



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



In the matter of: )  
)  
) ISCR Case No. 21-01827  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: Michael Weiser, Esq.

November 9, 2022

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On September 24, 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 Guidelines F and E. 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 October 13, 2021, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on February 8, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 7, 2022, scheduling the hearing for June 7, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 9, which were admitted into evidence. Applicant testified on his own behalf and called one witness. Applicant offered seven documents, which I marked Applicant’s Exhibits (AppXs) A through G. The record was left open until July 7, 2022, for receipt of additional

documentation. Applicant offered two additional documents marked as AppXs H and I, and admitted into evidence. DOHA received the transcript of the hearing (TR) on June 15, 2022.

### **Findings of Fact**

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

Applicant is a 65-year-old employee of a defense contractor. He has been employed with the defense contractor “for 22 years.” He is married, and has three adult children. (TR at page 35 line 3 to page 46 line 6, and GX 2 at page 7.)

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

1.a. and 1.b. Applicant denies that he is indebted to Creditor A, as the result of student loans he incurred on behalf of his son. These student loans totaled about \$272,000. Applicant paid these student loans in August of 2021, prior to the issuance of the SOR. (TR at page 72 line 21 to page 73 line 23, at page 108 line 24 to page 109 line 5, and AppXs C~E and G.)

1.c. and 1.d. Applicant admits that his wages were garnished, at the rate of \$800 a month, to pay back delinquent student loans to the Department of Education. Unbeknownst to Applicant, that garnishment stopped (his wife handled their finances), and he has an outstanding debt of about \$84,000. (TR at page 74 line 8 to page 75 line 5, and AppX I.) Applicant made a one-time payment of \$5,000 towards this past-due debt, and is now making monthly payments of \$500 to the Department of Education. (TR at page 109 line 6 to page 110 line 10, and AppXs G~I.)

#### **Guideline E - Personal Conduct**

2.a. and 2.b. Applicant denies that he “deliberately failed to disclose” his delinquencies and Federal Debt, noted in Paragraph 1, when he answered Section 26 on his August 2020 Electronic Questionnaire for Investigations Processing (e-QIP). Applicant credibly avers that he was going through “family issues” at the time and made “an honest mistake.” It is important to note that Applicant made these disclosures when he executed his January 2016 e-QIP, four years earlier. (TR at page 75 line 6 to page 77 line 20, at page 110 line 11 to page 111 line 6, and GX 1 at pages 29~31.) Accordingly, the Government was aware of these delinquencies, which Applicant has now addressed. Based on all the available evidence, I find that Applicant did not have any intent to deceive the Government about these debts.

## 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations

Applicant had substantial student loan debts. 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has addressed all of his alleged financial delinquencies. He has paid those student loans not held by the Federal Government, and is making monthly

payments to the Department of Education for the rest. He has demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has been established. Financial Considerations is found for Applicant.

### **Guideline E - Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to correctly answer Section 26 on his 2020 e-QIP. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. However, for the following reasons, I find that they are unnecessary to apply.

Applicant's financial omissions on his 2020 e-QIP were a serious oversight; but I find that he did not deliberately withhold this information from the Government, as he had fully disclosed his delinquencies on his 2016 e-QIP. Therefore, as stated earlier, he did not have any intent to deceive. Personal Conduct 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 Guidelines F and E in my whole-person analysis. Applicant has a distinguished history of working in the defense industry, as testified to by his supervisor. (TR at page 16 line 18 to page 33 line 2.) He performs well at his job.

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 and Personal Conduct 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.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. and 2.b:	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