



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



In the matter of:

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) ISCR Case No. 16-01108
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Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esq., Department Counsel

For Applicant: *Pro se*

March 8, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On August 1, 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.¹ 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 August 29, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on January 21, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2017, scheduling the hearing for March 6, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 6, which

¹ 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 and offered documents, which I marked Applicant's Exhibits (AppXs) A through F and admitted without objection. The record was left open until April 28, 2017, for receipt of additional documentation. On April 27, 2017, Applicant offered AppX G, which was also admitted without objection. DOHA received the transcript of the hearing (TR) on March 21, 2017.

Findings of Fact

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

Applicant is a 48-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor since July of 2002, and has held a security clearance since about October of 2002. (GX 1 at pages 10 and 29.) He is married, and has a 19-year-old son, who attends college. (GX 1 at pages 14~15, and 18, see *also* TR at page 19 line 22 to page 22 line 7.) Applicant attributes his past-due indebtedness to his wife becoming ill with "an esophageal hernia" in 2007. (TR at page 22 line 12 to page 25 line 23, and at page 42 line 19 to page 44 line 8.)

1.a. It is alleged that Applicant is indebted to a bank, as the result a "cash advance," in the amount of about \$26,815. He has been paying on this admitted past-due debt since about 2010; and in April of 2017, increased those monthly payments from \$20 to \$80. (TR at page 25 line 24 to page 32 line 19, and AppXs B and G.) This is evidenced by documentation regarding this creditor. (AppXs B and G.) As of January 2017, the past-due amount had only been reduced to about \$26,595; but with the \$60 monthly increase, the past-due amount should be reduced in the future. (AppX G.) It is further noted that this payment schedule is to the satisfaction of the creditor. (TR at page 25 line 24 to page 32 line 19, and AppXs B and G.) I find that Applicant is making a good-faith effort to address this debt.

1.b. It is alleged that Applicant is indebted to the same bank, as noted in ¶ 1.a. above, in the amount of about \$7,766. He has been making monthly payments on this admitted past-due debt since about May of 2011. (TR at page 32 line 20 to page 35 line 19, and AppX C.) This is evidenced by documentation regarding this creditor. (AppX C.) As of January 2017, the past-due amount had been reduced to about \$7,166. (*Id.*) Again, this payment schedule is to the satisfaction of the creditor. (TR at page 32 line 20 to page 35 line 19, and AppX C.) I find that Applicant is making a good-faith effort to address this debt.

1.c. It is alleged that Applicant is indebted to a department store in the amount of about \$2,218. He has been making monthly payments of \$50.40 on this admitted past-due debt since about January of 2015. (TR at page 35 line 20 to page 36 line 10, and AppX D.) This is evidenced by documentation regarding this creditor. (AppX D.) As of March 2017, the past-due amount had been reduced to about \$1,562. (*Id.*) This payment schedule is to the satisfaction of the creditor. (TR at page 35 line 20 to page

36 line 10, and AppX D.) I find that Applicant is making a good-faith effort to address this debt.

1.d. It is alleged that Applicant is indebted to a medical provider in the amount of about \$344. He avers that he was unaware of this “Emergency Room” past-due debt until he “got a Credit Report,” as he thought that the hospital bill he had paid also covered the emergency room costs. (TR at page 36 line 11 to page 37 line 25.) He has since accepted a “payment plan” offered by the medical provider, as evidenced by that signed agreement (AppX E.) Payments were to begin in March of 2017, and in six months the debt would be paid as agreed. (*Id.*) I find that Applicant has made a good-faith effort to address this debt.

1.e. It is alleged that Applicant is indebted to another medical provider in the amount of about \$99. Through his testimony and written averment, I find that he is making a good-faith effort to address this rather small past-due debt. (TR at page 38 lines 1~22, and AppX F.)

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. Two are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has significant 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; and

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

Applicant's past-due indebtedness is the direct result of his wife's unforeseen medical condition, dating back to 2007. He has since addressed all of the alleged past-due debts; and as such, there are clear indications that his financial problems are being resolved and are under control. Mitigation under AG ¶¶ 20(a), 2(b), and (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 in the workplace. (AppX A.)

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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.

Richard A. Cefola
Administrative Judge