



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



In the matter of: )  
)  
) ISCR Case No. 21-01773  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Carl A. Marrone, Esq., Applicant’s Counsel

March 29, 2023  
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**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On December 1, 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 I. 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 April 8, 2022, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on July 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 8, 2022, scheduling the hearing for October 13, 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 called two witness, one of whom was his treating physician. Applicant offered numerous documents, which I marked

Applicant's Exhibits (AppXs) A through LL and admitted into evidence. DOHA received the transcript of the hearing (TR) on October 25, 2022.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, 1.h, and 2.a.-c. He denied SOR allegations ¶¶ 1.b, 1.e, and 1.g. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 54-year-old employee of a defense contractor. He retired from the U.S. Air Force in June of 2010 and has been employed with the defense contractor since June of 2010. He has held a security clearance since about 1987. He is divorced and has one adult child. (TR at page 31 line 14 to page 44 line 7, and GX 1 at pages 7, 13, 18, 25 and 36-37.) He attributes his financial difficulties to a failed side-business, involving firearms, and to his divorce.

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

1.a. Applicant admits that he has a past-due debt to Creditor A in the amount of about \$6,530 "for computers." Since April of 2022, Applicant has been making monthly payments of \$320 towards this admitted debt, as corroborated by documentation from Creditor A. (TR at page 44 line 18 to page 48 line 8, and AppX E.) This allegation is found for Applicant.

1.b. Applicant denies a past-due debt to Creditor B in the amount of about \$1,001. He avers that this debt has been "paid in full," as is corroborated by a document from the successor creditor to this debt. (TR at page 48 line 9 to page 50 line 6, and AppX F.) This allegation is found for Applicant.

1.c, 1.d and 1.f. Applicant admits that he has past-due debts to Creditor C in the amounts of about \$9,276; \$9,349; and \$36,928. These debts are related to his failed business; and have been either "successfully settled" or "paid in full," as corroborated by documentation from Creditor C. (TR at page 50 line 7 to page 54 line 25, at page 55 line 24 to page 58 line 20, and AppXs G, H, KK and LL.) These allegations are found for Applicant.

1.e. Applicant denies another past-due debt to Creditor C in the amount of about \$3,177. He avers that this debt has been "paid in full," as is corroborated by a document from the successor creditor to this debt. (TR at page 55 lines 1-23, and AppX I.) This allegation is found for Applicant.

1.g. Applicant denies a past-due debt to Creditor G in the amount of about \$689. He avers that he is "in Good standing with no Past-due balance," as evidenced by a document from Creditor G. (TR at page 48 line 9 to page 50 line 6, and AppX F.) This allegation is found for Applicant.

1.h. Applicant admits that he was indebted to the Internal Revenue Service (IRS), for back-business taxes, in the amount of \$2,567. It has been paid, as evidenced by documentation from the IRS. (TR at page 59 line 6 to page 60 line 18, and AppX K.) This allegation is found for Applicant.

## **Guideline I - Psychological Conditions**

2.c. (These allegations are discussed chronologically) Applicant admits that since at least August of 2016, he has been treated for depression. He was treated by “several doctors and several different medicines.” These medications would work for a while, but then Applicant would begin feeling like “a zombie.” As a result, Applicant would go off the medications for periods of “a couple of months,” as recently as February 2020. (TR at page 86 line 22 to page 83 line 6, and at page 97 line 7 to page 99 line 5.)

2.b. Applicant admits that in November of 2020, he was involuntarily hospitalized for suicidal ideation. However, not to exacerbate his situation; Applicant intentionally loaded his firearm, backwards, so that it could not be discharged. He also spoke to his treating physician prior to his hospitalization. (Tr at page 71 line 23 to page 77 line 7, and at page 90 line 1 to page 96 line 1.)

2.a. Applicant admits that in July of 2021, he was involuntarily hospitalized for twelve days as the result of suicidal ideations. (GX 7.) Prior to this hospitalization, in discussions with his treating physician, Applicant “realized . . . that he “was just chemically off balance.” After his discharge, and with a change in medication, Applicant has “been 100 percent better since then.” (TR at page 64 line 11 to page 71 line 19, and at page 103 line 17 to page 112 line 25.) His treating physician testified that Applicant’s change in “the medication [was] definitely a turning point.” She avers that “his prognosis is great . . . as long as he takes his medication. It’s a chemical thing.” Applicant’s treating physician has no cause “for concern regarding . . . [Applicant’s] judgment, . . . trustworthiness or . . . reliability.” (TR at page 115 line 21 to page 134 line 5.)

## **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 substantial past-due indebtedness, mostly attributed to a failed business. 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; 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 addressed all of the alleged past-due indebtedness. They are the result of a failed business and a failed marriage. He has demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has been established.

### **Guideline I - Psychological Conditions**

The security concern relating to the guideline for Psychological Conditions is set forth at AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified

mental health professional (e.g. clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline at AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. Three conditions are established:

- (a) behavior that casts doubt on an individual's judgment, stability, reliability or trustworthiness, not covered under and that may indicate an emotional, mental or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;
- (b) voluntary or involuntary inpatient hospitalization; and
- (c) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including but not limited to failure to take prescribed medication or failure to attend required counseling sessions.

Appellant has had two involuntary hospitalizations: in November of 2020, and in July 2021. Therefore, AG ¶ 28 is established.

The guideline at AG ¶ 29 contains four conditions that could mitigate security concerns. Four conditions may be applicable:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and
- (e) there is no indication of a current problem.

More than a year prior to his hearing; Applicant changed his medication, and no longer has a chemical imbalance in his brain. His treating physician avers that, with this change in medication, Applicant is now trustworthy. Therefore, AG ¶ 29 is 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 Guidelines F and I 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 distinguished history of in serving in the U.S. Air Force, and working in the defense industry, and is respected by those who know him (TR at page 21 line 4 to page 30 line 7). He performs well at his military and civilian jobs. (AppXs O, P, and V~JJ.)

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 Psychological Conditions 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.h:	For Applicant
Paragraph 2, Guideline I:	FOR APPLICANT
Subparagraphs 2.a~2.c:	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