

DATE: May 6, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05194

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has past due indebtedness in excess of \$19,000 to eleven different creditors. His past due indebtedness is a result of a number of factors: immaturity, being unprepared for married life, the recent loss of his spouse, and underemployment. There are two debts, totaling about \$260, that he has apparently satisfied. However, he is presently barely surviving on welfare; and as such, the Applicant is unable to address any of his other past due indebtedness. Clearance is denied.

STATEMENT OF THE CASE

On October 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 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 November 21, 2002.

The case was received by the undersigned on February 26, 2003. A notice of hearing was issued on March 17, 2003, and the case was heard on April 10, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on April 24, 2003. The issue raised here is whether the Applicant's current financial difficulties militate against the granting of a security clearance. [The Applicant admits all of the allegations of the SOR.]

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 27 years of age, has two years of college, and is employed by a defense contractor who seeks a security

clearance on behalf of the Applicant.

Guideline F - Financial Considerations

Prior to the Applicant's marriage in December of 1996, he "had adequate finances" (Transcript (TR) at pag 24 lines 3~5). He attributes his current past due indebtedness to "low income, unwise choices, bad judgement and also a period of immaturity" (TR at page 24 lines 1~3). The Applicant's current financial difficulties were further complicated by the loss of his spouse in August of 2002 (TR at page 25 lines 8~11, at page 42 line 20 to page 43 at line 24, and AppX C).

1.a., 1.c.~1.e., and 1.g.~1.m. The Applicant owes in excess of \$19,000 in past due indebtedness to eleven different creditors (TR at page 28 line 16 to page 29 line 1, at page 31 line 18 to page 32 line 7, at page 32 lines 10~21, at page 33 line 15 to page 34 line 2, at page 34 line 20 to page 36 line 2, at page 38 line 15 to page 39 line 19, at page 39 line 25 to page 41 line 1, and Applicant's Exhibit (AppX) E at pages 2, 4~8 and 10~15). The Applicant has sought consumer credit counseling; but as he is currently on welfare, the counseling service is unable to help the Applicant (TR at page 26 line 25 to page 27 line 17, and AppX F). The Applicant has no extra income to address his past due indebtedness (*id*).

1.b. and 1.f. The Applicant has offered credible evidence that he has addressed \$260 in past due indebtedness owed to two creditors (TR at page 30 line 9 to page 31 line 11, at page 34 lines 9~19, and AppX E at pages 3 and 9).

Mitigation

The Applicant's Site Manager, a retired Navy Captain, thinks highly of the Applicant, and avers, in part, the following:

[The Applicant's] . . . financial situation in 2001 and prior was dreadful, but his family support is strong. Since his [sworn] statement of July 2001, he has made progress rectifying his financial problems and worked through a family tragedy. I do not think that . . . [the Applicant] poses a security risk to te Defense Department (AppX A).

POLICIES

Enclosure 2 and Section E2.2. of the 1992 Directive set forth both policy factors and conditions that could raise or mitigate a security concern, and 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 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:

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, 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

The Applicant has in excess of \$19,000 in past due indebtedness. Other than paying about \$260 towards two his past due debts, the Applicant, due to a lack of income, has been unable to do anything else to address his financial responsibilities. Disqualifying conditions 1 and 3 are thus applicable in this case, as the Applicant has a "history of" and an "inability" to satisfy his past due debts. He is to be commended for his recent attempt to seek consumer counseling, and one hopes that one day he will be able to follow through with a repayment plan; but as he is unable to do so at present, his current financial difficulties are clearly of present security significance. Guideline F is therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his financial difficulties. The Applicant has thus not met the mitigating conditions of Guideline F, and of Section E2.2. of the Directive. Accordingly, he has not 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: AGAINST THE APPLICANT

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

f. For the Applicant.

g. Against 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.

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