

DATE: April 15, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13463

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has in excess of \$125,000 in past due indebtedness. She incurred this debt since 2001, in an effort to get her and her spouse's space launch business off the ground. It is only recently, eight days before her hearing, that she has contacted her creditors in an effort to begin to satisfy this past due indebtedness. She and her husband hope to establish their space launch business on the ----- -- -----, and have established a business relationship with the ----- ----- -- ----- in order to perfect their hope. A Canadian investor owns only 1.5 % of their company. Clearance is denied.

On November 21, 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 December 16, 2002.

The case was received by the undersigned on January 15, 2003. A notice of hearing was issued on February 27, 2003, and the case was heard on March 18, 2003. The Government submitted documentary evidence. Testimony was also taken from the Applicant, who also offered documentary evidence. The transcript was received on April 1, 2003. The issues raised here are whether the Applicant's present financial difficulties, possible foreign influence, and alleged outside activities, 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 documents and the live testimony. The Applicant is 53 years of age, and is the Chief Executive Officer (CEO) of a company that seeks a security clearance on behalf of the Applicant.

Guideline F - Financial Considerations

1.a.~1.n. The Applicant owes in excess of \$125,000 in past due indebtedness to various banks and credit card companies (Transcript (TR) at page 36 line 20 to page 41 line 12, and Governments Exhibits (GXs) 5~10). The Applicant and her spouse own 98.5% of a space launch company (TR at page 52 lines 3~9). In an effort to get their space launch business off the ground, they have incurred the past due indebtedness since 2001 (TR at page 54 line 21 to page 57 line 1). She has made payments totaling about \$2,140 towards the \$8,197 alleged in subparagraph 1.b., but has not made any other payments towards the other past due debts alleged (TR at page 36 line 20 to page 41 line 12, and at page 56 line 5 to page 57 line 1). Eight days prior to her hearing, the Applicant sent letters to her creditors in an effort to begin to satisfy her past due indebtedness (Applicant's Exhibit (AppX) J at pages 4~5). In the May/June time frame of this year, 2003, the Applicant hopes to have a successful launch, and thereby begin to pay off some of her past due indebtedness (TR at page 61 lines 13~19). She is currently receiving no income from the company, and continues to incur personal debts to "keep the company going" (TR at page 42 line 22 to page 43 line 3).

Guideline B - Foreign Influence & Guideline L - Outside Activities

2.a., 2.d. and 3.a. The Applicant has established a business relationship with the Crown Prince of Tonga, in an effort to establish a relatively inexpensive launch site for their company (TR at page 43 line 8 to page 44 line 24, and page 46 lines 14~22). The ----- governs and runs ----- (*id*). The establishment of their space launch capabilities on the ----- would constitute both a financial interest in and a service received from a foreign country.

2.b. The Applicant has no personal or business relationship with the ----- (TR at page 45 line 25 to page 46 line 10).

2.c. The Canadian investor's 1.5% financial interest in the Applicant's company is minimal when compared with the 98.5% owned by the Applicant and by her American spouse (TR at page 44 line 25 to page 45 line 24).

Mitigation

In her dealing with -----, the Applicant has gone to great lengths to comply with the requirements of all Federal Departments and Agencies (TR at page 48 lines 13~22, at page 49 lines 1~24, and at page 52 line 21 to page 53 line 2).

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

Foreign Influence

Conditions that could raise a security concern and may be disqualifying include:

3. . . . associates who are connected with any foreign government;

Conditions that could mitigate security concerns include:

None

Outside Activities

Conditions that could raise a security concern and may be disqualifying include:

1. A foreign country;

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), Guideline B (Foreign Influence) and Guideline L (Outside Activities), 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.

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 \$125,000 in past due indebtedness. The genesis of this past due indebtedness is directly

related to an attempt to get her space launch business off the ground. It was only recently, eight days prior to her hearing, that she finally contacted her creditors in an effort to address her financial responsibilities. This is too little too late. She is also not reticent about incurring additional personal debt, in order to keep her company a going concern. Her dedication to her dream of launching a spacecraft is laudatory, but she has done little to address the alleged past due indebtedness; and as such, Guideline F is found against the Applicant.

As to foreign influence and outside activities, the Applicant has established a business relationship with the ----- -- -----. Clearly she is subject to possible foreign influence, as a result of the services she hopes to receive from a foreign sovereign. Although I find that the financial interests of the Canadian investor in her company to be minimal, I can not overlook ----- influence and her outside activities vis-a-vis that foreign country. Guidelines B and L are also found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her financial difficulties, foreign influence and outside activities. The Applicant has thus not met the mitigating conditions of Guidelines B, F and L, and of Section E2.2. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guideline B, F and L.

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. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. For the Applicant.

c. For the Applicant.

d. Against the Applicant.

Paragraph 3: AGAINST THE APPLICANT

a. 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