

DATE: May 11, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-10380

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Applicant, a retired Army Colonel, has addressed all of the alleged past due debts. This indebtedness was the result of a condition largely beyond his control, about \$100,000 of unexpected medical and related expenses. The Applicant made an honest "mistake" in not listing his past due debts in answer to question 38 on his May 2000 Security Clearance Application (SCA). The Government, however, already knew of the Applicant's past due debts as they were the subject of a February 1999 Letter of Intent (LOI). In answer to question 32 on his May 2000 SCA, the Applicant did not divulge that his clearance had been suspended as a result of the LOI. He was unaware it had been suspended, as he left this employment 11 days prior to the alleged suspension. His veracity is corroborated by three witnesses. Mitigation is shown. Clearance is granted.

### **STATEMENT OF THE CASE**

On September 8, 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 4, 2004.

The case had been previously assigned to another judge, and was received by the undersigned on March 7, 2005. A notice of hearing had already been issued on February 24, 2005, and the case was heard on March 31, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called three witnesses to testify on his behalf. The transcript (TR) was received on April 11, 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 denies all of the allegations, except for paragraph 2.a., the "mistake" in not listing his past due debts.]

## 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 62 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's mother-in-law was gravely ill for about five years from January of 1994 to January 1999 (Applicant's Exhibit (AppX) A). She succumbed this illness, and the Applicant incurred about \$100,000 in medical and related expenses (TR at page 65 lines 9~22, and at page 69 line 20 to page 70 line 10). As a result, the Applicant incurred about \$50,000 in past due indebted (TR at page 63 lines 1~14). Through the counsel of an Army lawyer, the Applicant has now reduced this past due indebtedness to about \$32,000 (*Id.*, and TR at page 46 lines 7~12).

1.a. The Applicant has been making monthly payments of \$75 towards a debt to a bank totaling about \$3,070 (TR at page 46 line 19 to page 47 line 9, and at page 61 lines 22~25). The bank has now agreed to settle this debt for a "50 percent payment of the balance" (AppX C at attachment 1c).

1.b. The Applicant has paid a \$578 debt to the same bank listed in subparagraph 1.a. (TR at page 45 lines 19~23, at page 62 lines 9~15, and AppX B at page 1).

1.c. The Applicant has been making monthly payments of \$75 towards a debt to a second bank totaling about \$2,871 (TR at page 47 line 12 to page 48 line 2, at page 62 lines 6~8, and AppX C at attachment 1f).

1.d. The Applicant has been making monthly payments of \$240 towards a debt to a military exchange totaling about \$864 (TR at page 48 lines 4~10, at page 62 lines 6~8, *see also* AppX C at page 3). Only part of this monthly payment goes towards the past due debt. The rest goes towards a current account with a balance of about \$10,000 (*Id.*).

1.e. and 1.f. The Applicant has paid two credit card debts totaling about \$14,624 (TR at page 48 line 12 to page 50 line 10, at page 62 lines 16~18, and Government Exhibit (GX) 8 at page 2). One debt was paid in June of 2002, and the other in October of 2004 (*Id.*, *see also* AppX C at page 3).

1.g. The Applicant has settled, to the satisfaction of the creditor, a debt of about \$484 to a catalog store (TR at page 50 line 20 to page 51 line 1, at page 51 lines 2~12, and GX 8 at page 2).

1.h. The Applicant has been making monthly payments of \$45 towards another debt to the second bank totaling about \$1,843 (TR at page 51 lines 2~12, *see also* AppX C at page 3).

1.i. The Applicant has paid a debt to a third bank totaling about \$635 (TR at page 45 line 23 to page 46 line 1, and AppX B at page 2).

1.j. The Applicant has been making monthly payments of \$120 towards another debt to "Palisades" totaling about \$8,905 (TR at page 51 lines 20~25, *see also* AppX C at page 3).

1.k. The Applicant has paid a debt to a credit union totaling about \$725 (TR at page 52 lines 2~14, and AppX C at attachment 1g).

1.l. The Applicant has been making monthly payments of \$200 towards another debt to department store totaling about \$3,255 (TR at page 52 lines 16~24, *see also* AppX C at attachment 1a).

1.m. The Applicant has been making monthly payments of \$45 towards a debt to a collection company totaling about \$2,612 (TR at page 52 line 25 to page 53 line 4).

### Guideline E - Personal Conduct

2.a. In answer to question 38 on his May 2000 SCA, the Applicant failed to divulge his financial delinquencies in excess of 180 days (GX 2 at page 11). The Applicant testified, credibly, that this was an honest "mistake," and that the Government was already aware of his past due debts, as they were the subject of an LOI issued to the Applicant in February of 1999 (TR at page 53 line 22 to page 55 line 25). The Applicant's credibility is attested to by three witnesses, a retired Army Colonel, a retired Navy Captain, and a Reserve Air Force Lieutenant Colonel (TR at page 33 line 7 to page 35 line 5, at page 37 line 4 to page 40 line 11, and at page 41 line 21 to page 44 line 9).

2.b. The Applicant answered question 32 "No" on his May 2000 SCA (GX 2 at page 11). The posited questions asks, in part, if the Applicant "ever had a clearance . . . suspended" (*Id.*). As a result of the February 1999 LOI, the Applicant's security clearance was suspended on September 28, 1999 (GX 1). The Applicant was unaware of any such suspension, however, as he had already left his employment on September 17, 1999 (TR at page 56 lines 3~25, and at page 57 line 14 to page 58 line 18).

### Mitigation

Three individuals who now work with the Applicant, a retired Army Colonel, a retired Navy Captain, and a Reserve Air Force Lieutenant Colonel, testify as to the Applicant's truthfulness and veracity (TR at page 33 line 7 to page 35 line 5, at page 37 line 4 to page 40 line 11, and at page 41 line 21 to page 44 line 9).

## **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 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's financial difficulties can be directly attributed to circumstances "largely beyond . . . [his] control (e.g. . . . unexpected medical emergency . . .)." His mother-in-law's lengthy illness caused the Applicant to incur about \$100,000 in medical and related expenses. The third mitigating condition is therefore applicable. Furthermore, the Applicant has now addressed 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 made an honest mistake in not divulging his past due debts in excess 180 days, a fact that the Government was already aware of; and he was unaware that his clearance had been suspended after he had left his employment. The Applicant's credibility is attested to by three former and present high ranking military officers. If his answer to question 38 was incorrect, it was not deliberate so. He answered question 32 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.
- 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.

### 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