

DATE: February 27, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-13158

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

By his own admission, the Applicant owes in excess of \$8,000 in past due indebtedness to seven different creditors. Included in these past due debts are two outstanding judgments. As the Applicant has done little, if anything, to address this indebtedness, mitigation is not shown. Clearance is denied.

**STATEMENT OF THE CASE**

On August 8, 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 September 15, 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 Material (FORM) on October 29, 2003. 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 November 19, 2003, and submitted nothing in reply. The case was received by the undersigned for resolution on January 29, 2004. The issue raised here are whether the Applicant's current financial difficulties militate against the granting of a security clearance. [The Applicant admits 10 of the 16 allegations; i.e., 1.a., 1.b., 1.e.-1.g., 1.j., 1.l., 1.m., 1.o. and 1.p.]

**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 29 years of age, and is employed by a defense contractor who 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

1.a. The Applicant owes about \$152 on an outstanding judgment that originally totaled \$752 (Government Exhibit (GX) 3 at page 1 and GX 5 at page 3). He paid about \$600 towards this judgement through garnishments (GX 5 at page 3).

1.b., 1.e. and 1.g. The Applicant owes about \$1,708 on a second outstanding judgement (GX 3 at page 1 and GX 5 at page 3). This judgment incorporated past due debts to a pizza parlor (subparagraph 1.e.), and attorney fees (subparagraph 1.g.) (GX 3 at page 1 ). This outstanding judgement was entered against the Applicant in March of 2000, but the Applicant has done nothing to address this past due debt (GX 3 at page 1 and GX 5 at page 3).

1.c. The Applicant owes about \$52 in past due indebtedness for emergency medical care (GX 3 at page 1, and GX 9 at page 9). The Applicant claims this past due debt has been paid, but offers nothing in support of his averment (GX 3 at page 1). According to his credit report of November 2001, it is still outstanding (GX 9 at page 9).

1.d. The Applicant owes about \$33 in past due indebtedness for medical services rendered (GX 9 at page 9). He claims this past due debt was paid through his health insurance, but offers nothing in support of his averment (GX 3 at page 1, and GX 5 at page 5).

1.f. The Applicant owes about \$802 in past due indebtedness to a drinking water service (GX 3 at page 1, GX 5 at page 5, and GX 9 at page 10). The Applicant has done nothing to address this past due debt (*id*).

1.h. The Applicant owes about \$138 in past due indebtedness to a utility company (GX 9 at page 8). He denies this debt, but offers nothing in support of his averment (GX 3 at page 1, and GX 5 at pages 4~5).

1.i. The Applicant owed about \$139 in past due indebtedness to a retailer (GX 9 at page 9). He claims this debt has been paid, and his November 2001 credit report supports his averment (GX 3 at page 1, and GX 5 at page 9). This subparagraph is found for the Applicant.

1.j. The Applicant owes about \$131 in past due indebtedness to a financial institution (GX 9 at page 11). The Applicant has done nothing to address this past due debt (GX 3 at page 1).

1.k. The Applicant owes about \$973 in past due indebtedness to another financial institution (GX 9 at page 5). He claims he only owes about \$500 on this past due debt, but offers nothing in support of his averment (GX 3 at page 2, and GX 5 at page 4).

1.l. The Applicant owes about \$918 in past due indebtedness to a third financial institution (GX 3 at page 2). The Applicant has done nothing to address this past due debt (*id*).

1.m. The Applicant owes about \$4,016 in past due indebtedness to a fourth financial institution (GX 3 at page 2). The Applicant has done nothing to address this past due debt (*id*).

1.n. and 1.o. The Applicant owed about \$300 in past due indebtedness to a fifth financial institution (GX 9 at page 9). He claims this debt was discharged in November of 1998 by this Chapter 7 Bankruptcy (GX 3 at page 2). His bankruptcy petition supports his averment (GX 8 at page 10). These subparagraphs are found for the Applicant.

1.p. The Applicant has a positive monthly cash flow of about \$30 (GX 3 at page 2, and GX 5 at page 7). This subparagraph is also found for the Applicant.

### Mitigation

The Applicant offers little in mitigation regarding his current financial situation.

## **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, by his own admission, has in excess of \$8,000 in past due indebtedness. There is additional past due indebtedness of about \$700 which the Government has proven he also owes. The Applicant, with a positive monthly cash flow of only about \$30, has been unable to do anything 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. 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. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. For the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. For the Applicant.
- o. For the Applicant.
- p. 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