



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



In the matter of: )  
)  
) ISCR Case No. 20-01386  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

April 13, 2021

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On October 7, 2020, 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 October 20, 2020, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on January 14, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 25, 2021, scheduling the hearing for February 23, 2021. 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 eight documents, which I marked Applicant’s Exhibits (AppXs) A through H, and admitted into evidence. The record was left open until March 23, 2021, for receipt of additional

documentation. Applicant offered three additional documents, which I marked AppXs I through K, and were admitted into evidence. DOHA received the transcript of the hearing (TR) on March 2, 2021.

### **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 60-year-old employee of a defense contractor. He has been employed with the defense contractor since 2019. He is married after a previous divorce, and has two grown children, and one stepchild. (TR at page 19 line 8 to page 26 line 13.) Applicant attributes his admitted past-due indebtedness to his divorce.

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

1.a. Applicant admits a past-due, credit-card debt of about \$53,000 that is directly related to his divorce. He is making monthly payments averaging about \$150; and has paid a total of \$5,950 towards this debt, as evidenced by documentation. (TR at page 26 line 14 to page 29 line 9, and AppX F.) I find a good-faith effort to satisfy this debt; and as such, this allegation is found for Applicant.

1.b. Applicant admits a past-due, credit-card debt of about \$15,000 that is not related to his divorce. He has done nothing to address this debt, despite admitting the ability to do so. This allegation is found against Applicant.

1.c. Applicant admits an outstanding judgment, related to a credit-card debt, in the amount of about \$13,000. He has done nothing to address this debt. (TR at page 31 line 23 to page 34 line 7, at page 35 line 8 to page 36 line 14, and at page 37 lines 7~18.) This allegation is found against Applicant.

1.d. Applicant admits a past-due, credit-card debt of about \$8,000. He has done nothing to address this debt. (TR at page 34 line 8 to page 35 line 7.) This allegation is found against Applicant.

1.e. and 1.f. Applicant has two judgments in favor of Creditor E in amounts of \$4,872 and \$2,416, respectively. One judgment has been satisfied, and Applicant is making monthly payments of \$300 towards the other, as supported by documentation. (TR at page 35 line 8 to page 37 line 18, and AppXs E and K.) I find a good-faith effort to satisfy these debts; and as such, these allegations are found for Applicant.

1.g. Applicant admits a past-due, credit-card debt of about \$598. He has done nothing to address this debt. (TR at page 37 line 19 to page 38 line 5.) This allegation is found against Applicant.

1.h. Applicant admits a past-due, bank debt of about \$490. He has done nothing to address this debt. (TR at page 39 lines 6~14.) This allegation is found against Applicant.

1.i. Applicant admits a past-due, medical debt of about \$686. He avers he has “paid” this, but has submitted nothing in support of his averment. (TR at page 40 lines 3~22.) This allegation is found against Applicant.

1.j. Applicant admits that Bank J appears to have charged-off a delinquent credit-card debt in the amount of about \$700. (TR at page 40 line 23 to page 41 line 18.) This allegation is found against Applicant.

1.k. Applicant admits a past-due, medical debt of about \$40. He avers he has “paid” this, but has submitted nothing in support of his averment. (TR at page 40 line 19 to page 42 line 13.) This allegation is found against Applicant.

1.l. Applicant admits he owed delinquent Federal income taxes for tax year 2017 in the amount of about \$22,000, and that he has yet to address this delinquency. (TR at page 46 line 21 to page 51 line 15, and AppXs D and I.) This allegation is found against Applicant.

1.m. Applicant admits he owes delinquent Federal income taxes for tax year 2010 in the amount of about \$3,900, and has submitted documentation showing he has addressed this delinquency. (TR at page 46 line 21 to page 51 line 15, and AppXs D and I.) This allegation is found for Applicant.

1.n. Applicant admits he owes delinquent Federal income taxes for tax year 2018 in the amount of about \$11,000, and that he has yet to addressed this delinquency. (TR at page 46 line 21 to page 51 line 15, and AppXs D and I.) This allegation is found against 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. 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 has significant past-due indebtedness and past-due taxes. 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; 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.

Although Applicant can attribute his financial difficulties to a divorce; and he is admittedly in a more stable financial situation, his financial problems are ongoing. He has yet to address most of his delinquencies. Furthermore, Applicant has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established. Financial Considerations 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. Applicant is well respected in his community and in the workplace. (AppXs A~C.) 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:	For Applicant
Subparagraphs 1.b~1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant

Subparagraphs 1.g~1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 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