



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



In the matter of: )  
)  
) ISCR Case No. 20-03528  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

July 29, 2021

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On February 15, 2021, 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 submitted an undated answer to the SOR, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on March 24, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 25, 2021, scheduling the hearing for May 4, 2021. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 7, which were admitted into evidence. Applicant testified on his own behalf and offered five documents, which I marked Applicant’s Exhibits (AppXs) A through E and admitted into evidence. The record was left open for two months until July 2, 2021, for receipt of

additional documentation. Applicant submitted no additional documentation. DOHA received the transcript of the hearing (TR) on May 24, 2021.

### **Findings of Fact**

Applicant admitted all the allegations of the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 54-year-old employee of a defense contractor. He has been employed with the defense contractor since March of 2019. (AppX 1 at pages 7 and 12.) He is unmarried, and has no children. (GX 1 at page 18.) Applicant was laid off and unemployed for nearly three years, from about 2015 until 2019, when he moved in with his ailing parents. (TR at page 14 line 20 to page 15 line 23, and GX 1 at page 13.)

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

1.a. Applicant filed for the protection of a Chapter 7 bankruptcy in October of 2018, as a result of his afore-mentioned unemployment. His debts were discharged in March of 2019. (TR at page 18 line 10 to page 19 line 13, and at page 30 lines 16~19.)

1.b. It is alleged that Applicant failed to file his Federal income tax returns for tax years 2014~2018. He has submitted documentation showing he has filed for tax years 2015, 2017 and 2018. (TR at page 19 line 21 to page 23 line 8, at page 24 line 1 to page 26 line 11, and AppXs A~C.) Despite having two additional months to do so, Applicant has submitted nothing regarding his 2014 and 2016 tax filings. (TR at page 30 line 20 to page 31 line 17.)

1.c. . It is alleged that Applicant failed to file his state income tax returns for tax years 2014~2018. He has submitted documentation showing he has filed for tax years 2015, 2017 and 2018. (TR at page 19 line 21 to page 23 line 8, at page 24 line 1 to page 26 line 11, and AppXs A~C.) Despite having two additional months to do so, Applicant has submitted nothing regarding his 2014 and 2016 tax filings. (TR at page 30 line 20 to page 31 line 17.)

1.d. Applicant admits that he owes \$6,453 (AppX E) to the Federal Government in delinquent taxes. (TR at page 23 lines 9~19, and at page 26 line 12 to page 27 line 22.) Despite having two additional months to do so, Applicant has submitted nothing regarding this Federal tax delinquency. (TR at page 31 lines 18~23.)

1.e. As Applicant has submitted documentation (AppX E) showing he is due a \$12,771 refund from his state, I find no \$5,277 state tax delinquency. (TR at page 23 line 20 to page 27 line 22.) 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;
- (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 delinquent Federal and state income tax filings, and owes significant monies to the Internal Revenue Service (IRS). 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; 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.

As noted above, Applicant's delinquent income tax filings are ongoing. He also still owes the IRS a significant amount of monies (he owes nothing to his state). He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established.

### **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.-d:	Against Applicant
Subparagraph 1.e:	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