

KEYWORD: Financial

DIGEST: The Applicant has either paid or is in the process of paying all of his admitted past due debts. His past due indebtedness was caused by circumstances largely beyond his control. He was mostly unemployed while attending university from 1993~1997. He also helped out with his grandmother's medical expenses. Mitigation is shown; and as such, the Applicant's clearance is granted.

CASENO: 03-21057.h1

DATE: 04/13/2005

DATE: April 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21057

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has either paid or is in the process of paying all of his admitted past due debts. His past due indebtedness was caused by circumstances largely beyond his control. He was mostly unemployed while attending university from 1993~1997. He also helped out with his grandmother's medical expenses. litigation is shown; and as such, the Applicant's clearance is granted.

STATEMENT OF THE CASE

On November 4, 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 December 14, 2004.

The case was received by the undersigned on February 7, 2005. A notice of hearing was issued on February 22, 2005, and the case was heard on March 16, 2005. The Government submitted documentary evidence, and called one witness to testify, the Applicant. The Applicant also submitted documentary evidence. The transcript (TR) was received on March 24, 2005. The issue raised here is whether the Applicant's alleged past due debts militate against the granting of a security clearance. [The Applicant admits that the debts noted in subparagraphs 1.h. and 1.s. are, in part, still

outstanding, but avers that the other alleged debts, 1.a., 1.b., 1.d.~1.g., 1.i.~1.r. and 1.t., have either been paid or settled. He denies that debt 1.c. is his. The Government has withdrawn subparagraph 1.u.]

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 33 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

From 1993~1997, while attending university, the Applicant was unemployed for three of the four years, and only had a part time job during one of the four years (TR at page 64 line 19 to page 67 line 10). He also helped out with the medical expenses of his grandmother (TR at page 69 lines 6~23).

1.a. The Applicant's alleged past due debt to a collection company has been paid (TR at page 50 lines 4~9, and Appellant's Exhibit (AppX) A).

1.b. The Applicant's alleged past due debt to a cable television provider has been paid (TR at page 50 lines 4~9, and AppX B).

1.c. The Applicant denies that a \$964 debt to a "Sweepstakes" is his, and it does not appear on his most recent credit report of December 30, 2004 (TR at page 50 line 10 to page 51 line 22, and AppXs C and U).

1.d. The Applicant's alleged past due debt to a bank has been paid (TR at page 50 line 23 to page 52 line 1, and AppX D).

- 1.e. The Applicant's alleged past due debt to a university has been paid (TR at page 52 lines 2~5, and AppX E).
- 1.f. The Applicant's alleged past due debt to a credit union has been paid (TR at page 52 lines 6~19 and AppX F).
- 1.g. The Applicant's alleged past due debt to another bank has been paid (TR at page 52 lines 20~22, and AppX G).
- 1.h. The Applicant has a past due debt to a third bank in an amount of about \$37,175 (AppX H at page 2). He is making monthly payments of \$200 towards this debt to the satisfaction of the creditor (TR at page 52 line 23 to page 56 line 17, and AppX H). Now that he has paid or settled all, but one, of his other admitted past debts, the Applicant plans to increase this payment (TR at page 56 lines 11~17).
- 1.i. The Applicant's alleged past due debt to a credit card company has been paid (TR at page 56 line 27 to page 57 line 9, and AppX I).
- 1.j. The Applicant's alleged past due debt to a fourth bank has been paid (TR at page 57 lines 10~17, and AppX J).
- 1.k. The Applicant's alleged past due debt to a fifth bank has been settled to the satisfaction of the creditor (TR at page 57 lines 18~21, and AppX K).
- 1.l. The Applicant's alleged past due debt to a another credit card company has been settled to the satisfaction of the creditor (TR at page 57 line 22 to page 58 line 22, and AppX L).
- 1.m. The Applicant's alleged past due debt to a finance company has been paid (TR at page 59 lines 3~6, and AppX M).
- 1.n. The Applicant's alleged past due debt to a sixth bank has been settled to the satisfaction of the creditor (TR at page 59 lines 7~9, and AppX N).

1.o. The Applicant's alleged past due debt to a seventh bank has been settled to the satisfaction of the creditor (TR at page 59 lines 10~13, and AppX O).

1.p. The Applicant's alleged past due debt to a utility company has been paid (TR at page 59 lines 14~16, and AppX P).

1.q. The Applicant's alleged past due debt to an eighth bank has been settled to the satisfaction of the creditor (TR at page 59 line 17 to page 60 line 11, and AppX Q).

1.r. The Applicant's alleged past due debt to another financial company has been paid (TR at page 60 line 13 to page 61 line 2, and AppX R).

1.s. The Applicant has a past due debt on a student loan in an amount of about \$6,000 (TR at page 61 line 4 to page 64 line 14). He is making monthly payments of \$500 towards this debt to the satisfaction of the creditor (*Id*, and AppX S).

1.t. The Applicant's alleged past due debt to a ninth bank has been paid (TR at page 64 lines 15~18, and AppX T).

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 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 has a "history of not meeting [his] financial obligations," and an "[i]nability . . . to satisfy debts." These are the first and third disqualifying conditions under Financial Considerations. The third mitigating condition is applicable, however, as his financial difficulties were a result of "conditions . . . largely beyond . . . [his] control (e.g., loss of employment . . .)." The fourth mitigating condition is also applicable as the Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve [his] debts." Mitigation is shown; and as such, Guideline F is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his past financial difficulties. The Applicant has thus met the mitigating conditions of Guideline F, and of Section E.2.2. of the Directive. Accordingly, he has 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: 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.
- h. For the Applicant.
- i. For the Applicant.
- j. For the Applicant.
- k. For the Applicant.
- l. For the Applicant.
- m. For the Applicant.
- n. For the Applicant.
- o. For the Applicant.
- p. For the Applicant.
- q. For the Applicant.
- r. For the Applicant.
- s. For the Applicant.
- t. 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