

KEYWORD: Financial; Drugs

DIGEST: The Applicant's methamphetamine usage was more than five years ago; and as such, is not recent. As a result of his past drug usage, however, the Applicant became financially overextended. He has over \$3,000 in past due debts to six different creditors that he has yet to address. These Financial Considerations are of security significance; and as such, mitigation has not been shown. Clearance is denied.

CASENO: 04-02998.h1

DATE: 02/10/2005

DATE: February 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02998

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's methamphetamine usage was more than five years ago; and as such, is not recent. As a result of his past drug usage, however, the Applicant became financially overextended. He has over \$3,000 in past due debts to six different creditors that he has yet to address. These Financial Considerations are of security significance; and as such, mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On September 28, 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 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 25, 2004.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on December 3, 2004. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on December 16, 2004, and submitted nothing in reply. The case was received by the undersigned for resolution on February 2, 2005. The issues raised here are whether the Applicant's past Drug Involvement and current Financial

Considerations militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 45 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 attributes the "majority" of his present financial difficulties to his past drug abuse, which will be discussed under Paragraph 2 of the SOR (Item 3 at page 2).

1.a. The Applicant owes an emergency service about \$252 in past due indebtedness (Item 6 at page 4). He has done nothing to address this past due debt.

1.b. The Applicant owes a credit card company about \$261 in past due indebtedness (Item 6 at page 4). He has done nothing to address this past due debt.

1.c. The Applicant owes a bank about \$1,955 in past due indebtedness (Item 6 at page 5). He has done nothing to address this past due debt.

1.d. The Applicant owes a national pizza chain about \$47 in past due indebtedness (Item 6 at page 5). He has done nothing to address this past due debt.

1.e. The Applicant owes a medical doctor about \$85 in past due indebtedness (Item 6 at page 5). He has done nothing to address this past due debt.

1.f. and 1.g. The Applicant owes a municipality about \$484 in past due indebtedness (Item 6 at page 6). He has done nothing to address these two past due debts.

Guideline H - Drug Involvement

2.a. and 2.b. The Applicant "used Methamphetamines on a nearly daily basis" from about May of 1994 until his last usage in November of 1999 (Item 4 at page 8, and Item 5 at pages 4~5). He used the drug despite being granted a security clearance in 1988 (Item 4 at page 9). The Applicant intends "not to use any dangerous drugs in the future" (Item 4 at page 8).

Mitigation

Other than stating how he got into his present financial difficulties, and averring he intends no future drug abuse, the Applicant offers little in the way of mitigation.

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.

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) and Guideline H (Drug Involvement) 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

Considering first the Applicant's Financial Considerations, he has in excess of \$3,000 in past due indebtedness, dating back to his drug abuse days. The first and third disqualifying conditions are therefore applicable in this case, as there is a "history of not meeting financial obligations," and an "unwillingness to satisfy debts." I can find no countervailing mitigating conditions, as the Applicant has done nothing to address his past due debts. Guideline F is therefore found against the Applicant.

As to his past Drug Involvement, the Applicant used methamphetamine, on a "nearly daily" basis, during the middle to late 1990s. The first disqualifying condition is therefore applicable, as there was "drug abuse." This is countered, however, by the first mitigating condition, as the "drug involvement was not recent," having occurred more than five years ago. Furthermore, the Applicant avers he will not use illegal drugs in the future. Mitigation is shown. Guideline H 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. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against 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 not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola
Administrative Judge