



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



In the matter of: )  
)  
) ISCR Case No. 20-00618  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: Brittany Forrester, Esq.

March 13, 2023  
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**Decision On Remand**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On December 4, 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 February 23, 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 15, 2022, scheduling the hearing for June 6, 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 offered six documents, which I marked Applicant’s Exhibits (AppXs) A through F, and admitted into evidence. The record was left open until July 6, 2022, for receipt of additional documentation. On

July 5, 2022, Applicant offered six additional exhibits, which were marked as AppXs F2 through K, and admitted into evidence. DOHA received the transcript of the hearing (TR) on June 15, 2022. On November 7, 2022, I issued a decision granting Applicant national security eligibility. The Government filed a timely appeal.

On January 18, 2023, the DOHA Appeal Board remanded my Decision with specific guidance: “First, . . . to address Applicant’s lengthy and troubled Federal tax history,” noted in subparagraphs 1.a, 1.b, 1.d, and 1.e. of the SOR, below. “Second, with regard to the state tax allegations . . . to consider and address: The fact that Applicant did not file state returns for the alleged years,” noted in subparagraph 1.e, of the SOR, below; “that instead the state ultimately filed substitute returns; and . . . that Applicant’s state tax debts were resolved involuntarily through the levy of his bank account and garnishment of his wages. . . . Third, with regard to the medical debts, how [the undersigned] determined that the delinquent medical debts alleged [in subparagraphs 1.i, 1.j, 1.m, and 1.n, of the SOR, below,] were all on Applicant’s payment plan.” Finally, “to identify the specific mitigating conditions that applied.” ISCR Case No. 20-00618 at 4~5 (App. Bd. Jan. 18, 2023).

### **Findings of Fact**

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

Applicant is a 44-year-old employee of a defense contractor. He has been employed with the defense contractor since June of 2016. He is married, and has two children, and one adult stepchild. (TR at page 5 lines 9~20, at page 12 line 7 to page 13 line 8, and GX 1 at pages 14, 26 and 51.)

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

1.c. Applicant filed for the protection of a Chapter 13 Bankruptcy in July of 2006, but he was unable to keep up with his payments; and as a result, it was dismissed in July of 2009. (TR at page 16 line 18 to page 17 line 16, and at page 41 line 14 to page 42 line 10.)

1.a. and 1.b. Applicant admits that he was indebted to the Federal Government for delinquent taxes for tax years 2004 and 2005 in an amount totaling about \$11,129. From about August 2002, until he graduated from college in June of 2016, Applicant was, for the most part, either underemployed as a private investigator, or unemployed. He filed his tax returns for 2004 and 2005, but was unable to pay his taxes that were due. Applicant began to address his past-due income taxes, after securing his current employment. (TR at page 13 line 23 to page 15 line 14 GX 1 at page 13, at pages 15~23.) These tax debts/liens were added to Applicant’s “Offer in Compromise contract” with the Internal Revenue Service (IRS). (TR at page 13 line 23 to page 15 line 14, at page 42 lines 11~20, and AppXs B and F2.) As Applicant “met the payment provisions” of his contract with the IRS, these tax debts/liens have been released by the IRS. (AppX B.)

1.f. Applicant admits that he was indebted to the Federal Government for delinquent taxes for tax year 2009 in an amount totaling about \$10,241. This tax debt/lien was part of Applicant's "Offer in Compromise contract" with the Internal Revenue Service (IRS). (TR at page 15 lines 15~24, and AppX B.) As Applicant "met the payment provisions" of his contract with the IRS, this tax debt/lien has been released by the IRS. (AppX B.)

1.g. Applicant admits that he was indebted to the Federal Government for delinquent taxes in an amount totaling about \$99,250. This combined tax debt/lien was part of Applicant's "Offer in Compromise contract" with the Internal Revenue Service (IRS). (TR at page 16 lines 1~17, and AppX B.) As Applicant "met the payment provisions" of his contract with the IRS, this combined tax debt/lien has been released by the IRS. (AppXs B and C.)

1.d. and 1.e. Applicant failed to file his Federal and state income tax returns for tax years 2006~2013, 2015 and 2017, in a timely fashion, during a lengthy period of underemployment or unemployment. He has now filed those returns. (TR at page 17 line 17 to page 18 line 18, at page 27 line 21 to page 30 line 10, and AppXs B and C.) Applicant has now also complied with the state taxing authority's concerns regarding his filings for tax years 2006~2013, 2015 and 2017. (TR at page 18 line 19 to page 19 line 11, at page 42 line 21 to page 43 line 15, and AppX C.)

1.h. Applicant is currently making monthly payments to Creditor H, through a "Creditor Counseling Service." (TR at page 19 line 12 to page 20 line 16, and AppX D.) As of April 2022, the alleged delinquency of \$2,179 has been reduced to about \$1,402. (AppX D at page 2.)

1.i, 1.j, 1.m, and 1.n. Applicant admits he is indebted to Creditor I due to medical debts in an amount totaling about \$4,600. (Applicant's documentation lists a current balance of \$8,092, which includes part of the medical debts noted below.) He is making "\$131.00 twice monthly" payments towards this past-due medical debt, and towards the additional medical debt noted in 1.i, below. Applicant's testimony in this regard is corroborated by documentation from a "Credit Counseling Service." (TR at page 20 line 17 to page 21 line 20, and AppXs I~K.)

1.l, 1.o, and 1.p. Applicant's admitted past-due medical debt to Creditor L, in the amount of about \$8,995, has been recently added to Applicant's payment plan noted, immediately above. Again, Applicant's testimony in this regard is corroborated by documentation. (TR at page 22 lines 1~4, at page 37 line 20 to page 38 line 7, page 39 line 17 to page 40 line 15, and AppXs I~K.)

## 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 has a history of not meeting his financial obligations, to include state and Federal income taxes. 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

(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's financial difficulties are attributed to a 14-year period, 2002~2016, of unemployment or underemployment. Thus, mitigating conditions AG ¶¶ 20(a) and (b) are applicable. He has addressed his delinquent state and Federal income taxes and filed all the required tax returns. Thus, mitigating condition AG ¶ 20(g) is applicable. He has also addressed his debts to the remaining two creditors, through the auspices of a "Credit Consulting Service," through payment plans. Thus, mitigating conditions AG ¶¶ 20(c) and (d) are applicable. Mitigation under AG ¶ 20 has 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 has

a fairly distinguished history of working in the defense industry. (AppXs E and F.) 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 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.p:	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