

DATE: August 25, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-06058

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant filed for the protection of a Chapter 13 Bankruptcy in 1995. His financial difficulties stemmed from a loss of employment or underemployment from about 1994 until 1997, and from marriage difficulties that resulted in a divorce in 1997. Tax liens were filed against the Applicant for tax years 1992~1995 and from 1998~2001. In 2004, the Applicant filed a Chapter 7 Bankruptcy in order to address the tax liens. Liens for tax years 1992, 1993, 2000 and 2001 remained after his Chapter 7 discharge. An offer of compromise has been accepted by the Internal Revenue Service (IRS) as to his outstanding Federal income taxes, and he has paid all outstanding state taxes owed. He now has a positive monthly cash flow of about \$800. Those who know and work with the Applicant recommend him for a position of trust. Clearance is granted.

STATEMENT OF THE CASE

On November 7, 2005, 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 8, 2005.

The case was originally assigned to another Judge, but was reassigned to the undersigned on May 1, 2006. A notice of hearing was issued on May 4, 2006, and the case was heard on May 23, 2006. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on June 9, 2006. The issue raised here is whether the Applicant's past Financial Considerations militates against the granting of a security clearance. [The Applicant admits the underlying factual basis for all of the allegations.]

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, 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 financial difficulties stemmed from a loss of employment or underemployment from about 1994 until 1997, and from marriage difficulties that resulted in a divorce in 1997 (TR at page 47 line 7 to page 48 line 3, *see also* at page 57 line 9 to page 61 line 19). He now has a positive monthly cash flow of about \$800 (TR at page 61 line 25 to page 62 line 5).

1.a.~1.e. The Applicant filed for the protection of a Chapter 13 Bankruptcy in 1995 (TR at page 34 line 18 to page 39 line 14, and Government Exhibits (GXs) 7 and 8). The Applicant "fully performed" his payment plan; and as such, the Chapter 13 Bankruptcy was "closed" in 1999 (Applicant's Exhibit (AppX) C). However, tax liens were also filed against the Applicant for tax years 1992~1995 and 1998~2001 (GXs 4, 5 and 8). In 2004, the Applicant filed a Chapter 7 Bankruptcy in order to address the tax liens (TR at page 50 lines 7~14). Tax liens totaling \$19,296.14 for tax years 1992, 1993, 2000 and 2001 remained after his Chapter 7 discharge, later in 2004 (AppX E). An offer of compromise has been accepted by the IRS as to his outstanding Federal income taxes (AppX G at pages 2~3). Furthermore, he has paid all outstanding state taxes owed (TR at page 45 line 18 to page 46 line 16, and AppX F at pages 3~6).

Mitigation

Those who know, supervise and/or work with the Applicant recommend him for a position of trust (AppX F at pages 11, 12, 21 and 22).

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. His financial difficulties, however, were caused by circumstances "largely beyond the . . . [Applicant's] control (e.g. loss of employment . . . divorce or separation)," the third mitigating condition. The last mitigating condition is also applicable as the Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve [his] debts." He now has a positive monthly cash flow of about \$800. 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.

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