



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



In the matter of:)
)
) ISCR Case No. 17-01576
)
)
Applicant for Security Clearance)

Appearances

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

January 24, 2019

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On October 5, 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 F and B. 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 October 31, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on February 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 15, 2018, scheduling the hearing for March 21, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 5, which were admitted into evidence. GX 5 was admitted for Administrative Notice as to the Philippines. Applicant testified on his own behalf and offered two documents, which I marked Applicant’s Exhibits (AppXs) A and B and admitted into evidence. The record

was left open until April 23, 2018, for receipt of additional documentation. Applicant submitted nothing further. DOHA received the transcript of the hearing (TR) on March 29, 2018.

Findings of Fact

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

Applicant is a 58-year-old employee of a defense contractor. (TR at page 20 line 22 to page 21 line 13, and GX 1 at page 5.) He has been employed with the defense contractor “since July of 2017.” (TR at page 20 line 22 to page 21 line 13.) He is married to a Philippine national; and has three children, the two eldest living with his former spouse in the United States. (TR at page 20 lines 18~21, and GX 1 at pages 46~47 and 53.) His youngest child resides in the Philippines with the child mother, Applicant’s current wife. Applicant resides in the United States.

Guideline F – Financial Considerations

Applicant attributes his admitted financial difficulties to brief periods of unemployment, the one “started May 31, 2017, to July 17, 2017.” (TR at page 34 lines 1~10.)

1.a. Applicant admits that he has a past-due debt in the amount of about \$7,291, as the result of a breach of contract with a former employer. (TR at page 21 line 21 to page 25 line 6.) Through a credit counseling service, Applicant is making monthly payments of \$134 towards this admitted debt, as evidenced by documentation from that counseling service. (AppX A at page1 and AppX B at page 1.) This allegation is found for Applicant.

1.b. and 1.f. Applicant admits that he has two past-due debts with the Department of Education totaling about \$3,672. (TR at page 25 line 7 to page 27 line 2.) In August and September of 2017, Applicant was trying to make monthly payments of only \$5 towards this admitted debt. (*Id.*, and AppX A at page 2 and AppX B at pages 2~3.) This documentation also shows that Applicant was “past due” \$5 on his payments. (*Id.*) Despite having a month to do so, Applicant has submitted nothing further in this regard. (TR at page 42 line 23 to page 43 line 19.) These allegations are found against Applicant.

1.c. Applicant admits that he has a past-due debt in the amount of about \$1,747 to Creditor C. (TR at page 27 line 3 to page 28 line 10.) Through a credit counseling service, Applicant is making monthly payments of \$88 towards this admitted debt, as evidenced by documentation from that counseling service. (AppX A at page1 and AppX B at page 1.) This allegation is found for Applicant.

1.d. Applicant admits that he had a past-due debt with Creditor D in the amount of about \$696, but avers that this “phone bill account . . . was paid off.” (TR at page 28

line 11 to page 29 line 8.) Despite having a month to do so, Applicant has submitted nothing further in this regard. This allegation is found against Applicant.

1.e. Applicant admits that he had past-due child support payments totaling about \$7,747. In August of 2017, this was being paid through wage garnishment. (TR at page 29 line 9 to page 31 line 14, and AppX at page 3 and AppX B at pages 4~5.) Despite having a month to do so, Applicant has submitted nothing further in this regard. This allegation is found against Applicant.

Not alleged; but admitted to by Applicant at his hearing, he is a month past due on a car payment, and owes about \$800 in state back taxes. (TR at page 32 line 3 to page 36 line 2.)

Guideline B – Foreign Influence

2.a, 2.b., and 2.d. Applicant’s current spouse is a citizen and resident of the Philippines. She hopes to immigrate to the United States. Their four-year-old American son resides with Applicant’s spouse. Applicant provides financial support of about \$600 every few months to his spouse. She lives with her parents. (TR at page 20 line 4~21, at page 37 line 18 to page 40 line 17.)

2.c. Applicant’s mother-in-law and father-in-law are citizens and residents of the Philippines. (TR at page 41 line 18 to page 42 line 3.) They know little about Applicant’s employment, only that he is “a mechanic . . . [who does] work for the Military.” (*Id.*)

2.e. In 2012, over five years ago, Applicant gave a one-time gift of about \$500 to a female friend in the Philippines. (TR at page 40 line 18 to page 41 line 17.) Their relationship was terminated years ago. (*Id.*)

Administrative Notice

I take Administrative Notice of the following facts regarding the Philippines: It is a multiparty, constitutional republic with a bicameral legislature. However, dynastic political families continue to monopolize elective offices. The U.S. Department of State advises all U.S. citizens traveling to the Philippines to exercise caution due to crime, terrorism, and civil unrest. (GX 5 at pages 3~5.)

Policies

When evaluating an applicant’s national security eligibility, 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 national security eligibility.

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 the 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. Directive ¶ E3.1.15 states 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 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. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has significant past-due debt to private companies, and to Federal and state agencies. 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. He has not demonstrated that future financial problems are unlikely. Mitigation has not been established. Financial Considerations are found against Applicant.

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. Two 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; and

(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.

Applicant's spouse and in-laws are citizens and residents of the Philippines. 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; and

(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.

The Applicant's connection with his Philippine family does not outweigh his allegiance to the United States. His wife hopes to immigrate to the United States with their child. Foreign Influence is found for 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 F and B in my whole-person analysis. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations 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 F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For 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 for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge