

DATE: December 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10454

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Ten years ago, in 1996, during his tenure with the Navy, the Applicant demonstrated a "pattern of dishonesty," and Criminal Conduct, which resulted in an Other Than Honorable discharge. In 2000, he also showed a pattern of minor "rule violations" with his present employer. The Applicant has, in the last five years, turned his life around, and now has the unqualified support of his present employer. He was also the victim of identity theft, which has resulted in financial difficulties. He was unaware of any such difficulties when he executed his July 2000, Security Clearance application (SCA). He has since hired legal counsel, and is addressing or disputing the alleged past due debts. The Applicant's credibility is attested to those who know him well. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On June 13, 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 or about August 2, 2005.

The case was received by the undersigned on September 14, 2005. A notice of hearing was issued on October 11, 2005, and the case was heard on October 31, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on November 8, 2005. Pursuant to the Applicant's request, and over the objection of Department Counsel, the record was left open until December 7, 2005, to receive additional documentation. Applicant's Exhibits (AppXs) E and F were admitted into evidence without objection by Department Counsel. The issues raised here are whether the Applicant's past Criminal Conduct, alleged Personal Conduct, and alleged Financial Considerations militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations; except for subparagraph 1.i., in

that he denies knowledge that his present employer extended a letter of caution in December of 2000, and subparagraph 1.j., in that the Applicant denies wilfully falsifying his SCA.]

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 40 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 E - Personal Conduct & Guideline J - Criminal Conduct

1.a. and 3.a. In August of 1996, the Applicant received non judicial punishment pursuant to Article 15 of the Uniform Code of Military Justice (UCMJ) (TR at page 21 line 15 to page 22 line 21, and Government Exhibit (GX 3)). He forged and signed a document thus enabling another service member to fraudulently obtain civilian housing (*Id*).

1.b.~1.d. and 3.a. In June of 1997, the Applicant received an Other Than Honorable discharge from the Navy in lieu of trial by Court Martial (TR at page 22 line 22 to page 23 line 21, and GX 2). In December of 1996, he falsified a marriage certificate, and thereby received financial allowances to which he was not entitled (*Id*). He also provided false information to Naval investigators about the incident under investigation (*Ibid*, and GXs 6~8).

1.e.~1.i. On August 7, 2000, the Applicant received a Letter of Caution from his present employer in regards to timeliness, idleness, unexcused absences or tardiness, and improper use of the internet (TR at page 23 line 22 to page 24 line 9, and GX 10). Later that month, on August 25, 2000, he was found sleeping at his desk, and he left the work area without authorization during work hours (TR at page 24 line 10 to page 26 line 3). As a result, on December 7, 2000, his Letter of Caution was extended (TR at page 26 line 4 to page 27 line 23, and GX 13).

Since 2000, the Applicant employer has been most pleased with the Applicant's performance (AppXs B C and F). His Director of Human Resources and Information Technology Security Officer think most highly of the Applicant, as does the President/CEO of a company which interfaces with the Applicant's employer through the Applicant (AppX F at pages 1~3). They are impressed by the Applicant's "honesty" and "integrity" (*Id*).

1.j. The Applicant was twice the victim of identity theft, which has resulted in financial difficulties (TR at page 42 line 11 to page 44 line 3, and at page 44 lines 14~17). He was unaware of any such difficulties when he executed his July 2000, SCA (TR at page 27 line 24 to page 29 line 18).

Guideline F - Financial Considerations

The Applicant has hired legal counsel to address his financial difficulties, most of which can be attributed to identity theft (AppX F at page 1).

2.a.~2.e., and 2.h.~2.m. The Applicant disputes alleged past due debts to 11 separate creditors totaling about \$63,000 (TR at page 30 line 2 to page 31 line 11, at page 32 line 4 to page 33 line 9, at page 34 line 8 to page 35 line 12). He has hired legal counsel to aid him in disputing these debts, four of which [noted in subparagraphs 2.b., 2.h., 2.k. and 2.l.] no longer appear on his most recent credit reports (AppX F).

2.f. The Applicant has paid a judgment to a Municipal Court in the amount of about \$459 (TR at page 33 lines 10~22, and AppX F at page 4).

2.g. The Applicant has paid a judgment to another Municipal Court in the amount of about \$3,190 (TR at page 33 line 23 to page 34 line 7, and AppX F at page 4).

2.n. The Applicant has paid a past due debt to a Credit Union in the amount of about \$1,324 (TR at page 35 lines 13 to 21, AppX A at page 1, and AppX F at page 2).

2.o. The Applicant has paid a past due debt on a credit card in the amount of about \$1,245, and is current with this account (TR at page 36 line 10 to page 36 line 9, and AppX F at page 6).

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), Guideline J (Criminal 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 and Criminal 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" identity theft. The third mitigating condition is therefore applicable. Furthermore, the Applicant has addressed all of his admitted past due debts, and has hired counsel to dispute those debts attributed to the identity theft. 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.

Considering next the Applicant's admitted Criminal Conduct, in 1996, he committed a number of violations of the UCMJ for which he received an Article 15, and was subsequently discharged with an Other Than Honorable discharge. The second disqualifying condition is therefore applicable, as there is a "single serious crime or multiple lesser

offenses." However, this is countered by the first mitigating condition, in that the "criminal behavior was not recent," having occurred 10 years ago. Mitigation is shown. Guideline J is found for the Applicant.

Finally, as to his past Personal Conduct, although there was no wilful falsification, there was a "pattern of dishonesty" in 1996, the related Criminal Conduct while he was in the Navy; and a "pattern of . . . rule violations" in 2000 with his present employer. The "pattern of dishonesty" is not recent, and the minor "rule violations," which occurred five years ago, are countered by his present employer's glowing remarks regarding the Applicant. Guideline E is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Financial Considerations, Criminal Conduct and his Personal Conduct. The Applicant has thus met the mitigating conditions of Guidelines E, F and J, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines E, F and J.

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.

Paragraph 2: 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.

Paragraph 3: FOR THE APPLICANT

a. 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