

DATE: March 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01201

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has filed his federal income tax returns for tax years 1995, 1996 and 1997. Tax years 1995 and 1996 have been paid in full. He is making payments towards his 1997 back taxes. There is also an outstanding judgment, however, in an amount in excess of \$70,000. In a July 2003 sworn statement, he averred he was not willing to pay it. At his hearing he reiterated he would not voluntarily pay this judgment. He has a positive monthly cash flow in excess of \$5,600. He did not wilfully falsify his Security Clearance Application (SCA) as to the existence of the before mentioned outstanding judgment. Mitigation is not shown as to his financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On November 5, 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 November 17, 2003.

The case was received by the undersigned on February 6, 2004. A notice of hearing was issued on February 17, 2004, and the case was heard on February 23, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant. The transcript was received on March 11, 2004. The issues raised here are whether the Applicant's current financial considerations, and alleged personal and criminal conduct militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all the allegations, except as to his failure to file his federal income tax returns, subparagraphs 1.a. and 3.a., which he denies.]

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 56 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, Guideline E - Personal Conduct & Guideline J - Criminal Conduct

1.a. and 2.a. The Applicant owes about \$70,000 on an outstanding judgment to a former business associate (Transcript (TR) at page 43 line 8 to page 45 line 9, and Government Exhibit (GX) 3 at page 2, and GX 18). In a July 2003 sworn statement, he averred he was not willing to pay the outstanding judgment (GX 4 at page 4). At his hearing, the Applicant reiterated that he would not voluntarily pay this outstanding judgment (TR at page 18 line 25 to page 19 line 9, at page 23 line 6 to page 24 line 9 and at page 27 lines 14~19). He has involuntarily paid about \$2,200~\$2,300 toward this past due indebtedness (TR at page 43 line 8 to page 45 line 9). The Applicant has a positive monthly cash flow in excess of \$5,600 (TR at page 30 line 20 to page 31 line 2).

1.b. and 3.a. The Applicant has filed his federal income tax for tax years 1995, 1996 and 1997 (TR at page 21 line 13 to page 22 line 25 line 21, *see also* Applicant's Exhibit (AppX) C). He has paid his back taxes for tax years 1995 and 1996 in full, and is paying \$555 each month towards his back taxes for tax year 1997 (TR at page 46 line 8 to page 49 line 2). It will be paid in full in one month (TR at page 29 line 3 to page 30 line 5).

Personal Conduct

2.b. The Applicant did not wilfully falsify his May 2001 SCA when he answered Question 37 "No" as to any unpaid judgements (GX 1 at page 8). He disclosed the existence of this judgement when he answered question 40 on the same page of his SCA (TR at page 25 line 12 to page 26 line 11, at page 27 lines 7~13, at page 41 line 4 to page 43 line 7, and GX 1 at pages 8~9).

Mitigation

The Applicant has received numerous awards and recognitions in conjunction with his employment (AppX A).

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

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

3. Inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

None

Personal Conduct

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

None

Criminal Conduct

Conditions that could raise a security concern and may be disqualifying 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 F (Financial Considerations), Guideline E (Personal Conduct) 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

The Applicant has filed and paid, or is in the process of paying, all of his alleged back taxes. Since he has filed all of his federal income tax returns, there is no continuing criminal conduct. Guideline J is therefore found for the Applicant. However, he does have an outstanding judgment pending against him in the amount of about \$70,000. Despite having a positive monthly cash flow in excess of \$5,600, the Applicant has repeatedly averred that he is unwilling to voluntarily address this past due. Disqualifying condition 3 is thus clearly applicable in this case, as there is an "unwillingness to satisfy debts." His current financial intransigence is clearly of present security significance. Guideline F is therefore found against the Applicant.

As to his alleged falsification under Personal Conduct, I can find none. The Applicant had absolutely no intention of keeping the existence of his judgement from the purview of the Government. He in fact disclosed its existence on his SCA, three questions later, on the same page as the posited question at issue. Guideline E is therefore found for the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Financial Considerations. 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. Against the Applicant.
- b. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Paragraph 3: FOR THE APPLICANT

- a. 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