



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



In the matter of: )  
)  
) ISCR Case No. 20-03824  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

November 3, 2021

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On March 31, 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 answered the SOR on April 26, 2021, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 2, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 19, 2021, scheduling the hearing for September 13, 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. The record was left open until October 13, 2021, for receipt of additional documentation. Applicant

submitted nothing. DOHA received the transcript of the hearing (TR) on September 22, 2021.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a., 1.b., 1.d. and 1.e. He denied SOR allegation ¶ 1.c. 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 August of 2018. He has held a security clearance since about 2010, as Applicant is retired from the U.S. Navy. He is married, and has three children. (TR at page 14 line 11 to page 20 line 19, and GX 1 at pages 13 and 39.)

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

1.a. and 1.b. Applicant admits that he is indebted to the Department of Education in the amount of about \$42,000. Applicant was making monthly payments of \$410 towards this debt, until the Department of Education put a moratorium on accepting said payments due to the Covid-19 pandemic. (TR at page 20 line 20 to page 26 line 22, and Answer at pages 2~5.) Applicant is ready, willing and able to continue said payments.

1.c. Applicant denies that he failed to file his Federal income tax returns for tax year 2018, and has submitted documentation demonstrating this filing. (TR at page 26 line 23 to page 28 line 1, and Answer at pages 6~8.)

1.d. Applicant admits that he is indebted to the Federal Government, in the amount of about \$35,000 in past-due taxes for tax years 2015, 2017 and 2018. (TR at page 28 line 2 to page 31 line 25, and at page 35 line 16 to page 37 line 17.) Despite having a month, post-hearing, to submit something further in this regard, Applicant has failed to do so.

1.e. Applicant admits that he is indebted to his state, in the amount of about \$11,500 in past-due taxes for tax years 2017 and 2018. (TR at page 32 line 1 to page 33 line 10.) Despite having a month, post-hearing, to submit something further in this regard, Applicant has failed to do so.

### **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 allegedly failed to file his 2018 Federal income tax return, has significant Federal and state income tax debt, and significant outstanding student loans. 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; 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 has filed his 2018 Federal income tax return; and is ready willing and able to address his outstanding student loans, he has yet to address about \$46,000 in back taxes. Applicant's financial problems are ongoing. He 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. 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~1.c:	For Applicant
Subparagraphs 1.d and 1.e:	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