

Date : October 10, 1997

---

In RE:

SSN:

Applicant for security clearance

---

ISCR Case No. 97-0405

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### Appearances

#### FOR THE GOVERNMENT

Melvin A. Howry, Esquire

Department Counsel

#### FOR THE APPLICANT

*Pro se*

### STATEMENT OF CASE

On June 4, 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 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 or about June 24, 1997.

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 August 8, 1997. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on August 14, 1997, and submitted nothing in reply. The case was received by the undersigned for resolution on September 17, 1997. The issue raised here are whether the Applicant's financial difficulties militate against the granting of a security clearance.

### 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 33 years of age, and is employed by a defense contractor who seeks a security clearance on her behalf.

Criterion F - Financial considerations.

1.a. On November 4, 1994, the Applicant petitioned for a Chapter 13 Bankruptcy (Government Exhibit (GX) 4 at page 8, and GX 6 at page 1). On February 25, 1997, the bankruptcy proceedings were dismissed due to the Applicant's failure to make monthly payments (GX 6 at page 7).

1.b.~1.k. The Applicant is indebted in an amount in excess of \$10,000.00 to ten different creditors, ranging from department stores to credit card companies (GX 3 at pages 1~2, GX 6 at pages 16~17, and GX 7 at page 4). These debts are all delinquent (GX 3 at pages 1~2, GX 6 at pages 16~17, and GX 7 at page 4).

1.l. The Applicant is also indebted to a hospital in an amount of approximately \$2,338.00 for services rendered in December of 1995 (GX 7 at page 6). This debt has not been satisfied (GX 7 at page 6).

### Mitigation.

The Applicant offers little in the way of mitigation, except to aver that she was unaware of her hospital debt (GX 5 at page 1).

Considering all of the evidence, and in light of the fact that the Applicant has done little, if anything, to satisfy her past due indebtedness, the Applicant bears a heavy burden of persuasion in demonstrating her suitability for security clearance access.

## **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

#### Conditions that could raise a security concern:

- (1) a history of not meeting financial obligations.
- (3) inability or unwillingness to satisfy debts.

#### Conditions that could mitigate security concerns:

None.

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 her 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. If an applicant has demonstrated a lack of respect for the law in her private affairs, then there exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

### CONCLUSIONS

The Applicant has a recent history of not meeting her financial obligations. In November of 1994, when she filed for bankruptcy, she had an opportunity to deal with much of her past due indebtedness. She failed to take advantage of this opportunity, and the proceeding were dismissed in February of 1997, due to her failure to make the required monthly payments. The Applicant is now indebted in excess of \$12,000.00, and has done little, if anything, to address her past due indebtedness. I must therefore conclude that her present financial situation is of present security significance.

Considering all the evidence, the Applicant has not rebutted the Government's prima facie case regarding her financial difficulties. The Applicant has thus not met the mitigating conditions of Criterion F, and of Section F.3. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Criteria 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.

h. Against the Applicant.

I. Against the Applicant.

j. Against the Applicant.

k. Against the Applicant.

l. Against 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 interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge