

DATE: July 22, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10889

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant admittedly has in excess of \$5,400 in past due indebtedness. She offers little to show that she is doing anything to address her past due indebtedness. She was also repeatedly less than candid with the Government in answer to several questions on her December 2001 Security Clearance Application (SCA). Mitigation is not shown. Guidelines E and F are found against the Applicant. Clearance is denied.

STATEMENT OF THE CASE

On October 2, 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 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 December 28, 2003.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant aterial (FORM) on March 18, 2004. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on May 2, 2004, and submitted nothing in reply. The case was received by the undersigned for resolution on June 18, 2004. The issues raised here are whether the Applicant's Financial Considerations and related Personal Conduct militate against the granting of a security clearance. [The Applicant admits the underlying factual basis for most of the alleged debts, 1.a.~1.d., 1.f., 1.g. and 1.i.; but denies the allegations of wilful falsification, 2.a.~2.f.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The

Applicant is 50 years of age, 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

The Applicant attributes her financial difficulties to a lack of "truly steady employment" during much of the 1990s; and as a result, she incurred the following past due indebtedness (Item 5 at page 2).

1.a. The Applicant has a past due debt to a wireless phone provider in the amount of about \$549 (Item 5 at pages 2~3 and 6). She avers that this creditor "will accept monthly payments," and gives an address where they might be sent, but nothing more (Item 3 at page 1).

1.b. The Applicant has a past due debt to a doctor in the amount of about \$1,099 (Item 5 at page 6). She again avers that this creditor "will accept monthly payments," and gives an address where they might be sent, but nothing more (Item 3 at page 1).

1.c. The Applicant has a past due debt to a bank in the amount of about \$690 (Item 3 at page 1). She avers that "[m]onthly payments" to this creditor "will be accepted," and gives an address where they "should be sent," but nothing more (*id*).

1.d. The Applicant has a past due debt to a veterinarian in the amount of about \$784 (Item 5 at page 6, and Item 6 at page 11). She again avers that "[m]onthly payments" to this creditor "will be accepted" and gives an address where they "should be sent," but nothing more (Item 3 at page 1).

1.e. The Applicant denies any past due debt to a collection agency in the amount of about \$359 (Item 3 at page 1).

1.f. The Applicant has an October 2001 outstanding judgment to a car dealership in the amount of about \$1,284 (Item 5 at pages 3~4, and Item 10). She avers that "[m]onthly payments" to this creditor "will be accepted" and gives an address where they "should be sent," but nothing more (Item 3 at page 2).

1.g. The Applicant has an October 1998 outstanding judgment to a phone company in the amount of about \$1,153 (Item 5 at page 4, and Item 9). She avers that "[m]onthly payments" to this creditor "will be accepted" and gives an address where they "should be sent," but nothing more (Item 3 at page 2).

1.h. The Applicant avers that her wages were never garnished, and that her debt to a state treasury for back taxes has been paid (Item 3 at page 2).

1.i. The Applicant has a debt for back taxes to the Internal Revenue Service (IRS) in the amount of about \$3,286 (Item 5 at page 4, and Item 8). She avers that "there is weekly deduction from . . . [her] check that is sent directly to the IRS' (Item 3 at page 2).

Guideline E - Personal Conduct

2.a. In answer to question 34 on her December 2001 SCA, ⁽¹⁾ the Applicant answered "No," that her wages had not been garnished in the last seven years (Item 4 at page 10). She avers that her state attempted to garnish her wages, but that "a garnishment was never issued." (Item 3 at page 2). Her averment is not supported by the evidence of record. The Applicant's wages were, in fact, garnished by her state in August of 1999 and this garnishment continued until she left her employment in March of 2001 (Item 8 at pages 3). This was a knowing and wilful falsification.

2.b. In answer to question 36 on her December 2001 SCA, the Applicant answered "No," that she had no tax "lien placed against . . . [her] **property**" in the last seven years (Item 4 at page 10, emphasis supplied). She avers that as she did "not own any property," a tax lien was not possible (Item 3 at page 2). As her lien was an "Income Tax Wage Lien," and not against any real or personal property, I find no knowing and wilful falsification.

2.c. In answer to question 37 on her December 2001 SCA, the Applicant answered "No," stating that she had no unpaid judgments in the last seven years (Item 4 at page 11). She admits the allegations of her past due debts as noted in subparagraphs 1.f. and 1.g., above; but avers she "did not realize that these were judgments" (Item 3 at page 2). This is inconsistent with her sworn statement of January 23, 2002, wherein she admits prior knowledge to at least one of the judgments (Item 5 at page 3). This was also a knowing and wilful falsification.

2.d. and 2.e. In answer to questions 38 and 39 on her December 2001 SCA, the Applicant answered "No," that she had no financial delinquencies in excess of 90 or 180 days (Item 4 at page 11). In her before mentioned sworn statement the Applicant states that she did not disclose the requested information, "because I did not know how to list this information on my forms without making it sound bad" (Item 5 at page 5). These are knowing and wilful falsifications.

2.f. In answer to question 26 on her December 2001 SCA, the Applicant answered "No," that she had no charges filed against her in the last seven years (Item 4 at page 9). She was charged with uttering a bad check in January of 1998, however, it appears that the Applicant was never served with the charge (Item 11). She in fact made good on the bad check; and as such, prosecution was declined (*id*). I therefore find no knowing and wilful falsification.

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. Furthermore, 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 her 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

Considering first the Applicant's Financial Considerations, the first and third disqualifying conditions are applicable as the Applicant has a "history of not meeting [her] financial obligations," and there was an "[i]nability or unwillingness to satisfy [her] debts." The Applicant's financial difficulties, however, were caused by conditions "largely beyond . . . [her] control (e.g., loss of employment" She was unemployed or underemployed for much of the 1990s; and as such, the third mitigating condition is applicable. While this explains how she acquired her past due debts, she has offered little to show she has addressed them. She still has in excess of \$5,400 of past due indebtedness. As her financial situation is yet precarious, Guideline F is found against the Applicant.

As to her alleged falsification of December 2001 SCA, I find that the Applicant knowingly and wilfully falsified her responses to four posited questions. She failed to disclose that her wages had been garnished. She failed to disclose that she had an unpaid judgment, and she failed to disclose she had financial delinquencies. The second disqualifying condition is therefore clearly applicable, as she repeated the "deliberate omission, concealment, or falsification of relevant and material facts from . . . [her] personnel security questionnaire . . . or similar form used to . . . determine security clearance eligibility." The Government reasonably expects this information to be disclosed, whether "it sound[s] bad" or not. Guideline E is also found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her Financial Considerations and her Personal 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, she has not met her 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: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. For the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. For the Applicant.
- i. For the Applicant.

Paragraph 2: 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.

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

1. The Applicant signed her SCA on December 19, 2001, and not in January of 2002 as alleged.