

KEYWORD: Financial; Personal Conduct

DIGEST: The Applicant's past due debts are directly attributed to extended periods of unemployment or underemployment for the last 10~12 years. She also co-signed a number of debts for those who turned out to be financially unreliable relatives. She no longer co-signs for anyone. All but two of the Applicant's alleged past due debts were included in an August 2005 bankruptcy filing. The remaining two debts total less than \$100, and the Applicant testified credibly that they have been or will be taken care of. Her credibility is attested to by seven individuals who know the Applicant in the workplace or in the community. When the Applicant executed her December 2002 Security Clearance Application (SCA), she was aware of only one past due debt in excess of 90 or 180 days. litigation is shown. Clearance is granted.

CASENO: 04-04015.h1

DATE: 01/26/2006

DATE: January 26, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-04015

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jeff A. Nagel, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant's past due debts are directly attributed to extended periods of unemployment or underemployment for the last 10~12 years. She also co-signed a number of debts for those who turned out to be financially unreliable relatives. She no longer co-signs for anyone. All but two of the Applicant's alleged past due debts were included in an August 2005 bankruptcy filing. The remaining two debts total less than \$100, and the Applicant testified credibly that they have been or will be taken care of. Her credibility is attested to by seven individuals who know the Applicant in the workplace or in the community. When the Applicant executed her December 2002 Security Clearance Application (SCA), she was aware of only one past due debt in excess of 90 or 180 days. litigation is shown. Clearance is granted.

**STATEMENT OF THE CASE**

On May 3, 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 July 14, 2005.

The case was received by the undersigned on October 13, 2005. A notice of hearing was issued on November 1, 2005, and the case was heard on November 22, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on December 7, 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 admits the underlying factual basis of all of the allegations, except for two of the alleged past due debts, and she denies any wilful falsification as alleged in Paragraph 2.]

## 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 50 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 past due debts are directly attributed to extended periods of unemployment or underemployment for the last 10~12 years (TR at page 44 line 10 to page 46 line 7). She also co-signed a number of debts for those who turned out to be financially unreliable relatives (*Id*, and TR at page 40 line 13 to page 42 line 9). She no longer co-signs for anyone's debts (TR at page 42 lines 3~9).

1.a.~1.k. All but two of the Applicant's alleged past due debts were included in an August 2005 bankruptcy filing (TR at page 15 line 5 to page 24 line 9, and Applicant's Exhibit (AppX) A at pages 13~15).

1.l. and 1.m. The remaining two debts total less than \$100, and the Applicant testified credibly that they have been or will be taken care of (TR at page 24 line 10 to page 25 line 20, and at page 26 lines 2~14).

### Guideline E - Personal Conduct

2.a. and 2.b. When the Applicant executed her December 2002 SCA, she answered "No" to questions 38 and 39 (Government Exhibit (GX) 2 at page 8). She was aware of only one past due debt in excess of 90 or 180 days, a debt she listed as requested (*Id* and TR at page 26 line 22 to page 38 line 3, and at page 43 line 15 to page 44 line 7).

## Mitigation

Those who know the Applicant in the workplace or in the community think she is trustworthy (AppX B at pages 2~9).

## **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 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 the third disqualifying conditions are applicable as the Applicant had a "history of not meeting [her] financial obligations," and there was an "[i]nability or unwillingness to satisfy [her] debts." However, the Applicant's financial difficulties can be directly attributed to circumstances "largely beyond . . . [her] control (e.g., loss of employment . . .)." The third mitigating condition is therefore applicable. Furthermore, the Applicant, by filing for the protection of bankruptcy, has substantially addressed all of the alleged past due debts. The last mitigating condition is therefore applicable, as she has "initiated a good-faith effort to repay overdue creditors or **otherwise resolve debts**" (Emphasis supplied). Itigation is shown. Guideline F is found for the Applicant.

As to her alleged wilful falsification, I can find no intent to keep information from the Government. When the Applicant filled out her SCA, she was only aware of one past due debt in excess of 90 or 180 days. The Applicant's trustworthiness is attested to by those with whom he works and by those who know her in the community. She therefore answered the posited questions truthfully and to the best of her ability. Guideline E is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her Financial Considerations, and her 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, she has met her 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