

DATE: May 16, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11380

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

#### **FOR APPLICANT**

Philip D. Cave, Esquire

### **SYNOPSIS**

The Applicant incurred in excess of \$98,000 in past due indebtedness due to the failure of a business venture, and the concurrent loss of his primary employment. He sought the advice of "a certified specialist in small business and personal bankruptcy." He was unable to salvage the business venture; and as a result, was forced to file for the protection of bankruptcy. All of the Applicant's alleged past due debts, all related to the failed business, have been discharged. He is once again employed, has no past due indebtedness, and has a positive monthly cash flow. Clearance is granted.

### **STATEMENT OF THE CASE**

On January 16, 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 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 February 3, 2003.

The case was received by the undersigned on February 21, 2003. A notice of hearing was issued on March 27, 2003, and the case was heard on April 25, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called two witnesses to testify on his behalf. The transcript was received on May 9, 2003. The issue raised here is whether the Applicant's past financial difficulties militate against the granting of a security clearance. [The Applicant admits all but one of the allegations.]

### **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 37 years of age, has a Ph.D., and is employed by a defense contractor who seeks a security clearance on

behalf of the Applicant.

### Guideline F - Financial Considerations

1.a.~1.j. The Applicant was awarded a Ph.D. in 1997, and soon thereafter was offered a position with a financial institution earning \$75,000 a year (Transcript (TR) at page 38 line 3 to page 39 line 1, at page 69 lines 1~7). He and his spouse purchased a home, which appreciated in value; and as a result, they took out a second mortgage on their home with the intention of starting "an entertainment/education center" for children in a shopping mall (TR at page 39 line 14 to page 40 at line 19). They started the business in May of 2000, and to their surprise, initially had a positive cash flow (TR at page 40 lines 21~25, at page 44 line 17 to page 45 line 15). Soon thereafter, however, there was an "economic down turn," the Applicant was unemployed for three months, and as a result of "911," people were reluctant to leave their children to the care of others in a shopping mall (TR at page 45 line 19 to page 46 line 24, and at page 70 lines 7~18). As a result, they incurred in excess of \$98,000 in past due credit card debt, as alleged on the SOR.

The Applicant and his spouse sought the advice of an attorney who was "a certified specialist in small business and personal bankruptcy" (TR at page 19 lines 13~22, and at page 47 line 16 to page 48 line 24). They sought a reduction in their mall rent, but to no avail; and on the advice of counsel, stopped making payments on their credit cards and filed for the protection of bankruptcy (*id, see also* TR at page 22 line 23 to page 25 line 6). All of their past due credit card indebtedness, as alleged on the SOR, was subsequently discharged by way of bankruptcy (TR at page 26 lines 12~14, and Applicant's Exhibit (AppX) A). The Applicant is once again employed, making "\$107,120" per year, has no past due indebtedness, and has a positive monthly cash flow (TR at page 73 lines 4~19, and AppX B).

### Mitigation

A college professor and a fellow employee both speak most highly of the Applicant (AppX C).

## **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;

Conditions that could mitigate security concerns include:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, . . .);
4. The person has received or is receiving counseling for the problem and there clear indications that the problem is being resolved or is under control;
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 a business downturn and a loss of his primary employment, the Applicant incurred in excess of \$98,000 in past due indebtedness, directly related to his failed business, which he was initially unable to address. The third mitigating condition thus clearly applies. He subsequently sought the advice of legal counsel and engaged his representation. Following his counsel's advice, the Applicant has had all of the alleged, business related, past due indebtedness discharged by way of bankruptcy. He has thus satisfying the fourth and the last mitigating conditions under Financial Considerations. Furthermore, the Applicant now has a positive cash flow, no past due indebtedness, and an annual income in excess of \$107,00. I therefore conclude that his past financial difficulties are not of present security significance.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his past 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.

j. 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