



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



In the matter of: )  
)  
) ISCR Case No. 17-02527  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

December 26, 2018

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On September 6, 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 20, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on January 4, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 9, 2018, scheduling the hearing for February 15, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 8, which were admitted into evidence. Applicant testified on his own behalf. The record was left open until March 15, 2018, for receipt of additional documentation. Applicant offered

one document, which I marked Applicant's Exhibit (AppX) A, and was admitted into evidence. DOHA received the transcript of the hearing (TR) on February 26, 2018.

### **Procedural Rulings**

At the hearing, the Government requested I take administrative notice of certain facts relating to Afghanistan. Department Counsel provided a seven-page summary of the facts, supported by six Government documents pertaining to Afghanistan, identified as GX 7. 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 the allegations in SOR ¶¶ 1.a.~1.c., 1.e.~1.l, 1.o., and 2.a. and 2.b. He denied SOR allegations ¶¶ 1.d., 1.m., and 1.n. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 66-year-old employee of a defense contractor. (GX 1 at pages 5 and 14.) He has been employed with the defense contractor since January of 2014. (GX 1 at page 14.) Applicant immigrated to the United States from Afghanistan in 1985, and became a naturalized U.S. citizen in 1995. (TR at page 19 line 4 to page 21 line 21.) He is married to a naturalized U.S. citizen, and has two children. (*Id.*)

### **Guideline F – Financial Considerations**

1.a. Applicant admits that from about 2003 until 2008 he lost about \$40,000 due to gambling at a local casino. (TR at page 24 line 17 to page 27 line 10.) Although, Applicant has not gambled for about 10 years, he admits that his gambling is one of the roots of his present financial difficulties. (*Id.*) The other root is periods of unemployment and underemployment. (GX 1 at pages 15~21.)

1.b.~1.c., and 1.e.~1.l. Applicant admits that he is indebted to ten separate creditors for past-due debts totaling about \$20,531. (TR at page 24 line 4~16, and at page 27 lines 11~21.) Despite having been given a month to address these admitted past-due debts, Applicant has submitted nothing further in their regard. These allegations are found against Applicant.

1.d. Applicant disputes that he is indebted to Creditor D for an alleged past-due medical debt in the amount of about \$5,014. (TR at page 21 line 25 to page 22 line 23.) Despite having been given a month to address this disputed debt, Applicant has submitted nothing further in this regard. As this debt does appear as past-due on the Government's July 2017 credit report, this allegation is found against Applicant. (GX 4 at page 2.)

1.m. Although Applicant initially denied this alleged past-due \$155 medical debt in his Answer to the SOR; at his hearing, Applicant admits that “this one may be true.” (TR at page 21 line 25 to page 22 line 23.) Despite having been given a month to address this debt, Applicant has submitted nothing further in this regard. As this debt does appear as past-due on the Government’s July 2017 credit report, this allegation is found against Applicant. (GX 4 at page 3.)

1.n. Applicant denies that he is indebted to Creditor N for an alleged past-due utility debt in the amount of about \$105. (TR at page 23 lines 6~23, and at page 36 line 9 to page 37 line 15.) Despite having been given a month to address this disputed debt, Applicant has submitted nothing further in this regard. As this debt does appear as past-due on the Government’s July 2017 credit report, this allegation is found against Applicant. (GX 4 at page 3.)

1.o. Applicant admits that he has an outstanding state tax lien against him in the amount of about \$7,613. As Applicant has submitted nothing further in this regard, this allegation is found against Applicant.

### **Guideline B – Foreign Influence**

2.a. Applicant admits that his brother, who works in a pharmacy, and his 70-year-old sister are citizens and residents of Afghanistan. (TR at page 29 line 22 to page 34 line 4.) As Applicant has very little contact with either of these siblings, this allegation is found for Applicant.

2.b. Applicant admits that his mother-in-law and his father-in-law are citizens and residents of Afghanistan. (TR at page 43 line 13 to page 44 line 13.) As Applicant has very little contact with either of these in-laws, this allegation is found for Applicant.

### **Notice**

I take administrative notice of the following facts regarding Afghanistan: A U.S. State Department Travel Warning remains in effect for Afghanistan. Extremists associated with various Taliban networks, the Islamic State in Iraq and Syria (ISIS), and members of other armed opposition groups are active throughout the country. (GX 7 at page 3.)

### **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. Five 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;
- (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; and
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts.

Applicant had significant gambling debt. He currently has past-due debts totaling about \$26,000, and a \$7,600 state tax lien. 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 that have not been resolved. Applicant has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant attributed his recent delinquencies, in part, to past periods of unemployment. These are circumstances beyond his control. However, he failed to establish that he acted reasonably or responsibly with respect to his debts. Full mitigation under AG ¶ 20(b) has not been established.

Applicant is not receiving any financial counseling. Further, there are no clear indications that his financial problems are being resolved or are under control. Mitigation under AG ¶¶ 20(c) or (d) has not been established.

AG ¶¶ 20(f) and 20(g) are inapplicable to this case. Applicant failed to address an outstanding state tax lien. Guideline F is 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 has two siblings and in-laws who are citizens and residents of Afghanistan. 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; and
- (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.

Applicant has little contact with his siblings and in-laws. Guideline B 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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is a respected linguist, serving with American forces in Afghanistan. He performs well at his job. (AppX A.) Overall, however, 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 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
Subparagraphs 1.a~1.o.:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a. and 2.b.:	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