

DATE: February 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24419

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's past criminal conduct and rule violations are distant enough in time so as not to be of present security significance. That same can not be said of his present financial situation, however. The Applicant has over \$7,000 in past due indebtedness, which, because of a recent loss of employment, he is unable to address. Clearance is denied.

STATEMENT OF THE CASE

On September 3, 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 September 16, 2002.

The case was received by the undersigned on November 8, 2002. A notice of hearing was issued on November 26, 2002, and the case was heard on January 9, 2003. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on January 17, 2003. The issues raised here are whether the Applicant's past criminal conduct, rule violations, and present 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 documents and the live testimony. The Applicant is 31 years of age, has an Associates Degree, and was employed by a defense contractor who sought a security clearance on behalf of the Applicant.

Guideline F - Financial Considerations

The Applicant had is employment terminated in June of 1998, in May of 1999, and again in April of 2000; and as a result, incurred the following past due indebtedness:

1.a. The Applicant owed \$424 in unpaid fines to a county superior court for incidents that occurred in June of 1998, and in November of 1999, as set forth in subparagraphs 2.b. and 2.c., below (Transcript (TR) at page 26 lines 3~19, and Government Exhibit (GX) 9 at pages 1, and 2). These fines have been paid (Applicant's Exhibit (AppX) A at pages 1, 3 and 4).

1.b. The Applicant owes \$802 in past due indebtedness to a bank (TR at page 26 line 20 to page 27 line 1, at page 29 lines 5~7, and GX 2 at page 3). Due to his current loss of employment, the Applicant was terminated by a defense contractor on October 24, 2002, he has been unable to address this past due indebtedness (*id*).

1.c. The Applicant owed \$400 in unpaid fines to a city justice superior court for an incident that occurred in January of 1997, as set forth in subparagraph 2.a., below (TR at page 29 line 8 to page 31 line 7, And GX 9 at page 7). He has recently paid \$50 towards this past due indebtedness (AppX A at pages 1 and 2).

1.d. The Applicant owes \$4,087 in past due indebtedness to a second bank (TR at page 31 line 10 to page 32 line 11, and GX 11). Due to his current loss of employment, he has been unable to address this past due indebtedness (*id*).

1.e. The Applicant owes \$1,847 in past due indebtedness to a financial institution (TR at page 32 lines 12~16, GX 2 at pages 4 and 5, and GX 11). Due to his current loss of employment, he has been unable to address this past due indebtedness (*id*).

Guideline J - Criminal Conduct

2.a. In January of 1997, the Applicant was cited for, and subsequently charged with driving while having Cancelled Insurance (TR at page 34 lines 4~19, and Gx 9 at page 7). He initially failed to appear in court and was subsequently fined \$412 (*id*).

2.b. In June of 1998, the Applicant was arrested for, charged with, and subsequently found guilty of Criminal Damaging (TR at page 35 line 20 to page 36 line 21, and GX 9 at page 2). He and his supervisor had a argument. He "slammed a door open and put a hole in the wall" (*id*). The Applicant was fined \$320 as a result of this conviction (*ibid*).

2.c. In November of 1999, the Applicant was again arrested for, charged with, and subsequently found guilty of Criminal Damaging (TR at page 36 line 22 to page 37 line 12). He and his girlfriend had a argument. He "turned around and kicked the door" (*id*). The Applicant was fined \$370 as a result of this conviction (*ibid*).

Guideline E - Personal Conduct

3.a. In June of 1998, the Applicant was terminated from his employment with the public school for insubordination (TR at page 38 line 25 to page 39 line 17, and GX 1 at page 9, and GX 8). He had several disagreements with his supervisor (TR at page 35 line 20 to page 36 line 21).

3.b. In May of 1999, the Applicant was terminated from his employment with a computer center for taking time off from employment without his supervisor's approval (TR at page 39 line 18 to page 40 line 18, and GX 1 at page 9).

3.c. In April of 2000, the Applicant was terminated from his employment with an express company for circumstances beyond his control, his insurance carrier would not cover his working for the express company (TR at page 40 line 19 to page 41 line 13, and at page 45 line 10 to page 46 line 8).

Mitigation

Two coworkers and a friend think highly of the Applicant (AppX A at pages 6~8).

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;

Condition 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 . . .);

Criminal Conduct

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

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Condition that could mitigate security concerns include:

1. The criminal behavior was not recent;

Personal Conduct

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

5. A pattern of . . . rule violations;

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 E (Personal Conduct), Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) 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

Considering first the Applicant's past criminal conduct and rule violations (the two terminations that were his fault), he was last arrested in November of 1999 for kicking a door and he was terminated in May of 1999 for taking time off without his employer's permission. Although this conduct can not be condoned, they last occurred more than two years ago; and as such, I find that the Applicant's past minor criminal conduct and personal conduct are not recent enough in time so as to be of present security significance. Guidelines E and J are found for the Applicant.

The same can not be said as to his current financial situation, however. The Applicant has in excess of \$7,000 in past due indebtedness. Other than paying \$474 in court fines, due to his recent loss of employment, the Applicant is unable to address his financial responsibilities, as required by the last mitigating condition under Financial Considerations. One hopes that the Applicant will find employment which will enable the Applicant to begin paying on his past due indebtedness, but his current, unaddressed financial difficulties are of present security significance. Guideline F is therefor 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. For the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.

e. Against the Applicant.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

Paragraph 3: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. 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