

DATE: May 14, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-01484

**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 all of his past due indebtedness. It was caused by his being unemployed for about six or seven months. When the Applicant answered his electronic Security Clearance Application (SCA), he was unable to answer "Yes" to Questions 37 and 38, as he did not know the particulars of his past due indebtedness. [A "Yes" response requires an affiant to list the particulars of the debts.] Two to three weeks later, the Applicant voluntarily disclosed the requested information. Mitigation is shown. Guidelines E and F are found for the Applicant. Clearance is granted.

**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 or about December 4, 2003.

The case was received by the undersigned on February 6, 2004. A notice of hearing was issued on February 12, 2004, and the case was heard on March 12, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on March 30, 2004. The issues raised here are whether the Applicant's Financial Considerations and related Personal Conduct militate against the granting of a security clearance. [The Applicant admits the underlying factual basis for most of the alleged debts, 1.a.~1.e., 1.g.~1.k. and 1.n.~1.p; but denies the allegations of wilful falsification, 2.b.~2.d.]

**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 39 years of age, and is employed by a defense contractor that 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 unemployed for about "six or seven months;" and as a result, he incurred the alleged past due indebtedness (Transcript (TR) at page 17 line 18 to page 18 line 4, and at page 43 line 4 to page 44 line 12).

1.a. The Applicant owes back taxes to the Internal Revenue Service (IRS) in the amount of about \$7,168 (TR at page 15 line 25 to page 17 line 11, and Applicant's Exhibit (AppX) A at page 5). With the filing of his 2003 Federal Income Tax Return, \$5,718 has been applied towards his back taxes (TR at page 15 line 25 to page 17 line 11, and AppX C at pages 2~3). He intends to pay off the remaining \$1,450 (TR at page 17 lines 1~11).

1.b.~1.d. The Applicant had three past due debts on credit cards totaling about \$1,335 (Government Exhibit (GX) 2 at page 4, and GX 3 at page 1). These past due debts have been paid (TR at page 17 lines 13~16, at page 18 line 11 to page 19 line 14, and AppX A at pages 8~13).

1.e. The Applicant had a past due debt on a bank card in the amount of about \$612 (GX 2 at page 4, and GX 3 at page 1). This "has been settled in full" (TR at page 19 line 17 to page 20 line 3, and AppX C at page 7).

1.f. The Applicant avers credibly that a \$257 debt to a financial corporation is not his (TR at page 20 lines 4~23).

1.g. The Applicant had a past due debt on another bank card in the amount of about \$1,143 (GX 2 at page 4, and GX 3 at page 2). This has been paid in full (TR at page 24 line 17 to page 21 line 4, and AppX C at page 8).

1.h. The Applicant had a past due debt to a medical group in the amount of about \$138 (GX 2 at page 4, and GX 3 at page 2). This has been paid in full (TR at page 21 lines 6~9, and AppX A at page 1).

1.i. The Applicant had a past due debt to a cable company in the amount of about \$176 (GX 3 at page 2). This has been paid in full (TR at page 21 line 18 to page 22 line 4, and AppX C at pages 9~10).

1.j. The Applicant credibly disputes a debt to a cell phone company in the amount of about \$979 (TR at page 22 lines 6~14, and at page 47 line 13 to page 48 line 7).

1.k. The Applicant avers credibly that a \$62 debt to a pizza parlor has been paid (TR at page 22 lines 15~22, at page 48 line 14 to page 49 line 8, and AppX C at page 11).

1.l. The Applicant credibly disputes the amount of a debt, about \$1,138, to a finance company (TR at page 22 line 23 to page 23 line 20, and at page 50 line 15 to page 51 line 24). He is attempting to make payments on this debt, but the finance company will not accept payment as their records show the debt has been "paid in bankruptcy" (*id*). The Applicant has never filed for the protection of a bankruptcy (*ibid*).

1.m. The Applicant avers credibly that a \$2,927 debt to a phone company is not his (TR at page 23 lines 22~25).

1.n. The Applicant avers credibly that a \$23 debt to a court has been paid (TR at page 23 lines 22~25).

1.o. Through the services of a consumer counseling service, the Applicant has successfully disputed a \$325 debt to a bank (TR at page 24 lines 10~15).

1.p. The Applicant owes about \$16,484 on a truck loan (GX 2 at page 4). Pursuant to a settlement agreement, he is making monthly payment of \$500 towards this past due debt (TR at page 25 line 19 to page 26 line 8, at page 55 line 19 to page 63 line 8, and AppX C at page 12).

1.q. The Applicant has a positive monthly cash flow (TR at page 26 line 14 to page 27 line 13).

## Guideline E - Personal Conduct

2.a. The Applicant tried to register for the draft with the Selective Service; but was told that at 37 years of age, he was too old (TR at page 27 line 17 to page 28 line 9).

2.b. When the Applicant answered Question 36 "No" on his June 2002 SCA, he failed to list his tax liens (GX 1 at page 7). The Question asks about tax liens in the last seven years (*id*). As his original tax lien went back to 1989, more than seven years, he answered the Question truthfully and to the best of his ability (TR at page 15 lines 15~25, and at page 28 line 11 to page 29 line 25).

2.c. and 2.d. When the Applicant answered the electronic SCA, he was unable to answer "Yes" to Questions 37 and 38, as he did not know the particulars of his past due indebtedness. [A "Yes" response requires an affiant to list the particulars of the debts.] Two to three weeks later, the Applicant voluntarily disclosed the requested information (TR at page 30 lines 3~23, and GX 1 at page 8). It was not his intention to keep any information from the Government (*id*).

## **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), 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 is 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 . . . ." As the Applicant was unemployed for six or seven months, the third mitigating condition is clearly applicable. While the Applicant is disputing those debts that he avers are not his, he has either paid off or settled all of the other alleged past due debts, except for his largest debt, a truck loan, which he is paying through a payment plan. The last mitigating condition is also applicable as he has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." He has a positive monthly cash flow; and as the Applicant is on the road to financial solvency, 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 responded to Question 36, he responded truthfully as he thought his tax liens went back to 1989, well outside of the Government's seven year ambit of concern. As to his "No" responses to Questions 37 and 38, the electronic SCA did not permit the Applicant to answer "Yes" without further explanation. He answered "No" and disclosed the particulars of his past due indebtedness only two or three weeks after executing his electronic SCA. There is no evidence that the Applicant was trying to keep the existence of any past due debt from the Government. 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.
- 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.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. 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