



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



In the matter of: )  
)  
) ISCR Case No. 20-00789  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: Asya Hogue, Esq., Applicant's Counsel

September 9, 2021

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On October 15, 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 November 25, 2020, and requested a hearing before an administrative judge. (Answer.) His Answer also included Applicant's Exhibits (AppXs) A through H, which were subsequently admitted into evidence. This case was assigned to me on June 8, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 9, 2021, scheduling the hearing for July 12, 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. At his hearing Applicant offered AppXs I through R, which I marked and were admitted into

evidence. The record was left open until August 12, 2021, for receipt of additional documentation. On July 16, 2021, and August 6, 2021, Applicant offered AppXs S through X and X2, which were admitted into evidence. DOHA received the transcript of the hearing (TR) on July 20, 2021.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a, and 1.h. He denied SOR allegations ¶¶ 1.i, and 1.j. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 55-year-old employee of a defense contractor. He has been employed with the defense contractor since November of 2005. He has held a security clearance since June of 2006. (GX 1 at pages 5, 10 and 34.) He is currently going through a divorce, and has two adult children. (TR at page 15 line 11 to page 20 line 12.) Applicant completed his last two Security Clearance Applications (SCAs) in 2011 (AppX Q), and again in 2016 (GX 1).

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

1.b.-1.h. Applicant and his, now-estranged spouse had a rental-property side-business involving five properties. (TR at page 23 line 2 to page 29 line 18, at page 30 line 19 to page 31 line 10, at page 48 line 24 to page 49 line 3, at page 64 line 4 to page 65 line 2, and at page 67 lines 6-13.) With the crash of the real-estate market in 2008-2009, Applicant and his spouse defaulted on the first and second mortgages on these properties. (*Id.*) He disclosed these foreclosures on his 2011 SCA. (AppX Q at pages 30-35, and AppX R.) Applicant owes nothing as a result of these foreclosures, as evidenced by Federal tax documents, 1099c's, and by credit reports. (TR at page 68 line 22 to page 70 line 14, and AppXs P and S-X2.)

1.a. and 1.i. In 2018, Applicant and his now-estranged spouse, defaulted on their primary residence secondary loan. This was the result of their HELOC (Home Equity Line Of Credit) loan payments increasing to the point that they could not pay them. (TR at page 35 line 25 to page 42 line 22, at page 49 lines 8-21, at page 65 line 3 to page 66 line 16, and at page 67 lines 6-13.) The Applicant owes nothing as a result of this default, as evidenced by a 1099c, and banking records. (AppXs H at page 3, L, and N at page 3.)

1.j. Applicant is current with his state taxing authority, as evidenced by a document from his state. (TR at page 42 line 25 to page 44 line 19, at page 67 lines 14-18, and AppX G.) His estranged spouse never told Applicant of their tax delinquency. Once he was apprised of the fact, said state tax was paid. (*Id.*)

## 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 defaulted on mortgage payments on six properties; resulting in foreclosures, and had delinquent state 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; 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 addressed all of the allegations, the vast majority of which he disclosed to the Government in 2011, and were the result of the 2008~2009 real-estate crisis. He has also successfully addressed the three post 2008~2009 allegations. Applicant has demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has 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. Applicant has a distinguished history of working in the defense industry and is also respected in his community. (AppXs C, D, J and O.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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:                      FOR APPLICANT

Subparagraphs 1.a. through 1.j:              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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge