

KEYWORD: Financial; Personal Conduct

DIGEST: The Applicant has addressed, or is in the process of addressing, all of the alleged past due debts. One of the four debts has been paid, and he is making payments towards the other three alleged past due debts. I find no willful falsification here. When the Applicant executed his November 2002 Security Clearance Application (SCA), he disclosed a motor vehicle repossession, but was unaware of that the other three debts were past due. Mitigation is shown. Guidelines E and F are found for the Applicant. Clearance is granted.

CASENO: 03-20789.h1

DATE: 04/26/2005

DATE: April 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20789

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, or is in the process of addressing, all of the alleged past due debts. One of the four debts has been paid, and he is making payments towards the other three alleged past due debts. I find no willful falsification here. When the Applicant executed his November 2002 Security Clearance Application (SCA), he disclosed a motor vehicle repossession, but was unaware of that the other three debts were past due. Mitigation is shown. Guidelines E and F are found for the Applicant. Clearance is granted.

STATEMENT OF THE CASE

On September 21, 2004, 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 14, 2004.

The case was received by the undersigned on February 22, 2005. A notice of hearing had already been issued on February 1, 2005, as this case had previously been assigned to another judge, and the case was heard on February 23, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on March 4, 2005. The issues raised here are whether the Applicant's Financial Considerations and alleged Personal Conduct militate against the granting of a security clearance. [The Applicant only admits the underlying factual basis of the department store debt, 1.b. He denies all the other 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 46 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

The Applicant was maintaining two households, one in the U.S. and one in Korea (TR at page 19 line 23 to page 21 line 10). All of his alleged past due debts were incurred prior to the Applicant retiring from the active duty Army and moving to Korea as a contractor (*Id*). By far his largest debt was for his motor vehicle which the title holder would not permit the Applicant to take it to Korea (*Ibid*). He now has a positive monthly cash flow of between \$700 and \$800 (TR at page 21 lines 11~15).

1.a. The Applicant has paid a \$75 debt to a cable television provider (TR at page 14 lines 15~22, and Applicant's Exhibit (AppX) C at page 4).

1.b. The Applicant has paid \$194 towards a \$430 debt to a department store (TR at page 16 lines 8~20, at page 35 lines 1~22, and AppX C at page 3).

1.c. The Applicant has increased his monthly payments from \$125 to \$250 towards a \$3,287 debt to the military exchange (TR at page 16 line 22 to page 18 line 9, at page 29 line 17 to page 31 line 3, and AppX C at pages 1 and 2).

1.d. The Applicant is making monthly payments of \$200 towards an \$11,245 debt for a motor vehicle that was repossessed (TR at page 18 line 11 to page 19 line 18, at page 23 line 16 to page 27 line 17, at page 28 line 13 to page 29 line 16, and AppX D at page 1). The creditor is now willing to settle this debt for \$8,500 (AppX D at page 1).

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 are 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." However, the Applicant has now either addressed or is in the process of addressing, through payments or payment plans, all of his alleged past due debts. The last mitigating condition is therefore applicable as he has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Mitigation is shown. Guideline F is found for the Applicant.

As to his alleged wilful falsification, I can find no intent to keep information from the Government. When the Applicant filled out his SCA, he disclosed the repossession. He was unaware that he had any past due debts in excess of 90 or 180 days. The Applicant's credibility is attested to by both his immediate supervisor and his program manager. He thus answered the posited questions truthfully and to the best of his ability. 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.

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