



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



In the matter of: )  
)  
) ISCR Case No. 21-02393  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

June 6, 2023

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On February 11, 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 June 10, 2022, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 6, 2022, scheduling the hearing for December 14, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 5, which were admitted into evidence. Applicant testified on his own behalf and offered 26 documents, which I marked Applicant’s Exhibits (AppXs) A through Z, and admitted into evidence. The record was left open until January 13, 2023, for receipt of additional

documentation. On December 15, 2022, Applicant offered one additional Exhibit which was marked as AppX AA, and admitted into evidence. DOHA received the transcript of the hearing (TR) on December 27, 2022.

### **Findings of Fact**

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

Applicant is a 57-year-old employee of a defense contractor. He has been employed with the defense contractor since August of 2020, and has held a security clearance since then. He is divorced three times, the last time in 2013, and has three children, one of whom is an adult.

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

1.a. and 1.b. The first two admitted past-due debts are to the Small Business Administration (SBA) in the amounts of about \$319,766 and \$53,385, respectively. Applicant was in a start-up business with two partners, a married couple. He left the start-up in 2016. His partners subsequently filed for a business bankruptcy and later divorced. Applicant was contacted by the U.S. Treasury Department after the fact. His wages are being garnished to satisfy his share of the \$319,766 SBA loan. (TR at page 13 line 25 to page 20 line 7, at page 33 line 11 to page 36 line 25, and AppXs A, B, F, H and G.) The \$53,385 SBA loan has been paid. (TR at page 20 line 8 to page 21 line 15, at page 37 line 7 to page 42 line 18, and AppX C.)

1.c. Applicant denies the alleged past-due judgement debt to his former spouse in the amount of about \$57,176. Since June of 2021, he has been making monthly payments of \$1,729.73 to his former spouse in compliance with their payback agreement, as evidenced by banking documentation (AppX AA). (TR at page 21 line 16 to page 23 line 12, at page 42 line 19 to page 47 line 23, and AppXs I, J and K.)

1.d. Applicant admits that he had a past-due debt to Creditor D in the amount of about \$46,848. Through a debt relief program, Applicant is making monthly payments of \$1,204 towards this admitted debt, as evidenced by documentation. As of November 2022, he has reduced the "Payoff Amount" to \$15,450. (TR at page 23 line 13 to page 25 line 9, at page 47 line 5 to page 49 line 20, and AppXs L and U.)

### **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. Two are potentially applicable in this case:

- (a) inability to satisfy debts; 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
- (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 the alleged past-due indebtedness. It was caused, in part, by failed marriages and their related costs; and, in part, by a start-up business failure. He was only made aware of the business failure well after the fact of said failure. He has now demonstrated that future financial problems are unlikely. 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 that guideline, but some warrant additional comment. Applicant has a distinguished history of working in the defense industry and is respected by those who know him. He performs well at his job. (AppXs N, V and W.) 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.d:	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