



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



In the matter of: )  
)  
) ISCR Case No. 18-02071  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

February 14, 2019

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On August 31, 2018, 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 Guideline F. 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 September 24, 2018, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on October 25, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 14, 2018, scheduling the hearing for December 4, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 5, which were admitted into evidence. Applicant testified on his own behalf. The record was left open until January 4, 2019, for receipt of additional documentation. Applicant presented 11 documents, which Applicant marked Applicant’s Exhibits (AppXs) A through N (AppX

H~K is one and the same document addressing four past-due debts to the same creditor). DOHA received the transcript of the hearing (TR) on December 13, 2018.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a. through 1.g., and 1.k. through 1.n. He denied SOR allegations ¶¶ 1.h. through 1.j. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 29-year-old employee of a defense contractor. (TR at page 14 line 4 to page 15 line 5, and GX 1 at pages 5 and 15.) He has been employed with the defense contractor since March of 2016, but he does not currently have a security clearance. (*Id.*) Applicant served in the Marine Corps from 2008~2013. (TR at page 14 line 11 to page 15 line 23, and GX 1 at page 25.) He was deployed “to Iraq in 2009,” and “to Afghanistan in 2010 to 2011.” (*Id.*) As a result, he receives 70% compensation from the Veterans Administration. (TR at page 15 lines 2~23.) Applicant received an Honorable Discharge. (GX 1 at page 26.)

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

Applicant attributes his current financial difficulties to a divorce in 2012, and periods of unemployment in 2013 and in 2014. (TR at page 15 line 9 to page 19 line 2.)

1.a.~1.d., 1.f., and 1.k.~1.n. Applicant admits that he has past-due debts to eight different creditors totaling about \$20,121. (TR at page 19 at line 23 to page 23 line 8, at page 26 line 7 to page 33 line 2, and at page 35 line 14 to page 36 line 19.) On New Year’s Eve, four months after the issuance of the SOR, Applicant sent the following two line, letter request to each of these creditors. (AppXs a~d, f, and k~n.) In each letter he simply requested the following: “this letter is being sent to you to request information on my account. I would like to be sent a statement with current amount due and minimum monthly payment options to be able to resolve this credit account.” (*Id.*) Applicant’s recent requests, though laudable, are too little too late. He has had years to address these known delinquencies that remain outstanding. These allegations are found against Applicant.

1.e. Applicant has paid the alleged \$35 past-due debt to Creditor E, as evidenced by correspondence with Creditor E. (TR at page 34 line 17 to page 35 line 13, and AppX E.) This allegation is found for Applicant.

1.g. Applicant successfully disputed an alleged \$14,257 past-due debt to Creditor G; and as such, it does not appear on the Government’s two most recent 2018 credit reports. (TR at page 24 line 16 to page 26 line 6, and GXs 4 and 5.) This allegation is found for Applicant.

1.h.~1.j. Applicant successfully disputed three alleged past-due debts, totaling about \$3,104, to Creditor H; and as such, they do not appear on the Government’s two

most recent 2018 credit reports. (TR at page 23 line 9 to page 24 line 15, and GXs 4 and 5.) These allegations are found for Applicant.

### **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 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;

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

(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.

Applicant's financial problems are ongoing and continuing. He has a long history of delinquencies, and significant past-due indebtedness that he has only recently begun to address, through simple two sentence letters requesting "information." He has clearly 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 Guideline 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 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.d.:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g.-1.j.:	For Applicant
Subparagraphs 1.k.-1.n.:	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 for a security clearance. Eligibility for access to classified information is denied.

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Richard A. Cefola  
Administrative Judge