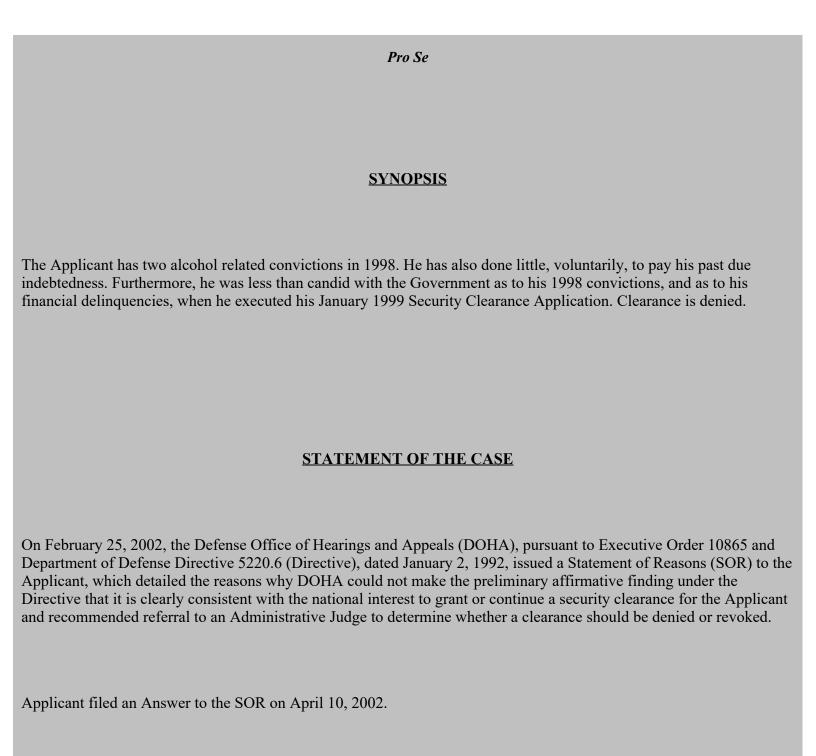
KEYWORD: Financial; Criminal Conduct; Personal Conduct
DIGEST: The Applicant has two alcohol related convictions in 1998. He has also done little, voluntarily, to pay his past due indebtedness. Furthermore, he was less than candid with the Government as to his 1998 convictions, and as to his financial 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
<u>APPEARANCES</u>
FOR GOVERNMENT
Martin H. Mogul, Esquire, Department Counsel

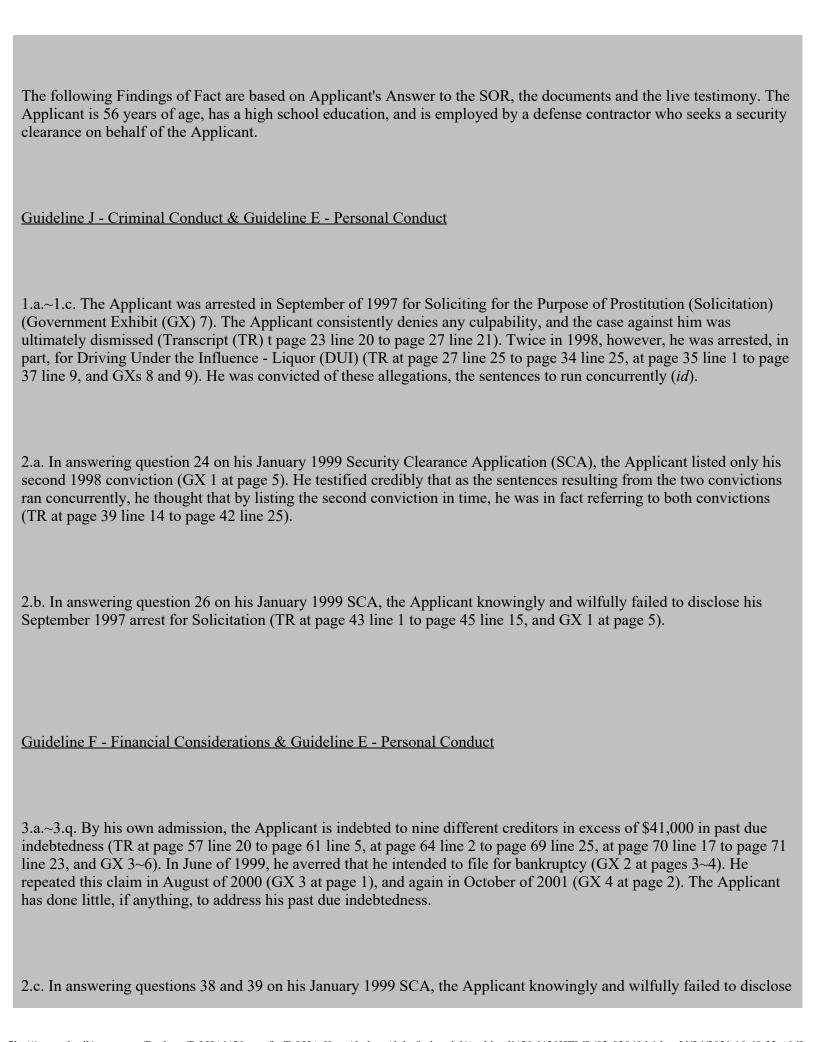
FOR APPLICANT

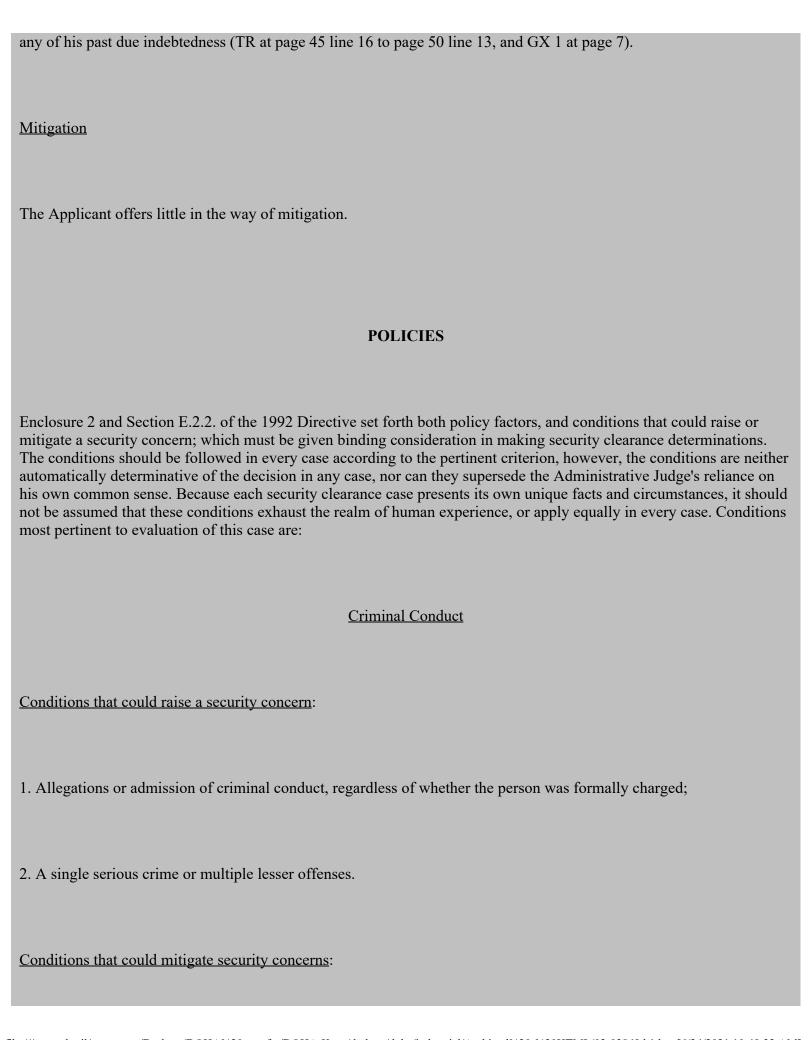


FINDINGS OF FACT

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.





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.

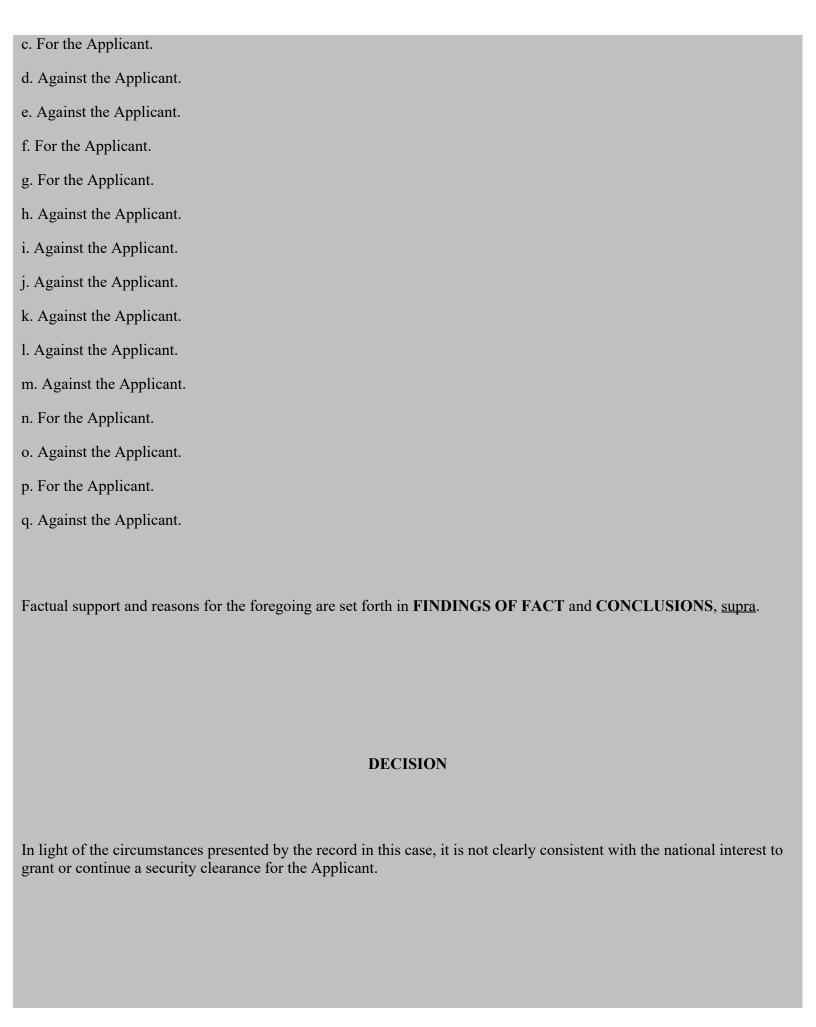
CONCLUSIONS

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 Fandha Angliaant
a. For the Applicant.
b. For the Applicant.
c. For the Applicant.
D
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.



Richard A. Cefola

Administrative Judge