



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



In the matter of: )  
)  
) ISCR Case No. 15-03553  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

August 31, 2017

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On November 19, 2015, 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.<sup>1</sup> 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 January 26, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on November 14, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 14, 2016, scheduling the hearing for November 22, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through

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<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

5, which were admitted without objection. Applicant testified on his own behalf and presented 11 documents, which I marked Applicant's Exhibits (AppXs) A through K. The record was left open until January 23, 2017, for receipt of additional documentation. On January 18, 2017, Applicant offered AppX L, which was admitted without objection. DOHA received the transcript of the hearing (TR) on November 30, 2016.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a.~1.j., and 1.o. He denied SOR allegations ¶¶ 1.k.~1.n. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 37-year-old employee of a defense contractor. (GX 1 at page 5 and TR at page 54 line 17 to page 55 line 16.) He has been employed with the defense contractor since December of 2012. (*Id.*) Applicant served in the U.S. Navy "for 14 years," and is on "40 percent" Veterans Administration Disability. (TR at page 28 lines 4~11, and AppX L at page 9.) He has held a security clearance while serving in the Navy. He is married, and has five children. (TR at page 26 lines 10~23.)

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

Applicant attributes much of his admitted past-due indebtedness to his four months of unemployment from August 2012 to December of 2012, when he left active duty and obtained his present employment; to his wife losing "her employment in 2013; and to unforeseen medical bills. (TR at page 30 line 16 to page 31 line 7, GX 1 at pages 12~13.

1.a.~1.d., and 1.f.~1.h. These are the past-due medical bills totaling about \$3,015. Prior to Applicant's wife losing her employment in 2013, these co-pay medical costs used to be covered by his wife's medical insurance. (TR at page 32 line 10 to page 35 line 22, at page 38 line 2 to page 39 line 25, and at page 40 lines 12~24.) Through the auspices of a credit consolidation service (CCS), Applicant is making monthly payments of \$75 towards these medical debts, and the debt to be discussed under ¶ 1.e., as evidenced by documentation from his CCS and his credit union. (*Id.*, and AppXs E and L at page 2.) I find that Applicant is making a good-faith effort to address these past-due debts.

1.e. This is a past-due debt to a jeweler, for the purchase of his "wife's wedding ring," in the amount of about \$2,439. (TR at page 35 line 23 to page 38 line 1.) The original purchase price was \$5,000. (*Id.*) Through the auspices of his CCS, Applicant is making monthly payments of \$75 towards this debt, and the before mentioned medical debts, as evidenced by documentation from his CCS and his credit union. (TR at page 35 line 23 to page 38 line 1, and AppXs E and L at page 2.) I find that Applicant is making a good-faith effort to address this past-due debt.

1.i. Through monthly payments of \$60, “this [\$1,127] account was satisfied on 10-28-2016,” as evidenced by documentation from this creditor. (TR at page 40 line 25 to page 42 line 3, AppX F, and AppX L at page 3.)

1.j. This \$58 debt was satisfied “02/26/2016,” as evidenced by documentation from this creditor. (TR at page 43 lines 3~9, and AppX D.)

1.k. Applicant denies this alleged past-due debt for about \$4,259, and it does not appear on the Government’s last three credit reports accessed in March of 2015, October of 2015, and most recently in November of 2016. (TR at page 42 line 10 to page 45 line 22, and GXs 3~5.) I find that Applicant does not owe this alleged past-due debt.

1.l. Applicant denies this alleged past-due debt for about \$329, and it does not appear on the Government’s last three credit reports accessed in March of 2015, October of 2015, and most recently in November of 2016. (TR at page 46 line 4 to page 47 line 11, and GXs 3~5.) I find that Applicant does not owe this alleged past-due debt.

1.m. This \$277 debt “has been PAID in full,” as of “November 16, 2016,” as evidenced by documentation from this creditor’s “Collection Agency.” (TR at page 47 lines 12~24, and AppX B.)

1.n. This \$192 debt “was paid . . . on December 09, 2013,” as evidenced by documentation from this creditor. (TR at page 47 line 25 to page 48 line 8, and AppX C.)

1.o. Applicant is making monthly payments towards this \$460 medical account, as evidenced by documentation from this creditor. (TR at page 48 lines 9~24, and AppX L at page 4.) I find that Applicant is making a good-faith effort to address this debt.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, 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 eligibility for access to classified information.

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 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.

Directive ¶ E3.1.14, requires the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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;
- (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.

Applicant has addressed all of his admitted past-due indebtedness. The two debts he contests, ¶¶ 1.k. and 1.l., do not appear on the Government's last three credit reports, which gives credence to his averment that they are not owed. Now that he is employed, Applicant has demonstrated that future financial problems are unlikely. Mitigation under AG ¶¶ 20(a)~20(e) 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 distinguished history of working in the defense industry and is highly respected in the work place. (AppX A, and AppX L at pages 5~8.) He performs well at his job. (*Id.*)

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.o:

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge