



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



In the matter of:

ISCR Case No. 15-07593

Applicant for Security Clearance

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

October 2, 2017

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On June 14, 2016, 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 October 3, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on October 26, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 18, 2016, scheduling the hearing for December 8, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 6, which

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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.

were admitted without objection. Applicant testified on his own behalf. Applicant presented two documents, which I marked Applicant's Exhibits (AppXs) A and B, and were admitted without objection. The record was left open until February 9, 2017, for receipt of additional documentation. Applicant offered AppX C, which was admitted without objection. DOHA received the transcript of the hearing (TR) about ten business days after the hearing.

### **Findings of Fact**

Applicant admitted all the allegations of SOR. 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 pages 5 and 13.) He has been employed with the defense contractor since January of 2015. (GX 1 at page 13.) He has held a security clearance since October of 2012. (GX 1 at page 44.) He is married, and has two "stepchildren." (TR at page 23 lines 20~25.) Each month, he and his wife are able to save about \$3,847. (AppX C.)

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

Applicant attributes much of his past-due indebtedness to a medical emergency in November of 2011, when he had no medical insurance. (TR at page 16 line 12 to page 21 line 19.)

1.a. Applicant admits to a past-due 2014 judgment, as a result of his medical emergency, in the amount of about \$137,609. (*Id.*) As this judgment is still outstanding, this allegation is found against Applicant.

1.b. Applicant admits that he is indebted to Creditor B for a past-due medical debt in the amount of about \$2,503. (TR at page 16 line 12 to page 21 line 19.) As this debt is still outstanding, this allegation is also found against Applicant.

1.c., 1.d., and 1.g.~1.n. With the help of his credit union, Applicant has been able to pay ten admitted past-due debts totaling about \$4,713. (TR at page 26 line 10 to page 28 line 14, and AppX A.) This finding is supported by Applicant's most recent December 2016 credit report. (AppX B.)

1.e. and 1.f. Applicant has yet to address two additional, admitted past-due medical debts totaling about \$13,566. (TR at page 28 lines 15~25.) These two allegations are found against Applicant.

### **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.

Under Directive ¶ E3.1.14, 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 has a history of not addressing his admitted 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 failed to demonstrate that he is financially responsible. His financial problems are significant and ongoing. He has a long history of delinquencies. He still has significant past-due indebtedness. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant attributed his delinquencies to a 2011 medical emergency. These were circumstances beyond his control. However, he failed to establish that he acted reasonably or responsibly with respect to his debts, despite now having a significant positive monthly cash flow. He has not demonstrated that he addressed his debts in a responsible or timely manner. Full mitigation under AG ¶ 20(b) has not been established.

Furthermore, there are no clear indications that his financial problems are being resolved or are under control. Mitigation under AG ¶¶ 20(c) or (d) has not 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. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g.~1.n.	For Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is denied.

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Richard A. Cefola  
Administrative Judge