



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ADP Case No. 19-00805  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: Frederic Nicola, Esq., Applicant's Counsel

February 10, 2020

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On June 21, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guidelines F, Financial Considerations; and B, Foreign Influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DOD for SORs issued after June 8, 2017.

Applicant answered the SOR on July 3, 2019, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 5, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 21, 2019, scheduling the hearing for November 19, 2019. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 5, which were admitted into evidence. Applicant testified on her own behalf. Applicant offered five

documents, which I marked Applicant's Exhibits (AppXs) A through E, and admitted into evidence. The record was left open until December 19, 2019, for receipt of additional documentation. On December 17, 2019, Applicant offered two additional sets of documents, with numerous attachments (attchs), which I have marked as AppXs F and G, and admitted into evidence. DOHA received the transcript of the hearing (TR) on December 3, 2019.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.f., 1.g., and 2a.~2.d. She denied SOR allegations ¶¶ 1.a.~1.e., and 1.h.~1.j. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 38-year-old registered nurse. (TR at page 26 line 14 to page 28 line 15, and GX 1 at page 7.) She is married to a member of the U.S. Navy, and has one child. (TR at page 16 line 17 to page 18 line 3.) As they are deployed in Japan, Applicant has had difficulties qualifying to work in her profession, which resulted in the alleged financial difficulties.

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

1.a. Applicant denies that she had her husband failed to file their 2013 Federal income tax returns in a timely fashion. They incorrectly thought that, as they were deployed overseas, they "had some kind of . . . extension." (TR at page 21 line 25 to page 24 line 11.) They in fact filed this return in September of 2014, five months late, as evidenced by this filing. (AppXs A, B, and F at attch A.) I find that Applicant made a good-faith effort to comply with Federal tax law; and as such, this allegation is found for Applicant.

1.b. Applicant denies that she had a past-due debt to a cable provider in the amount of about \$322. Applicant avers that she was unaware of this alleged debt until she was interviewed by a special agent. (TR at page 24 line 12 to page 25 line 14.) Her credibility is attested to by those who know Applicant in the work place. (AppX G.) This debt was "settled in full" in July of 2019, as evidenced by a letter from this creditor. (AppX D.) This allegation is found for Applicant.

1.c. Applicant denies that she had a past-due debt to a department store in the amount of about \$299. Applicant avers that she lost her wallet and was unaware of this alleged debt until she was interviewed by a special agent. (TR at page 36 line 20 to page 37 line 10.) This debt "has a zero balance," as evidenced by a letter from this creditor. (AppX F at attch C.) This allegation is found for Applicant.

1.d. and 1.e. Applicant denies that she is delinquent on her student loans that total about \$16,922. Applicant is current with her student loans, with a current balance of about \$15,055. (TR at page 37 line 11 to page 38 line 7, at page 44 line 19 to page 46 line 16, and AppX F at attchs D and E.) These allegations are found for Applicant.

1.f. Applicant denies that she had a past-due credit card debt in the amount of about \$8,228. (TR at page 25 line 23 to page 26 line 14.) This debt was settled and has a "\$0.00" balance, as evidenced by documentation from this creditor. (AppX F at attach F.) This allegation is found for Applicant.

1.g. Applicant denies that she is delinquent on another student loan for about \$11,817. This loan is settled in full as evidenced by documentation regarding this student loan. (TR at page 38 lines 8 ~19, at page 41 line 21 to page 42 line 8, at page 46 line 18 to page 47 line 17, and AppX F at attach G.) This allegation is found for Applicant.

1.h. and 1.i. Applicant denies that she had past-due credit card debts totaling about \$1,442. (TR at page 40 lines 3~14.) This debt was settled and has a "\$0.00" balance, as evidenced by documentation from this creditor. (AppX F at attachs H and I.) These allegations are found for Applicant.

1.j. Applicant denies that she had a past-due credit card debt in the amount of about \$715. (TR at page 38 line 8 to page 49 line 6.) This debt "has a zero balance," as evidenced by a letter from this creditor. (AppX F at attach J.) This allegation is found for Applicant.

## **Guideline B - Foreign Influence**

2.a. Applicant's father-in-law is a dual national of the Philippines and the United States, and resides in the Philippines. He is retired and has no connection with the Philippine government. (TR at page 49 lines 6~21.) This allegation is found for Applicant.

2.b. Applicant's two older brothers are citizens and residents of the Philippines. One "drives a jeep," and the other "owns a Gown Shop." (TR at page 13 lines 4~10, and at page 14 lines 10~20.) She has little contact with these brothers, once in 12 year. (TR at page 15 line 16 to page 16 line 5.) This allegation is found for Applicant.

2.c. Applicant's aunt is a citizen and resident of the Philippines. She also owns "a Gown Shop." (TR at page 15 lines 8~15, and at page 16 lines 6~16.) Applicant's contact with her aunt is infrequent, at best. This allegation is found for Applicant.

2.d. Applicant and her husband own "undeveloped" property in the Philippines worth about \$60,000. They are unsure what they will do with this property, which has appreciated little since its purchase. As their son may return to the United States to further his education once he reaches college age, they may sell this property and also return to the United States. (TR at page 18 line 4 to page 21 line 9, at page 30 line 23 to page 32 line 20, and at page 50 lines 20~25.) This allegation is found for Applicant.

## **Notice**

I take administrative notice of the following facts: The Philippines is a multi-party, constitutional republic with a bicameral legislature. There is considerable risk of terrorism in Manila. There are also human rights issues including unlawful or arbitrary killings by security forces, vigilantes, and other groups allegedly connected to the government.

## **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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive 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. 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 allegedly had substantial past-due debts, and failed to file 2013 tax returns in a timely fashion. 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;

(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; 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 has successfully addressed all of the alleged past-due indebtedness. She is current with her tax filings, and her one-time late tax filing occurred more than five years ago. She has demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has been established. Financial Considerations is found for 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. Three 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; 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 has Philippine relatives, and co-owns undeveloped property worth about \$60,000. 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; 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.

Applicant has infrequent contact with his Philippine relatives, none of whom has any connection with the Philippine government. Her property interest in the Philippines is also diminuous, at best. 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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected in the workplace. She performs well at her job. (AppX G.)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the Financial Considerations and Foreign Influence 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:	FOR APPLICANT
Subparagraphs 1.a.~1.j.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a.~2.d.:	For Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. National security eligibility for access to sensitive information is granted.

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Richard A. Cefola  
Administrative Judge