

DATE: February 2, 1998

In Re:

SSN:

Applicant for Security Clearance

ISCR Case No. 97-0610

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On September 24, 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 October 29, 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 November 20, 1997. 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 November 25, 1997, and submitted nothing in reply. The case was received by the undersigned for resolution on January 9, 1998. The issues 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 a 35 year old electronic technician, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Criterion F - Financial considerations

In his answer to the SOR, the Applicant stated that if he were provided with a copy of his credit report, he would make

arrangements to pay his past due indebtedness (Government Exhibit (GX) 3 at page 1). On November 25, 1997, the Government provided the Applicant with the requested document as part of its FORM (GX 6).

1.a. The Applicant is indebted to a mortgage company in an amount of about \$9,570.00 for a deficiency balance on a mobile home which was repossessed in 1989 (GX 5 at page 1, and GX 6 at page 3). Under the provisions of a divorce decree, the Applicant was responsible for "any and all payments due on" this mobile home (GX 7 at page 27).

1.b. The Applicant is indebted to a bank in an amount of about \$5,619.00 for credit card debts incurred by his ex-spouse prior to their divorce of October 18, 1993 (GX 5 at page 2, GX 6 at pages 3 and 4, and GX 7 at the last page). His divorce decree is silent as to who's responsibility it is to pay this past due debt; and as such, it resides with both ex-spouses (GX 7).

1.c. The Applicant is indebted to a finance company in an amount of about \$323.00 for furniture now in the possession of his ex-spouse (GX 5 at page 3) Again, his divorce decree is silent as to who's responsibility it is to pay this past due debt; and as such, it resides with both ex-spouses (GX 7).

1.d. As of August 12, 1997, the Applicant had a positive, monthly cash flow of \$825.00. However, he has offered nothing to demonstrate that he is paying any of the above past due debts.

Mitigation

The Applicant offers little in the way of mitigation, except to aver that he will "try and establish a repayment plan for the above debts" (GX 3 at page 1).

Considering all of the evidence, and in light of the fact that the Applicant has done little, if anything, to satisfy his past due indebtedness, the Applicant bears a heavy burden of persuasion in demonstrating his 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

Condition that could raise a security concern:

(1) a history of not meeting financial obligations.

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 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. If an applicant has demonstrated a lack of respect for the law in his 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 his financial obligations. His past due indebtedness is in excess of \$15,000.00. In his October 1997 Answer to the SOR, the Applicant averred that, if provided a credit report, he would establish a repayment plan (GX 3 at page 1). On November 25, 1997, the Government provided the Applicant with the requested document, as part of its FORM (GX 6). Despite the Government's action, the Applicant has apparently done nothing vis-a-vis his past due indebtedness. I must therefore conclude that his present financial situation is still of present security significance.

Considering all the evidence, the Applicant has not rebutted the Government's prima facie case regarding his financial difficulties. The Applicant has thus not met the mitigating conditions of Criterion F, and of Section F.3. of the Directive. Accordingly, he has not met his 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.

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