



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



In the matter of:)	
)	
)	ISCR Case No. 20-02875
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

December 7, 2022

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On July 28, 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 November 14, 2021, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on April 12, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 14, 2022, scheduling the hearing for June 1, 2022. 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 and offered five documents, which I marked Applicant’s Exhibits (AppXs) A through E, and admitted into evidence. The record was left open until August 5, 2022, for receipt of additional

documentation. Applicant offered three additional exhibits that were marked as AppXs F through H, and admitted into evidence. DOHA received the transcript of the hearing (TR) on June 9, 2022.

Findings of Fact

Applicant denied all the allegations in the SOR, except for SOR allegation ¶ 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 51-year-old employee of a defense contractor. He has been employed with the defense contractor since March of 2019. Applicant is married, and has two adult children. (TR at page 15 line 12 to page 16 line 4, and GX 1 at page 12.)

Guideline F - Financial Considerations

Applicant attributes his financial difficulties to an unexpected, \$20,000 special assessment by his home owner's association, to be used to replace the damaged roofs of others in his condominium complex. (TR at page 27 line 13 to page 29 line 14.) As a result, Applicant was forced to file for the protection of a Chapter 7 bankruptcy. (GX 4.) His debts were discharged in September of 2021. (GX 4 at the last page.) Since this bankruptcy, Applicant's credit scores have risen from the mid 500s to the high 600s. (AppX H.) He is also receiving credit counseling, and has a positive monthly cash flow of about \$1,500. (AppXs C and G.)

1.a. Applicant was indebted to Creditor A in the amount of about \$55,000, including penalties and interest, as a result of the special assessment noted, above. The loan for his condo unit also suffered a voluntary foreclosure. This real-estate debt is included in Applicant's Chapter 7 bankruptcy. (TR at page 27 line 12 to page 36 line 18, at page 43 lines 2~13, at page 46 lines 7~12, and GX 4.)

1.b~1.k. and 1.m. Applicant was indebted to Creditors B~K and M, mostly credit cards, in the amount of about \$27,000. These alleged past-due debts are included in Applicant Chapter 7 bankruptcy. (TR at page 33 line 3 to page 35 line 12, at page 36 lines 14~22, and GX 4.)

1.l. Applicant disputes a \$1,369 jewelry debt to Creditor L, and it does not appear on the Government's December 2021 credit report. (TR at page 35 line 13 to page 36 line 13, and GX 4.)

1.n. Applicant disputes a \$258 cable TV debt to Creditor N, and it does not appear on the Government's December 2021 credit report. (TR at page 36 line 23 to page 37 line 20, and GX 4.)

1.o. Applicant disputes a \$158 debt to Creditor O, and it does not appear on the Government's December 2021 credit report. (TR at page 37 line 21 to page 38 line 8, and GX 4.)

Guideline E - Personal Conduct

2.a. Applicant is a former police officer. He was involved with a charity at his Police Department. The charity was grossly understaffed. He was the treasurer, and inadvertently commingled his personal check book with that of the charity. As a result, he was terminated from his employment, in January 2013, nearly ten years ago. Persecution was declined, as there was “insufficient evidence to prove embezzlement.” (TR at page 16 line 5 to page 27 line 17, at page 43 line 14 to page 44 line 25, and AppX F.)

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 significant past-due indebtedness. 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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(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.

Applicant has demonstrated that future financial problems are unlikely. He filed for the protection of bankruptcy; and as a result, he has no past-due indebtedness. Applicant has received financial counseling, has a positive monthly cash flow, and has significantly increased his credit score. 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.

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources;

Applicant was terminated from his employment as a police officer in 2013 over accusations of embezzlement. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Prosecution was declined for the alleged embezzlement occurred a decade ago. So much time has passed; and the incident occurred under such unique circumstances, that it is unlikely to recur. 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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected in the workplace, as noted by his supervisor. (AppX A.) 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.o:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

Richard A. Cefola
Administrative Judge