



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



In the matter of: )  
)  
) ISCR Case No. 15-08675  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: Veronica T. Barton, Esq., Applicant's Counsel

January 25, 2018

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On June 13, 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 July 22, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on November 8, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 22, 2016, scheduling the hearing for December 14, 2016. However, as a result of Applicant's Counsel's repeated requests, this case was continued until January

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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.

6, 2017, and then until February 13, 2017. The hearing was convened as finally scheduled on February 13, 2017. The Government offered Exhibits (GXs) 1 through 15, which were admitted without objection. Applicant testified on his own behalf and called one witness, his wife who handles their finances. Applicant presented documents, which I marked Applicant's Exhibits (AppXs) 1 through 13. The record was left open until April 12, 2017, for receipt of additional documentation. On April 12, 2017, Applicant offered five additional exhibits that Applicant's Counsel mismarked as AppX 12, 13, and correctly marked as AppXs 14 through 16. I have thus marked the two mismarked exhibits as AppX 12(#2) and as AppX 13(#2), respectively. There being no objection, all the exhibits were admitted into evidence. DOHA received the transcript of the hearing (TR) on February 23, 2017.

### **Findings of Fact**

Applicant denied all the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 61-year-old employee of a defense contractor. (GX 1 at page 5, and TR at page 54 line 14 to page 57 line 7.) He has been employed with the defense contractor since 2002, but he has held a security clearance since 1987. (TR at page 54 line 14 to page 57 line 7.)

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

Applicant's alleged financial difficulties stemmed from investment properties that did not provide an adequate return for the investments. (TR at page 46 line 18 to page 51 line 12.)

1.a. and 1.b. Applicant used loans from these financial institutions to cover his failing investment properties, but eventually fell behind in his payments to these institutions. (TR at page 40 line 16 to page 46 line 2, and at page 52 line 17 to page 60 line 24.) To cover these delinquencies, roughly \$60,000, he made monthly payments of about \$840, for more than four years, to an attorney to address the delinquencies. (*Id.*, and (12(#2).) Said attorney, who has since been disbarred, absconded with the funds. (TR at page 40 line 16 to page 46 line 2, and at page 52 line 17 to page 60 line 24, and AppXs 7~11.) Through reputable legal counsel, Applicant is again making a good-faith effort to address these debts, as evidenced by correspondence with the creditors. (AppX 13(#2).)

1.c. Applicant has paid the alleged past-due debt of about \$6,255 to his Condominium Association. (TR at page 43 lines 14~18, and at page 60 line 25 to page 61 line 8.) This is evidenced by documentation vis-à-vis the creditor showing a zero balance as of July 2016; and furthermore, it does not appear on the Government's most recent February 2017 credit report. (AppX 5, and GX 15.)

1.d. Applicant has paid the alleged past-due debt of about \$3,960 owed on his time share property. (TR at page 43 line 19 to page 44 line 18, and at page 60 line 25 to

page 61 line 8.) This is evidenced by documentation vis-à-vis the Financial Group, and it does not appear on the Government's most recent February 2017 credit report. (AppX 6, and GX 15.)

## **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 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Above and beyond his attorney's malpractice, Applicant was delinquent on two real estate-related debts. 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems have been resolved. Furthermore, he demonstrated that future financial problems are unlikely. Mitigation under AG ¶¶ 20(a), 20(b) and 20(d) have 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 is well respected both at his workplace and in his community. 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 |
| Subparagraph 1.a:         | For Applicant |
| Subparagraph 1.b:         | For Applicant |
| Subparagraph 1.c:         | For Applicant |
| Subparagraph 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 and a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge