.

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:

1. The criminal behavior was not recent.

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 and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age 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), F (financial considerations) and 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.

Unacceptable personal conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations; and criminal conduct also creates doubt about a person's judgment, reliability and trustworthiness. 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, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

For whatever reason, the Government has failed to allege the Applicant's wilful falsification as criminal conduct; and as such, there remains only two DUI convictions going back to 1998. The criminal conduct that led to these convictions occurred four years ago; and as such, are distant enough in time as not to be of present security significance. Guideline J is found in Applicant's favor.

The same can not be said as to Applicant's financial considerations and personal conduct. The Applicant has serious financial difficulties, which he averred as far back as June of 1999 he was going to address by way of bankruptcy. In the intervening three years he has done little, if anything, to address the Government's continuing concerns in this regard. He also failed to disclose the existence of these financial delinquencies on his January 1999 SCA. This lack of candor was not a mere single aberration, however, as the Applicant also failed to disclose the existence of his September 1997 arrest for Solicitation. Both guidelines are therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his financial considerations, and his personal and criminal 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, he has not 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.

Paragraph 2: AGAINST THE APPLICANT

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

Paragraph 3: AGAINST THE APPLICANT

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

- c. For the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. For the Applicant.
- o. Against the Applicant.
- p. For the Applicant.
- q. 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