



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



In the matter of:)
)
) ISCR Case No. 22-00133
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Brittany Forrester

March 13, 2023

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On February 18, 2022, 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 March 10, 2022 and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on June 6, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 14, 2022, scheduling the hearing for August 16, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 8, which were admitted into evidence. Applicant testified on his own behalf and offered 13 documents, which I marked Applicant’s Exhibits (AppXs) A through M and admitted into evidence. The record was left open for receipt of additional documentation. Applicant subsequently

offered AppX N, which was admitted into evidence. DOHA received the transcript of the hearing (TR) on August 24, 2022.

Findings of Fact

Applicant denied the allegations in SOR ¶¶ 1.a, through 1.c. He admitted 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 43-year-old employee of a defense contractor. He has been employed with the defense contractor since May of 2007. He has held a security clearance since June of 2007. He is divorced and has two minor children. (TR at page 11 line 24 to page 13 line 6, and GX 1 at pages 7, 14, 19~20, 22~23 and 42.) Applicant attributes some of his alleged financial difficulties to his former spouse, from whom he was divorced from in July of 2020.

Guideline F - Financial Considerations

The SOR alleges that Applicant is indebted to three creditors totaling in excess of \$65,000. It also alleges that Applicant filed for the protection of a Chapter 7 Bankruptcy in 2016.

1.d. Applicant admits that he filed for the protection of a Chapter 7 Bankruptcy in 2016, and that his debts were subsequently discharged by said bankruptcy. (TR at page 19 lines 3~23, and GX 2.)

1.a. Applicant denies that he has a past-due debt to Creditor A in the amount of about \$48,000. He admits to a \$22,000 past-due debt, which he began to address in June of 2022 (AppX L) and made his first monthly payment of \$457 towards in August 2022 (AppX N), only a week prior to his hearing. (TR at page 13 line 16 to page 15 line 24, and at page 25 line 14 to page 28 line 17.) I find Applicant's response to this significant past-due debt to be too little, too late. From his testimony it is clear he was aware of this debt, but only began to address it about four months after the issuance of the SOR. (AppX L.) This allegation is found against Applicant.

1.b. Applicant denies that he has a past-due debt to Creditor B in the amount of about \$16,000. His former spouse had agreed to pay this motor vehicle loan; and as such, Applicant was unaware of this past-due debt until he received the SOR. (TR at page 15 line 22 to page 17 line 15.) He has satisfied this debt prior to his hearing, as evidenced by documentation. (AppXs J, K and M.) This allegation is found for Applicant.

1.c. Applicant denies any knowledge of a past-due medical debt of about \$1,874. (TR at page 17 line 16 to page 19 line 2.) This alleged debt does not appear on the Government's three most recent credit reports: April 2021, August 2021 and May 2022. (GXs 6~8.) This allegation is found for Applicant.

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 has 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;

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

Although Applicant's financial difficulties can, in part, be attributed to his divorce, he has only recently begun to address his most significant past-due debt. This is not due diligence on Applicant's part. Applicant has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not 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.

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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is respected in the workplace. He performs well at his job. (AppXs C and D.)

Overall, the record evidence leaves me with questions or 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For 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.

Richard A. Cefola
Administrative Judge