



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



In the matter of: )  
)  
) ISCR Case No. 20-00320  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: Ryan C. Nerney, Esq., Applicant’s Counsel

November 3, 2021

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On April 24, 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 or about August 8, 2020, and requested a hearing before an administrative judge. (Answer.) The case was originally assigned to another administrative judge on February 16, 2021, and reassigned to me on June 15, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 15, 2021, scheduling the hearing for August 5, 2021. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 5, which were admitted into evidence. Applicant testified on her own behalf. Applicant offered Applicant’s Exhibits (AppXs) A through R, which were admitted into evidence. The

record was left open until October 4, 2021, for receipt of additional documentation. Applicant offered AppXs S through V, which were admitted into evidence. DOHA received the transcript of the hearing (TR) on August 16, 2021.

### **Findings of Fact**

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

Applicant is a 37-year-old employee of a defense contractor. She has been employed with the defense contractor for “about two and a half years.” She is divorced, and has two children, ages sixteen and three. (TR at page 14 line 13 to page 16 line 25.) Applicant attributes her current financial difficulties to her 2015 divorce, a “split up” with a subsequent boyfriend, and to brief periods of unemployment. (TR at page 19 line 2 to page 20 line 16.) She has recently completed financial counseling. (AppX J.)

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

1.a., 1.b., 1.d.~1.h., and 1.aa.~1.dd. Applicant is indebted to the Department of Education, for student loans, in an amount totaling about \$63,000. (AppX A at page 1.) She has entered into a rehabilitation plan with the Department of Education, by which Applicant will make monthly payments of \$40 for nine months; and as a result, this student loan debt will be taken out of default. (TR at page 17 line 24 to page 26 line 21, at page 55 lines 1~12, and at page 58 line 23 to page 59 line 13.) This is evidenced by said agreement with the Department of Education. (AppX G.)

1.c. Applicant is indebted to Creditor C in the amount of about \$8,650 as the result of an 2019 automobile repossession. (TR at page 26 line 22 to page 28 line 10, and at page 59 line 13 to page 60 line 3.) She is making monthly payments of \$200 towards this “repo” debt, as evidenced by a “payment receipt” from Creditor C. (*Id.*, and AppX K.)

1.i. Applicant has a past-due debt with Creditor I in the amount of about \$227. Applicant is in the process of making monthly payments of \$20, for a period of ten months, towards this phone bill. (TR at page 28 line 11 to page 30 line 3, at page 60 lines 4~10, see *also* AppX N.) As there is no other evidence in the record supporting these payments, it is unclear if she is making said payments.

1.j. Applicant had a past-due debt with Creditor J in the amount of about \$222. She is current with her electricity provider, as evidenced by a current bill from Creditor J. (TR at page 30 line 4 to page 31 line 11, at page 60 lines 11~19, and AppX M.)

1.k. Applicant has a past-due debt with Creditor K in the amount of about \$198. In her answer, Applicant refers to her “current Experian credit report.” That credit report shows that said debt is still “past due.” (AppX Q seven pages from the last page.) At her

hearing, Applicant avers “It’s paid.” The status of this previously admitted, past-due debt is unclear.

1.l. and 1.m. Applicant had past-due debts to the Department of Veterans Affairs totaling about \$1,354. These debts are no longer past due, as evidenced by the Government’s most recent credit report. (TR at page 33 line 2 to page 34 line 13, at page 60 lines 20~25, and GX 2 at pages 8~9.)

1.n~1.r. Applicant is indebted to ECMC (Navient), for student loans, in an amount totaling about \$33,000. Repayment is determined by way of an income-based program; and as such, Applicant is current with her payments. (TR at page 35 line 14 to page 37 line 20, at page 55 line 15 to page 56 line 16, and at page 61 lines 1~17.) This is evidenced by documentation from Navient. (AppX S.)

1.s. Applicant had a past-due debt to Creditor S in the amount of about \$921. Applicant successfully disputed this debt; and as such, This debt does not appear on either the Government’s 2019 and 2021 credit reports (GX 2 and 3), nor on the Applicant’s 2019 credit reports (AppXs T). (TR at page 40 line 7 to page 41 line 14, and at page 61 lines 18~21.)

1.t. Applicant had a past-due debt to Creditor T in the amount of about \$3,133. Applicant successfully disputed this debt; and as such, her debt does not appear on neither the Government’s 2019 or 2021 credit reports (GX 2 and 3), or on the Applicant’s 2019 credit report (AppXs T). (TR at page 41 line 15 to page 42 line 22, and at page 61 lines 22~25.) This debt is no longer past due.

1.u.~1.x. Applicant had past-due medical bills totaling about \$492. Applicant successfully disputed these debts; and as such, these debts do not appear on either the Government’s 2019 and 2021 credit reports (GX 2 and 3), or on the Applicant’s 2019 credit report (AppXs T). (TR at page 42 line 23 to page 44 line 1, and at page 62 lines 1~4.) These debts are no longer past due.

1.y. Applicant had a past-due debt to Creditor Y in the amount of about \$635. Applicant successfully disputed this debt, as evidenced by documentation. (TR at page 44 lines 2~16, at page 62 lines 5~11, and AppXs L and U.) This debt is no longer past due.

1.z. Applicant had a past-due debt to Creditor Z in the amount of about \$64. Applicant settled and paid this debt, as evidenced by documentation. (TR at page 34 line 13 to page 35 line 12, at page 62 lines 12~15, and AppX P.) This debt is no longer past due.

1. ee and 1. ff. Applicant filed her Federal and state income tax returns for tax year 2016. (TR at page 44 line 16 to page 45 line 9, at page 45 line 16 to page 46 line 4, at page 62 lines 16~24, and AppX H.)

## 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 had significant past-due indebtedness, late student loans, and allegedly failed to file income taxes for tax year 2016. 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;

(c) the individual has received financial counseling for the problem from a legitimate and credible source . . . and there are clear indications that the problem is being resolved or is under control;

(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.

Applicant has addressed and/or paid the vast majority of her past-due indebtedness and student loans. She has only two debts, totaling about \$420 that she may have yet to address. Applicant has received financial counseling. She has demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has been established. Financial Considerations is found for 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 the workplace and in her community. (AppXs C and V.) 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.~1.ff:	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