



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



In the matter of: )  
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 ) ISCR Case: 15-07239  
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Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

October 10, 2017

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of Case**

On April 30, 2015, Applicant submitted a security clearance application (SF-86). On April 21, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on June 23, 2016. He admitted all the allegations of the SOR, with explanations, except for an alleged past-due debt related to a foreclosure (1.h.), and a small alleged past-due medical debt (1.k.), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On July 24, 2016, Department Counsel submitted the Government's written case, including

a complete copy of the File of Relevant Material (FORM), containing six Items. Applicant responded to the FORM on August 22, 2016. He did not object to Items 1 through 6. Applicant also submitted additional information in his FORM response, to which Department Counsel had no objection. DOHA assigned the case to me on June 5, 2017. Items 1 through 6 are admitted into evidence. Applicant's response to the FORM (Response) is also admitted.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

## **Findings of Fact**

### **Guideline F – Financial Considerations**

Applicant is 57 years old. (Item 3 at page 5.) He is divorced, with two adult children. (Item 3 at pages 17 and 20.) Applicant attributes his financial difficulties to the Great Recession of 2008~2009, as he was "a Real Estate Broker full time." (Item 2 at page 3.)

1.a., 1.c., and 1.d. Applicant admits to three Federal tax liens (from 2009, 2010 and 2012) totaling about \$67,337. He has an "Installment Agreement" with the Internal Revenue Service (IRS), by which since at least January of 2015, he had been making monthly payments of \$490 towards these tax liens. (Item 2 at pages 5 and 7~10, and Response at pages 12~31 and 41~44.) In March of 2016, these monthly payments increased to \$689. (Item 2 at page 5.) This payment history, and installment agreements, are evidenced by documentation from the IRS, and from Applicant's banking records. (Item 2 at pages 5 and 7~10, and Response at pages 12~31 and 41~44.) I find that Applicant is making a good-faith effort to repay these tax liens.

1.b. Applicant admits to a state tax lien (from 2012) for about \$8,030. He has an installment agreement with his state, by which since at least July of 2016, he had been making monthly payments of \$77.68 towards this tax lien. (Response at pages 3~6 and 33~40.) This payment history, and installment agreement are evidenced by documentation from his state's legal representative, and from Applicant's banking records. (*Id.*) I find that Applicant is making a good-faith effort to repay this tax lien.

1.e., 1.f., 1.i. and 1.k. Applicant admits to three of four past-due medical debts totaling about \$1,342. He denies one medical debt for \$161 (1.k.). In his Response to the FORM, Applicant submitted a list of medical bills from the medical provider's fiscal intermediary, with notations to which the Government did not object. By this notation Applicant avers that allegation 1.e. was paid in September of 2016, and that he is "trying to come to a monthly payment acceptable to both parties" as to the remaining three past due debts. I find that Applicant is making a good-faith effort to resolve these medical bills.

1.g. Applicant admits to a past-due "Education Loan" in the amount of about \$6,406.<sup>1</sup> (GX 6 at page 3.) In his Answer, Applicant avers he is "on a payment plan of \$77, and in his Response Applicant has documented five payments of \$77.68, which were made subsequent to the Government's credit report. (Response at pages 5~9 from the end.) I find that Applicant is making a good-faith effort to repay this student loan.

1.h. and 1.i Applicant's admits that his home was foreclosed on in February of 2009, when he had a past-due mortgage balance of \$28,908. As a result of this foreclosure, the past-due amount was forgiven by the mortgage company, as evidenced by a 2010 IRS Form 1099-A. (Response at page 2.) However, the amount forgiven was considered income for Applicant for tax purposes; and as such, he is addressing the taxes through his \$689 monthly installment payments to the IRS, already discussed as to allegations 1.a., 1.c., and 1.d., above.

1.j. Applicant avers that he settled an admitted past-due energy debt alleged to be \$492. As this debt does not appear on the Government's most recent April 2016, credit report, I find that Applicant resolved this debt.

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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, these guidelines are applied 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. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must

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<sup>1</sup> GX 6 is an April 2016 credit report that notes a balance of \$15,070, and a past-due amount of \$6,406. It also notes a monthly payment schedule of \$118, with actual payments of \$77.

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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. . . .

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying 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 Federal and state tax liens, and a number of past-due debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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 acted responsibly under unforeseen difficult circumstances that were completely beyond his control, the 2008~2009 Great Recession, and there are clear indications that his financial issues are under control. He has a payment plans as to his tax liens and his student loan, and is addressing the remaining past-due debts. The record establishes clear mitigation of financial security concerns under the provisions of AG ¶¶ 20(b), 20(d), and 20(g).

## **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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who took reasonable and effective action to resolve the financial issues created by the Great Recession. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He has met his burden to mitigate the security concerns arising under the guideline for financial considerations.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a. through 1.l.:

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 and a security clearance. National security eligibility is granted.

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Richard A. Cefola  
Administrative Judge