

DATE: December 16, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11121

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has either entered a settlement for, or has paid off, all of his past due indebtedness. He now has a monthly positive cash flow of \$860.00 each month. Clearance is granted.

STATEMENT OF THE CASE

On June 28, 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 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 July 29, 2002.

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 Material (FORM) on September 18, 2002. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on October 3, 2002, and Applicant's Response was received on November 27, 2002. The case was received by the undersigned for resolution on December 12, 2002. The issues raised here are whether the Applicant's admitted past financial difficulties 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 File of Relevant Material and Applicant's Response. The Applicant is 30 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline F - Financial Considerations

The Applicant had about \$18,400 in past due indebtedness (Government Exhibits (GXs) 5~7). The genesis of this indebtedness was the break up with his fiancée, the resulting loss of her income (the Applicant and his fiancée lived on their combined income), and a two month period of unemployment in 1999 (GX 4 at page 3, and GX 5 at pages 2, 4 and 6). He has since addressed all of his past due indebtedness:

- 1.a. The Applicant owed about \$3,423 in past due indebtedness to a financial institution for a credit card debt (GX 3 at page 1). In November of 2002, the creditor accepted a payment by the Applicant "as Settlement in Full" for this debt (Response at Exhibit 1).
- 1.b. The Applicant owed about \$1,638 in past due indebtedness to another financial institution (GX 3 at page 1). Prior to the issuance of the SOR, this debt was "paid in full" (Response at Exhibits 2 and 3).
- 1.c. The Applicant owed about \$608 in past due indebtedness to a jeweler (GX 3 at page 2). Prior to the issuance of the SOR, this debt was "Settled" (GX 3 at page 2, and Response at Exhibits 3 and 4).
- 1.d. The Applicant owed about \$8,426 in past due indebtedness to a credit union for a loan (GX 3 at page 2). In November of 2002, this debt was satisfied (GX 3 at page 2, and Response at Exhibits 5 and 6).
- 1.e. The Applicant owed about \$3,579 in past due indebtedness to the same credit union for a credit card debt (GX 3 at page 2). In November of 2002, this debt was also satisfied (GX 3 at page 2, and Response at Exhibits 6 and 7).
- 1.f. The Applicant owed about \$181 in past due indebtedness to a utility company (GX 3 at page 2). Prior to the issuance of the SOR, this debt was "paid in full" (Response at Exhibit 8).
- 1.g. The Applicant owed about \$116 in past due indebtedness to a retailer (GX 3 at page 2). Prior to the issuance of the SOR, this debt was "paid in full" (Response at Exhibit 9).
- 1.h. The Applicant owed about \$496 in past due indebtedness to a local court for an unpaid ticket (GX 3 at page 2). Prior to the issuance of the SOR, this debt was "paid in full" (GX 3 at page 2, and Response at Exhibit 10).
- 1.i. The Applicant has a monthly positive cash flow of \$860.00 each month.

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 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;

Condition that could mitigate security concerns include:

6. The individual initiated a good faith effort to repay overdue creditors or otherwise resolved debts.

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 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

Due to the loss of his fiancee's income and a brief period of unemployment, the Applicant incurred about \$18,400 in past due indebtedness, as evidenced by eight debts, which he was initially unable to address. Prior to the issuance of the SOR, however, the Applicant either settled or paid in full five of the eight past due debts. The remaining three debts have recently also been paid in full. He has thus repaid all of his past due indebtedness, as required by the last mitigating condition under Financial Considerations, and now has a positive cash flow of \$860 each month. As the Applicant is now financially solvent, I conclude that his past financial considerations are not of present security significance.

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

g. For the Applicant.

h. For the Applicant.

i. 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