



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



In the matter of: )  
)  
) ISCR Case No. 19-00435  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

January 27, 2020

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On May 14, 2019, 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 June 7, 2019, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 13, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 16, 2019, scheduling the hearing for October 8, 2019. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 6, which were admitted into evidence. Applicant testified on his own behalf and offered two documents, which I marked Applicant’s Exhibits (AppXs) A and B. The record was left open until November 15, 2019, for receipt of additional documentation. On November

13, 2019, Applicant offered additional documentation, which are marked as Post-Hearing Exhibits (PHXs) A~Q, and admitted into evidence. DOHA received the transcript of the hearing (TR) on October 17, 2019.

### **Findings of Fact**

Applicant admitted to all the allegations in SOR, except for ¶¶ 1.k., 1.p., and 1.q., which she denied. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 37-year-old employee of a defense contractor. (GX 1 at pages 5 and 11.) She has been employed with the defense contractor since November of 2016. (GX 1 at page 11.) She is married, but has no children. (TR at page 20 line 9 to page 22 line 12, and GX 1 at pages 22~28.) Applicant attributes her current financial difficulties to periods of unemployment, and health issues for both herself and her husband. (TR at page 22 line 13 to page 25 line 25.) She is well respect at work. (PHX Q.)

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

1.m. In January of 2015, Applicant filed for the protection of a Chapter 7 Bankruptcy. (TR at page 26 lines 1~25, at page 38 lines 1~5, and GX 2.)

1.a. Applicant admits that she is indebted to Creditor A for a past-due debt of about \$9,707. (TR at page 21 lines 1~25.) Applicant has submitted documentation showing she has contacted Creditor A about setting up a payment plan to address this admitted past-due debt, but little else. (PHX A.) This allegation is found against Applicant.

1.b. Applicant admits that she was indebted to Creditor B for a past-due debt of about \$1,724. (TR at page 28 line 12 to page 30 line 18.) Applicant has submitted documentation showing she has paid this admitted past-due debt with a “zero balance.” (AppX A.) This allegation is found for Applicant.

1.c. Applicant admits that she was indebted to Creditor C for a past-due debt of about \$1,412. (TR at page 30 line 19 to page 31 line 14.) Applicant has submitted documentation showing she is making monthly payments of \$143 towards this admitted past-due debt. (AppX B, and PHX C.) This allegation is found for Applicant.

1.d. Applicant admits that she was indebted to Creditor D for a past-due debt of about \$1,196. (TR at page 31 line 15 to page 32 line 20.) Applicant has submitted documentation showing she is making monthly payments of \$209 towards this admitted past-due debt. (PHX D.) This allegation is found for Applicant.

1.e. Applicant admits that she is indebted to Creditor E for a past-due debt of about \$1,114. (TR at page 32 line 21 to page 33 line 11.) Applicant has submitted nothing further in this regard. This allegation is found against Applicant.

1.f. Applicant admits that she is indebted to Creditor F for a past-due debt of about \$1,025. (TR at page 33 line 22 to page 34 line 21.) Applicant has submitted documentation showing she has contacted Creditor F about setting up a payment plan to address this admitted past-due debt, but little else. (PHX F.) This allegation is found against Applicant.

1.g. Applicant admits that she was indebted to Creditor G for a past-due debt of about \$895. (TR at page 34 line 15 to page 35 line 12.) Applicant has submitted documentation showing she is making monthly payments of \$50 towards this admitted past-due debt. (PHX G.) This allegation is found for Applicant.

1.h. and 1.j. Applicant admits that she was indebted to Creditor H for past-due debts totaling about \$940. (TR at page 35 line 13 to page 36 line 13.) Applicant has submitted documentation showing she is making monthly payments of \$51 towards these admitted past-due debts. (PHX G and J.) These allegations are found for Applicant.

1.i. Applicant admits that she was indebted to Creditor J for a past-due debt of about \$714. (TR at page 36 line 14 to page 37 line 2.) Applicant has submitted documentation showing she is making monthly payments of \$137 towards this admitted past-due debt. (PHX J.) This allegation is found for Applicant.

1.k. Applicant denies that she is indebted to Creditor K for a past-due debt of about \$162. (TR at page 37 lines 3~12.) As this alleged past-due debt does not appear on any of the Government's credit reports, this allegation is found for Applicant.

1.l. Applicant admits that she was indebted to Creditor L for a past-due debt of about \$140. (TR at page 37 lines 13~25.) Applicant has submitted documentation showing she has authorized two \$50 payments in settlement of this past-due debt. (PHX L.) This allegation is found for Applicant.

1.m. The Chapter 7 Bankruptcy has already been discussed, above.

1.n. Applicant admits that she is indebted to Creditor N for a past-due debt of about \$583. (TR at page 38 lines 6~25.) Applicant has submitted nothing further in this regard. This allegation is found against Applicant.

1.o. Applicant admits that she is indebted to Creditor O for a past-due debt of about \$523. (TR at page 39 line 1 to page 40 line 18.) Applicant has submitted nothing further in this regard. This allegation is found against Applicant.

1.p. Applicant initially denied that she was indebted to Creditor P for a past-due debt of about \$208. (TR at page 40 lines 19~24.) Applicant has now submitted documentation showing she has authorized payments to resolve this past-due debt. (PHX P.) This allegation is found for Applicant.

1.q. Applicant denies that she is indebted to Creditor Q for a past-due debt of about \$124. (TR at page 41 lines 1~7.) As this alleged past-due debt does not appear on any of the Government's credit reports, this allegation is 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. She has a long history of delinquencies. Although Applicant has made an effort to address much of her past-due indebtedness, she still has in excess of \$12,000 of past-due indebtedness. Furthermore, she has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established. The Financial Considerations guideline 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. Applicant performs well and is respected in the workplace. However, 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

Subparagraph 1.a.:

Against Applicant

Subparagraphs 1.b.~1.d.:	For Applicant
Subparagraphs 1.e. and 1.f.:	Against Applicant
Subparagraphs 1.g.~1.i.:	For Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	For Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraphs 1.p.~1.q.:	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.

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Richard A. Cefola  
Administrative Judge