



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



In the matter of: )  
)  
) ISCR Case No. 16-00944  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: Ryan Nerney, Esq., Applicant's Counsel

February 26, 2018

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On August 17, 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 11, 2016, and requested a hearing before an administrative judge. (Answer.) The case was originally assigned to another Administrative Judge on January 18, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 25, 2017, scheduling the hearing for March 14, 2017. The case was reassigned to me on March 8, 2017. The

<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.

hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 5, which were admitted without objection. Applicant testified on his own behalf and called one witness. Applicant presented 11 documents, which I marked Applicant's Exhibits (AppXs) A through K, which were admitted without objection. The record was left open until April 25, 2017, for receipt of additional documentation. On April 25, 2017, Applicant offered AppX L, which was also admitted without objection. DOHA received the transcript of the hearing (TR) on March 21, 2017.

### **Findings of Fact**

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

Applicant is a 44-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor since April of 2016. (GX 1 at page 10.) He has held a security clearance since about June of 20016. (GX 1 at page 29.) He is divorced twice from the same former spouse, and has two children, ages 23 and 24. (GX 1 at page 19.) Applicant's two divorces are the root causes of the alleged financial difficulties. (TR at page 18 line 7 to page 20 line 15, and at page 21 lines 11~23.) He has a "Doctorate in Engineering," and is a "Lieutenant Commander" in the Navy Reserves. (*Id.*) Applicant has also completed a regimen of financial counseling, and has a positive monthly cash flow of about \$1,146. (AppXs C and D.)

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

1.a. Applicant has settled and paid the outstanding debt to his divorce attorney, as evidenced by correspondence with his former counsel. (TR at page 20 line 6 to page 23 line 3, at page 42 line 20 to page 43 line 19, and AppX F.) This allegation is found for Applicant.

1.b.~1.e. Applicant has paid his former spouse's miscellaneous medical debts totaling about \$190, as evidenced by correspondence from this creditor. (TR at page 23 line 4 to page 25 line 22, at page 44 line 13 to page 45 line 9, and AppX K.) These allegations are found for Applicant.

1.f., 1.g., 1.i., and 1.j. These are in fact two alleged past-due debts to the same creditor totaling about \$1,700. (TR at page 25 line 22 to page 28 line 20, and at page 51 line 16 to page 53 line 7.) Applicant has paid off these undergraduate student loans, as evidenced by correspondence from this creditor. (AppX G.) These allegations are found for Applicant.

1.h. Applicant has set up a payment plan, by which he is making monthly payments of \$764 towards the alleged past-due student loans totaling about \$131,000, as evidenced by correspondence from this creditor. (TR at page 28 line 21 to page 32 line 9, and AppXs E and L.) Once he has made nine monthly payment pursuant to his rehabilitation agreement, Applicant will be considered current with this student loan. (*Id.*)

I find that Applicant is making a good-faith effort to address this past-due debt; and as such, this allegation is found for Applicant.

### **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.

Applicant had significant past-due 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;

(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's past financial difficulties were directly attributed to his two divorces. He has received financial counseling, has paid or settled his past-due indebtedness, and is making a good-faith effort to address his remaining past-due student loans that will soon be current. He has thus demonstrated that future financial problems are unlikely. Mitigation under AG ¶¶ 20(b)~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. Applicant is well respected both in the workplace and in the Navy Reserve. (TR at page 13 line 5 to page 17 line 6, and AppXs B, I and J.)

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.j.: 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