

DATE: April 8, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-14393

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has addressed all of his past due indebtedness. It was caused by his being unemployed for about two years. When the Applicant responded to Financial Interrogatories (FIs) in March of 2003, he responded truthfully as to what he knew at that time. Mitigation is shown. Guidelines E and F are found for the Applicant. Clearance is granted.

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**STATEMENT OF THE CASE**

On September 4, 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 October 19, 2003.

The case was received by the undersigned on January 8, 2004. A notice of hearing was issued on January 13, 2004, and the case was heard on February 4, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called four witness to testify on his behalf. The transcript was received on February 25, 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 denies three of the six alleged past due debts, subparagraphs 1.d., 1.e., and 1.f.; and denies the two allegations of wilful falsification, subparagraphs 2.a. and 2.b.]

**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 34 years of age, and is employed by a defense contractor which 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 left active duty service with the Navy in June of 1997 (Transcript (TR) at page 52 line 13 to page 53 line 17). As a result, he was unemployed for about two years which caused him financial difficulties (*id*).

1.a. The Applicant has a past due to a Bank in the amount of about \$6,662 (TR at page 38 line 20 to page 40 line 15). The Applicant has initiated a good faith effort to repay this past due debt (Applicant's Exhibit (AppX) H at page 1).

1.b. The Applicant had a past due debt to a Credit Corporation in the amount of about \$135 (TR at page 41 line 17 to page 42 line 25). This has been paid in full (*id*, and Applicant's Answer at page 3).

1.c. The Applicant disputes that he is currently indebted to a Bank Loan Company in the amount of about \$242 (TR at page 43 line 5 to page 44 line 5, and Government Exhibit (GX) 3 at page 5). As a result of him disputing this debt, it has been "DELETED" from his credit report (AppX G at page 1, second to the last entry).

1.d. The Applicant disputes that he is currently indebted to a second Bank in the amount of about \$1,321 (TR at page 45 lines 3~20, and AppXs D and E). As a result of him disputing this debt, it has also been "DELETED" from his credit report (AppX G at page 1, the fourth last entry).

1.e. The Applicant disputes that he is currently indebted to a third Bank in the amount of about \$5,895 (TR at page 45 line 21 to page 49 line 6, at page 67 line 2 to page 69 line 18, and AppX F).

1.f. Although, in the past, the Applicant thought he owed this past due debt, he now disputes that he is indebted in the amount of about \$3,500 on a Credit Card (TR at page 48 line 22 to page 49 line 11, at page 58 line 24 to page 61 line 10, and at page 73 line 18 to page 74 line 12).

1.g. The Applicant avers that he has paid an Association \$70 to cover an alleged past due debt which he had previously admitted he owed (TR at page 49 line 19 to page 50 line 2, and GX 1 at page 10).

#### Guideline E - Personal Conduct

2.a. and 2.b. When the Applicant executed his Security Clearance Application (SCA) in July of 2000, in response to questions 38 and 39, he admitted the past due debts alleged in subparagraphs 1.f. and 1.g., above (GX 1 at page 10). In October of 2001, when the Applicant executed a sworn statement, he again addressed the alleged past due debts found in subparagraphs 1.f. and 1.g. (GX 2 at page 2). Finally, in March of 2003, in response to FIs he averred that he had "no record" of the previously admitted past due debts (GX 5 at page 3). He had "no record" of owing the Credit Card debt alleged in subparagraph 1.f., as he is disputing this debt ever existed (TR at page 51 lines 4~25, and at page 83 lines 14~19). Furthermore, he had "no record" of still owing the \$70 Association debt alleged in subparagraph 1.f., as he had paid this debt (TR at page 51 lines 4~25, and at page 83 at lines 14~19).

#### Mitigation

The Applicant's current supervisor (TR at page 21 line 23 to page 25 line 4), and his past two supervisors (TR at page 26 line 13 to page 28 line 12, and at page 29 line 16 to page 31 line 7) all testified favorably as to the Applicant's trustworthiness.

### **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 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.

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 had a "history of not meeting [his] financial obligations," and there was an "[i]nability or unwillingness to satisfy [his] debts." The Applicant's financial difficulties, however, were caused by conditions "largely beyond his control (e.g., loss of employment . . . ." As the Applicant was unemployed for nearly two years, the third mitigating condition is clearly applicable. While the Applicant is disputing those debts that he avers are not his, two of which have already been deleted from his credit history, he has paid two others, and he has contacted a third creditor in order to set up a payment plan. The last mitigating condition is also applicable as he has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Since obtaining his present employment, the Applicant has also incurred no further past due indebtedness (TR at page 53 line 24 to page 54 line 2). As the Applicant is on the road to financial solvency, Guideline F is found for the Applicant.

As to his alleged wilful falsification, I can find none. When the Applicant responded to the FIs, he responded truthfully as he had "no record" of owing one alleged creditor, and "no record" of still owing another creditor, who had been paid. There is no evidence that the Applicant was trying to keep the existence of any past due debt from the Government, as he had already divulged the existence of the alleged past due debts, in question, when he executed his SCA in 2000, and when he executed a sworn statement in 2001. Guideline E is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Financial Considerations and his Personal Conduct. The Applicant has thus met the mitigating conditions of Guidelines E and F, and of Section

E.2.2. of the Directive. Accordingly, he has met his 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: 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.

#### Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. 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