



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



In the matter of: )  
)  
) ISCR Case No. 15-08847  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

November 30, 2017  
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**Decision on Remand**  
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CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On November 4, 2014, 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 18, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on September 8, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 12, 2016, scheduling the hearing for September 29, 2016. The hearing

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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 on remand would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

was convened as scheduled. The Government offered Exhibits (GXs) 1 through 7, which were admitted without objection. Applicant testified on his own behalf. The record was left open until October 31, 2016, for receipt of additional documentation. Unbeknownst to the undersigned, Applicant sent a request for an extension of time to submit additional documentation to the DoD Consolidated Adjudications Facility (CAF). DOHA received the transcript of the hearing (TR) on October 11, 2016.

On June 6, 2017, I issued a Decision denying Applicant's eligibility for a security clearance. Applicant appealed that Decision. On September 8, 2017, the Appeal Board remanded that Decision with instructions that I "consider the documents Applicant has attached to his brief and issue a new Decision in accordance with the Directive." On September 25, 2017, I issued an Order on Remand, reopening the record, and giving Applicant "until close of business, Wednesday, October 25, 2017, to submit through Department Counsel 'the documents Applicant has attached to his brief.'" On or before October 25, 2017, Applicant submitted said documents, which are mark as Applicant's Exhibit (AppX) A, and admitted without objection.

### **Findings of Fact**

Applicant is 49 years old. He has been employed with a Government contractor for seven years. He is divorced but remarried, and has two children. (TR at page 18 line 1 to page 20 line 2, and GX 1 at page 12.) Applicant attributes his past-due indebtedness and income tax delinquencies to his current wife, a nurse, losing her income as a care giver to her mother, when Applicant's mother-in-law passed away. (TR at page 28 lines 13~21.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR identified 14 debts totaling approximately \$19,693, and a state income tax debt for about \$3,357. It also alleged that he failed to file his Federal and state income tax returns, as required, for tax years 2012 and 2014. Applicant admitted all of the allegations.

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

1.a. and 1.b. Applicant avers that he has now filed his Federal and state income tax returns for tax year 2012. (TR at page 20 line 5 to page 23 line 16.) He also avers that he intends to file his Federal and state income tax returns for tax year 2014. (*Id.*) Applicant has submitted no documentation in support of his averments. These allegations are found against Applicant.

1.c. Applicant avers that he is paying his state income tax delinquency by way of involuntary garnishment. (TR at page 20 line 5 to page 23 line 16.) He has submitted documentation showing that Applicant "has fully paid" this garnishment. (AppX A at page 3.) This allegation is found for Applicant.

1.d. and 1.e. Applicant filed for the protection of a Chapter 13 bankruptcy in June of 2002. It was dismissed in March of 2003. (TR at page 23 line 17 to page 24 line 16.) Applicant again filed for the protection of a Chapter 13 bankruptcy in May of 2006. It was dismissed in February of 2007, when Applicant defaulted on his approved payment plan. (TR at page 24 line 17 to page 26 line 1.)

Throughout his hearing, Applicant averred that he is expecting to receive \$27,000, as he overpaid his past child support; and an additional \$50,000, in a lump sum pension payment from a previous employment. (TR at page 34 line 13 to page 35 line 24, and at page 38 line 15 to page 40 line 24.) He further testified that with this \$77,000, Applicant fully intends to address the remaining alleged past-due indebtedness. (*Id.*)

1.f.~1.s. Applicant admits that he is indebted, as the result of 14 past-due debts, in the amount of about \$19,693. (TR at page 26 line 2 to page 37 line 15.) Despite his above mentioned averment to do so; and despite my leaving the record open for him to do so, Applicant has submitted nothing further in this regard. These 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. 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. Four are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 accumulated a significant amount of delinquent debt. His actions demonstrated both a history of not addressing his debt, and an inability to do so. He has also failed to file his Federal and state income tax returns for tax years 2012 and 2014, as required. 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;

(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.

While Applicant has satisfied his unpaid state taxes by way of garnishment; he still has significant past-due indebtedness, and has yet to file required income tax returns. Furthermore, his behavior did not happen long ago, but is continuing. It does cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(d) and 20(g) do not provide mitigation.

### **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 national security 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 considered the comments of his "Maintenance Shop Manager." (AppX A at page 4.) However, 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 |
| Subparagraphs 1.a. and 1.b.: | Against Applicant |
| Subparagraph 1.c.:           | For Applicant     |
| Subparagraphs 1.d.~1.s.:     | Against 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