

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: The Applicant has addressed, or is in the process of addressing, all of his admitted past due debts. Six of the nine alleged debts are being paid through a debt consolidation plan. He intends to add the seventh debt to that plan. He is in contact with the Internal Revenue Service (IRS) regarding his tax lien, and is attempting to contact the remaining creditor regarding a vehicle repossession. As to the Applicant's past Criminal Conduct, his last arrest occurred nearly three years ago; and as such, is not recent. As to his Personal Conduct, the Applicant disclosed his known delinquencies when he filled out his Questionnaire for National Security Positions (QNSP); and as such, there was no intention to deceive the Government when he executed his Security Clearance Application (SCA). Mitigation is shown. Guidelines E, F and J are found for the Applicant. Clearance is granted.

CASENO: 03-21920.h1

DATE: 03/08/2005

DATE: March 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21920

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin a. Howry, Esquire, Department Counsel

FOR APPLICANT

Richard Hildago, Applicant's Representative

SYNOPSIS

The Applicant has addressed, or is in the process of addressing, all of his admitted past due debts. Six of the nine alleged debts are being paid through a debt consolidation plan. He intends to add the seventh debt to that plan. He is in contact with the Internal Revenue Service (IRS) regarding his tax lien, and is attempting to contact the remaining creditor regarding a vehicle repossession. As to the Applicant's past Criminal Conduct, his last arrest occurred nearly three years ago; and as such, is not recent. As to his Personal Conduct, the Applicant disclosed his known delinquencies when he filled out his Questionnaire for National Security Positions (QNSP); and as such, there was no intention to deceive the Government when he executed his Security Clearance Application (SCA). Mitigation is shown. Guidelines E, F and J 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 or about October 18, 2004.

The case was received by the undersigned on January 3, 2005. A notice of hearing was issued on January 18, 2005, and the case was heard on February 16, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who submitted documentary evidence and called one witness to testify on his behalf. The transcript was received on February 28, 2005. The issues raised here are whether the Applicant's Financial Considerations, past Criminal Conduct, and alleged Personal Conduct militate against the granting of a security clearance. [The Applicant

admits the underlying factual basis of the Financial Considerations, but denies, in part, the Criminal Conduct, and unequivocally denies the Personal Conduct.]

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 37 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 divorced in 1998, which resulted in monthly child support payments of between \$1,100 and \$1,200 (TR at page 111 lines 4~22, and at page 118 lines 2~17). From August of 2001 to January 2002, the Applicant was also unemployed, which resulted in a significant loss of income (TR at page 111 line 23 to page 115 line 3, and at page 117 line 13 to page 122 line 5). As a result, the Applicant incurred much of the alleged past due indebtedness. Since rejoining the job force, he has employed the services of a debt counseling service as an aid in addressing his past due bets (Applicant's Exhibit (AppX) B). any of his debts have now been consolidated under this counseling service (*Id*).

1.a. The Applicant owes an "AFNI-Bloom" about \$927 (Government Exhibit (GX) 5 at page 4). Through his debt counseling service, this debt has been consolidated with others, and the Applicant is paying \$21 each month towards this debt (TR at page 51 line 8 to page 52 line 8, and AppX B).

1.b. The Applicant allegedly owes about \$150 to a utility company (GX 3 at page 5). Initially, he was paying \$12 each month towards this debt through his debt counseling service, but the creditor can not find the Applicant's account; and as such, there is no account to credit (TR at page 52 lines 9~24, at page 54 3~7 and AppX J at page 1). The debt counseling service has thus ceased making these monthly payments (*Id*).

1.c. The Applicant owes about \$756 to a bank (GX 3 at page 5). Through his debt counseling service, the Applicant is paying \$25 each month towards this debt (TR at page 52 line 25 to page 54 line 2, and AppX B).

1.d. The Applicant owes about \$883 on a credit card (GX 3 at page 6). Through his debt counseling service, the Applicant is paying \$18 each month towards this debt (TR at page 54 line 11 to page 55 line 9, and AppX B).

1.e. The Applicant owes about \$2,230 to another bank (GX 3 at page 6). Through his debt counseling service, the Applicant is paying \$44 each month towards this debt (TR at page 55 line 24 to page 56 line 3, and AppX B).

1.f. The Applicant owes about \$18,412 to the IRS for a tax lien (GX 3 at page 7). The Applicant has been diligent in trying to set up a payment plan with the IRS (TR at page 56 line 4 to page 60 line 13, at page 98 lines 11~14, at page 116 line 21 to page 117 line 10, and AppXs C, D, E and G).

1.g. The Applicant allegedly owes about \$1,065 to a credit company. He is trying to consolidate this debt with the others under his debt counseling service (TR at page 60 line 17 to page 62 line 5).

1.h. The Applicant allegedly owes about \$8,633 as the result of a vehicle repossession. The Applicant is trying to contact this creditor, but has been unsuccessful (TR at page 62 line 9 to page 65 line 17, and at page 93 line 15 to page 95 line 15).

1.i. The Applicant owes about \$550 on a credit card (GX 3 at pages 4~5). Through his debt counseling service, the Applicant is paying \$20 each month towards this debt (TR at page 65 lines 18~22, and AppX B).

Guideline J - Criminal Conduct

2.a. In February of 1999, the Applicant was arrested for, and subsequently charged with, Disobeying a Court Order, a restraining order regarding an ex-girlfriend (GX 6 at page 12). As a result, he was held in jail for four hours, fined, and placed on unsupervised probation for three years (TR at page 65 line 23 to page 67 line 6, and at page 100 lines 7~10).

2.b. In April of 2002, the Applicant was arrested for, and subsequently pled Nolo Contendere to, Driving Under the Influence (DUI) (GX 4 and GX 6 at page 13). He spent six days in a county jail, was fined, ordered to attend a First Offender Alcohol Program, and placed on three years probation (*Id.*, and TR at page 67 line 7 to page 68 line 1).

2.c. The Applicant has, in fact, filed his federal income tax returns for tax years 1998, 2000, 2001 and 2002 (TR at page 68 line 14 to page 72 line 13, and AppXs C, D, E, G and J at page 2).

2.d. The Applicant did not violate 18 U.S.C. 1001 when he executed his April 2003 SCA, or when he executed his September 11, 2003 sworn statement, as will be discussed under Paragraph 3 of the SOR.

Guideline E - Personal Conduct

3.a. In February of 2003, the Applicant filled out a hand written QNSP wherein he disclosed his known financial delinquencies in excess of 180 days (AppX F at page 11). Forty days later, however, in April of 2003, the Applicant was unable to input, electronically, the particulars of his debts when he executed his SCA (TR at page 73 line 13 to page 78 line 22, at page 101 line 5 to page 105 line 5, at page 115 line 22 to page 116 line 8, and GXs 1 and 2). There was absolutely no intention to deceive the Government (*Id*).

3.b. In September of 2003, the Applicant executed a sworn statement, in which he stated that his "unpaid tax lien" was being paid through withholdings of his tax refunds, which was a true statement (TR at page 80 line 4 to page 89 line 19, at page 116 lines 9~12, and AppX E).

Mitigation

The Applicant's second level supervisor, a retired U.S. Army Master Sergeant, testified most highly of the Applicant (TR at page 37 line 5 to page 49 line 1). He is also well thought of by those others with whom he works (AppXs I and J at page 4).

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), 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.

Unacceptable Personal and Criminal 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." The Applicant's financial difficulties, however, were caused by conditions "largely beyond his control (e.g., loss of employment . . . divorce . . .)." As the Applicant suffered economic dislocations as a result of a divorce in 1998, and of an extended period of unemployment in 2001~2002, the third mitigating condition is clearly applicable. The Applicant he has now consolidated under a repayment plan six of his nine outstanding debts, and is proactively addressing the remaining three debts. The last mitigating condition is also 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 the Applicant's admitted Criminal Conduct, he has two arrests, one in 1999 and the other in 2002. The second disqualifying condition is therefore clearly applicable as there are "multiple lesser offenses." I find that the "criminal behavior was not recent," however, as the DUI occurred nearly three years ago, and there is no evidence of any subsequent criminal behavior. The first mitigating condition is therefore applicable. Guideline J is also found for the Applicant.

Finally, as to his alleged wilful falsification, I can find no intent to keep information from the Government. When the Applicant filled out his QNSP, he disclosed his known financial delinquencies. Through no fault of his own, he was unable to fill out the requisite SCA properly. Guideline E is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Financial Considerations, his Criminal Conduct, and his Personal Conduct. The Applicant has thus met the mitigating conditions of Guidelines E, F and J, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines E, F and J.

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.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.

Paragraph 3: 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