



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 17-00473  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

February 11, 2019

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On March 28, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and F.<sup>1</sup> The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on April 18, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 14, 2017. Due to Applicant’s location in The Republic of Korea, he asked that a notice of hearing not be issued until April of 2018. As a result, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 24, 2018, scheduling the

<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

hearing for May 23, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 through 6, which were admitted without objection, and Hearing Exhibit (HX) I for Administrative Notice. Applicant testified on his own behalf and presented one document, which I marked Applicant's Exhibit (AppXs) A. The record was left open for an additional two months until July 23, 2018, for receipt of additional documentation. Applicant submitted no additional evidence, only a one page closing statement. DOHA received the transcript of the hearing (TR) on June 8, 2016.

### **Procedural Rulings**

At the hearing, the Government requested I take administrative notice of certain facts relating to the Philippines. Department Counsel provided a five-page summary of the facts, supported by Government documents pertaining to the Philippines, identified as HE I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted to all the allegations in SOR, with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 40-year-old employee of a defense contractor. (GX 1 at pages 5 and 14.) He has been employed with the defense contractor "since November 2016." (TR at page 13 line 21 to page 16 line 11.) Previously divorced "in 2014," he is now married to a Philippine national, and has two children from his previous marriage. (*Id.*)

### **Guideline B - Foreign Influence**

1.a. and 1.d. Applicant's wife is a citizen of the Philippines, but resides with Applicant in Korea. (TR at page 16 line 19 to page 18 line 21, and at page 35 lines 5~11.) He gives his wife about \$250 each month which she deposits in a Philippine bank account. (*Id.*)

1.b., and 1.c. Applicant father-in-law "passed away" in 2017, and his mother-in-law "is a homemaker." He currently provides no financial support for his mother-in-law, who plans to join her sister in the United States. (TR at page 19 line 3 to page 20 line 22, and at page 23 lines 2~13.) Applicant's seven brothers-in-law and two sisters-in-law "live in the mountains." (TR at page 19 line 3 to page 20 line 22.) The men work "a little construction, [and] farm work," while the women "wash clothes for money." (TR at page 34 line 8 to page 35 line 11.) "They [all] think . . . [Applicant fixes] electronics." (TR at page 22 line 23 to page 23 line 1.)

1.e. Applicant only owns property in the Philippines, worth about \$18,000, where he plans to “retire” in about 15~20 years. He does not own any property in the United States. (TR at page 21 line 12 to page 22 line 22.)

## **Guideline F - Financial Considerations**

Applicant attributes his current financial difficulties to the hospitalization of his former spouse, his subsequent divorce, a cut in pay, and a personal bout with stomach cancer. (TR at page 26 line 11 to page 27 line 15, and at page 38 line 16 to page 40 line 25.)

2.a. Applicant has filed his Federal income tax returns for tax years 2014 and 2015, as evidenced by documentation included in his Answer to the SOR. (TR at page 25 line 25 to page 26 line 10, at page 27 line 19 to page 28 line 15, and Answer.) This allegation is found for Applicant.

2.b. Applicant owes a past-due debt to the Army and Air Force Exchange Service (AFES) in the amount of about \$11,000. (TR at page 28 lines 16~21, and at page 37 lines 5~20.) Despite having two months after his hearing to do so, Applicant has provided nothing further in this regard. This allegation is found against Applicant.

2.c., 2.e., and 2.f. Applicant owes three past-due debts to a credit union in the amount of about \$21,000. (TR at page 28 line 22 to page 31 line 4, at page 32 line 3 to page 35 line 8, and at page 36 line 12 to page 37 line 4.) Despite having two months after his hearing to do so, Applicant has provided nothing further in this regard. These allegations are found against Applicant.

2.d. Applicant has paid a \$532 past-due debt on an automobile loan, as evidenced by documentation showing this automobile has been sold. (TR at page 31 lines 5~17, and AppX A.) This allegation is found for Applicant.

## **Notice**

I take administrative notice of certain facts relating to the Philippines: the United States continues to work with the Philippine government to monitor and investigate groups engaged in or supporting terrorist activities in the Philippines. The Philippine government is also currently engaged in a nationwide counter-narcotics campaign. Extrajudicial killings have been the chief human rights concern in the Philippines.

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B - Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or

induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Four are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's wife is a Philippine national. He gives her monies each month, which she deposits in a Philippine bank account. Applicant only owns property in the Philippines, and plans to retire there. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

None of these apply. Apart from his U.S. citizenship and his job position, much of Applicant's emotional interest, and all of his property interest appears to reside in the Philippines. Guideline B is found against Applicant.

#### **Guideline F - Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Four are potentially applicable in this case:

(a) inability to satisfy debts;

(b) unwillingness to satisfy debts regardless of the ability to do so;

(c) a history of not meeting financial obligations; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has significant past-due indebtedness. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial problems are ongoing. He has a long history of delinquencies. Although Applicant can attribute much of his debt to circumstances largely beyond his control, he has about \$30,000 in past-due debt that he has yet to

address. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established. Guideline F is found against Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Foreign Influence and Financial Consideration security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant



Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is denied.

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Richard A. Cefola  
Administrative Judge