

Date :September 15, 1997

In RE:

SSN:

Applicant for security clearance

ISCR Case No. 97-0322

DECISION⁽¹⁾ OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

Appearances

FOR THE GOVERNMENT

Martin H. Mogul, Esquire

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On May 2, 1997, 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 interests of national security 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.

The SOR is attached.

Applicant filed an Answer to the SOR on May 22, 1997.

The case was received by the undersigned on July 15, 1997. A notice of hearing was issued on July 16, 1997, and the case was heard on August 21, 1997. The Government submitted documentary evidence, and called one witness to testify. Testimony was taken from the Applicant. The transcript was received on September 11, 1997. The issue raised here is whether the Applicant's current financial difficulties militates against the granting of a security clearance.

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 42 years of age, has two years of college credits, and is employed by a defense contractor as a senior quality assurance inspector. He currently has no security clearance, but his employer seeks a secret security clearance on behalf of the Applicant.

Criterion F - Financial Considerations

1.a. The Applicant is currently pending a divorce from his present wife (Transcript (TR) at page 54 lines 11~16, and Applicant's Exhibit (AppX) L). It appears that his current financial difficulties are, for the most part, a result of this union. The Applicant avers, credibly, that his spouse is addicted to methamphetamine (TR at page 35 lines 3~12). He was self-employed, and relied on his wife to pay the bills. Although he gave her the funds to make the appropriate payments, she converted much of the funds to her drug addiction, and failed to pay most of their debts (TR at page 35 line 13 to page 43 line 21). The \$98 debt alleged in this subparagraph will be paid pursuant to their divorce decree; i.e., there is a strong likelihood that his spouse will be charged with paying this debt (TR at page 23 lines 2~23).

1.b. The Applicant has paid this \$59 debt to a collection agency (TR at page 24 lines 5~17, and AppX P).

1.c., 1.e., 1.g.~1.j., 1.l., and 1.n.~1.q. The Applicant has also engaged the services of a bankruptcy attorney; and as such, has made arrangements to file a Chapter 13 Bankruptcy in the near future (TR at page 49 lines 12~19, at page 56 line 7 to page 57 line 1, at page 62 lines 18~23, and AppX M). These past due debts, totaling in excess of \$56,000, are the subject of this future bankruptcy (AppX M at pages 9~14).

1.d., 1.f., 1.k., and 1.m. The Applicant is paying off these debts, totaling in excess of \$1,200, by way of either a monthly allotment or by monthly check payments (TR at page 24 line 25 to page 26 line 5, at page 26 line 19 to page 27 line 11, at page 28 lines 7~22, and at page 29 lines 3~12).

Mitigation

The Applicant is a retired U.S. Air Force Master Sergeant, who has worked on this nation's most highly classified programs (AppXs E, F, H, and J). He now lives quite frugally, and has every

intention to eventually pay all of his past due debts (TR at page 50 line 3 to page 54 line 10, at page 55 line 16 to page 56 line 6, and AppX D).

POLICIES

Enclosure 2 and Section F.3. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; 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. Conditions most pertinent to evaluation of this case are:

Financial Considerations

Condition that could raise a security concern:

(1) a history of not meeting financial obligations;

Condition that could mitigate security concerns:

(3) the conditions that resulted in the behavior were largely beyond the person's control (e.g., . . . a business downturn, . . . divorce or separation);

(6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

As set forth in the Directive, "[e]ach 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 and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age 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 prima facie case under Criterion 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 appears to be the victim of a very unfortunate situation, a bad marriage that has completely drained his financial resources. Once he realized that he was, in fact, in financial dire straits, he took what appropriate measures were available to him to eventually satisfy his past due indebtedness. In light of his past exceptional military record, and as it appears that all of his past due debts will soon be resolved, I conclude that these unforeseen, past financial difficulties are not of present security significance.

Considering all the evidence, the Applicant has rebutted the Government's prima facie case regarding his financial difficulties. The Applicant has thus met the mitigating conditions of Criterion F, and of Section F.3. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Criterion 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.
- n. For the Applicant.
- o. For the Applicant.
- p. For the Applicant.
- q. 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 interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge

1. This case and the corresponding SOR were incorrectly issued under ISCR Case No. 97-0332.