



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



In the matter of:)
)
) ISCR Case No. 20-00323
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Grant Bayerle, Esq., Applicant’s Counsel

August 2, 2021

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On July 21, 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 August 6, 2020, and requested a hearing before an administrative judge. (Answer.) Appended to it were 15 exhibits, which were admitted into evidence as Applicants Exhibits (AppXs) A through O. The case was assigned to me on March 16, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 18, 2021, scheduling the hearing for April 14, 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. The record was left open until June 14, 2021, for the receipt of additional

documentation. On April 8, 2021, and on June 14, 2021, Applicant offered AppXs P through II, which were admitted into evidence. DOHA received the transcript of the hearing (TR) on April 26, 2021.

Findings of Fact

Applicant admitted all the allegations in the SOR, except for ¶¶ 1.u., and 1.x. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 44-year-old employee of a defense contractor. He has been employed with the defense contractor since March of 2019. (TR at page 5 lines 7~22, and GX 1 at page 17.) He is twice divorced, in 2007 and in 2013, and has two children, one of which he is still providing child support. (TR at page 49 line 18 to page 50 line 12, and GX 1 at pages 30~31.) Applicant attributes his financial difficulties to his two divorces, and their related child support obligations; to his father's death in 2008 and to the tragic death of two nieces in 2013; and to periods of unemployment in 2007 and in 2013. (TR at page 15 line 3 to page 39 line 25.) He has a Master of Business Administration degree. (AppX K at page 2.)

Guideline F - Financial Considerations

1.a.~ 1.n. Applicant admits that he failed to file in a timely fashion both Federal and state income tax returns in a timely fashion for tax years 2011~2013, and 2015~2018. (TR at page 29 line 11 to page 30 line 3, and at page 44 line 25 to page 46 line 14.) He owes about \$83,000 in Federal back-taxes, and about \$20,000 in state back-taxes, for which he has set up payment plans. (TR at page 47 line 19 to page 48 line 2, and AppXs X through AA, and FF and II.)

1.o., 1.p., 1.r. and 1.t. As of May 2021, Applicant has student loans totaling about \$216,000, of which about \$11,000 is past due. (TR at page 50 line 13 to page 52 line 23, at page 61 line 6 to page 62 line 13, and AppX BB.) In November of 2021, Applicant will begin making monthly payments of \$598 towards his student loans. AppX CC.)

1.q. Applicant admits that he owed Creditor Q about \$24,000 as the result of an auto loan that has been charged-off. (TR at page 62 line 15 to page 63 line 12.) Despite having two months post-hearing to address this debt, Applicant has offered nothing further in this regard.

1.s. and 1.v. Applicant admits that he owes Creditor S about \$19,000 as the successor of "private" loans that have been charged-off. (TR at page 63 line 20 to page 64 line 11.) Despite having two months post-hearing to address this debt, Applicant has offered nothing further in this regard.

1.u. Applicant denies a debt to Creditor U in the amount of about \$4,400. (TR at page 64 line 12 to page 65 line 13.) Creditor U, by letter, has informed Applicant that it

“has ceased collection of this account.” (AppX DD.) This allegation is found for Applicant.

1.w. Applicant admits that he owes Creditor W about \$1,300 as the result of a 2011 debt for an “engagement ring.” (TR at page 52 line 24 to page 53 line 21, and at page 59 lines 8–25.) Despite having two months post-hearing to address this debt, Applicant has offered nothing further in this regard.

1.x. Applicant denies a debt to Creditor X in the amount of about \$75. (TR at page 65 line 17 to page 66 line 25.) It appears that a successor creditor to Creditor X, which by letter, has informed Applicant that this debt will be removed from Applicant’s credit reports (AppX DD.) 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. 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 a plethora of late tax filings, significant back-taxes; and significant past-due-student loans, private loans and a car loan. 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.

Although Applicant can attribute his financial problems to failed marriages, periods of unemployment, and family deaths, his financial difficulties are ongoing. He has a long history of delinquencies. He has only recently addressed these past-due taxes and debts, which is too little too late. 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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant performs well at his job. (AppXs L and M.)

Overall, the record evidence leaves me with questions or 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.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraphs 1.v. and 1.w:	Against Applicant
Subparagraph 1.x:	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.

Richard A. Cefola
Administrative Judge