



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



In the matter of: )  
)  
) ISCR Case: 16-03914  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esquire, Department Counsel  
For Applicant: *Pro se*

March 30, 2018

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**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

**Statement of Case**

On February 27, 2016, Applicant submitted a security clearance application (SF-86). On February 24, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on March 13, 2017. He admitted all of allegations the SOR allegations, except for Subparagraph 1.g., regarding the alleged delinquent debts; with explanations, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) On March 30, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of

Relevant Material (FORM), containing eight Items, was mailed to Applicant on March 31, 2017, and received by him on April 22, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant responded to the FORM (Response) on May 16, 2017. He did not object to Items 1 through 8. Applicant also submitted additional information in his FORM Response, Items 1 through 3, to which Department Counsel had no objection. DOHA assigned the case to me on October 1, 2017. Response Items 1 through 3 are admitted into evidence. Applicant's Response to the FORM is also admitted.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

## **Findings of Fact**

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

Applicant is 63 years old. (Item 5 at page 5.) He is married, with two adult children. (Item 5 at pages 18~19, and 21~23.) Applicant retired from active duty in the Army in July of 2006, with the rank of Colonel. (Item 5 at pages 14~16.) He attributes the admitted past-due indebtedness to a significant drop in income in 2011~2012, from about \$260,000 to about \$93,000 in 2013. (Answer at Tab A.) Through no fault of his own, Applicant, and 600 of his fellow employees, lost his "full-time consultant" position dealing with "government medical contracts." (*Id.*) Despite this drop in income, Applicant has now addressed the admitted past-due debts.

1.a. Applicant admits that he had a past-due debt to Creditor A in the amount of about \$19,541. Applicant has begun to make \$50 payments towards this debt, which is listed as past-due in the amount of \$10,701 on his May 2017 credit report. (Response, Item 1 at page 5, and Item 2 at page 3.) This is evidenced by his credit report, and by correspondence from the successor creditor A's fiscal intermediary. (*Id.*) \$50 is not an insignificant amount in light of Applicant's drastic reduction in income. I find that Applicant is making a good-faith effort to address this past-due debt.

1.b. Applicant admits that he had a past-due debt to Creditor B in the amount of about \$19,666. Applicant has begun to make \$25 payments towards this debt, to the satisfaction of the successor creditor to this debt. (Response, Item 1 at page 6, and Item 2 at page 1.) This is evidenced by his credit report, and by correspondence from the successor creditor. (*Id.*) I find that Applicant is making a good-faith effort to address this past-due debt.

1.c. Applicant admits that he had a second past-due debt to Creditor B in the amount of about \$25,096. Applicant has also begun to make \$25 payments towards this debt, to the satisfaction of the successor creditor to this debt. (Response, Item 1 at page 6, and Item 2 at page 2.) This is evidenced by his credit report, and by correspondence from the successor creditor. (*Id.*) I find that Applicant is making a good-faith effort to address this past-due debt.

1.d. Applicant admits that he had a third past-due debt to Creditor B in the amount of about \$7,422. Applicant has also begun to make \$25 payments towards this debt, to the satisfaction of the successor creditor to this debt. (Response, Item 1 at page 4, and Item 2 at page 1.) This is evidenced by his credit report, and by correspondence from the successor creditor. (*Id.*) I find that Applicant is making a good-faith effort to address this past-due debt.

1.e. Applicant admits that he had a past-due debt to Creditor E in the amount of about \$2,376. Through counsel, Applicant is making a good-faith effort to ascertain the successor creditor to this debt, which is listed as past-due in the amount of \$677 on his May 2017 credit report. (Response, Item 1 at page 8, and Item 3.) This is evidenced by his credit report, and by court documents. (*Id.*) I find that Applicant is making a good-faith effort to address this past-due debt.

1.f. Applicant admits that he had a past-due debt to Creditor F in the amount of about \$3,139. Through counsel, Applicant has settled this debt, which is not listed as past-due on his May 2017 credit report. (Response, Item 1 at page 7, and Item 3.) This is evidenced by his credit report, and by court documents. (*Id.*) I find that Applicant has resolved this past-due debt.

1.g. Applicant denies that he had a past-due debt to Creditor G in the amount of about \$1,225. He avers that he settled this debt; and furthermore, it does not appear on his May 2017 credit report. (Response, Item 1.) I find that Applicant has settled this alleged debt.

## Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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, these guidelines are applied 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "[a]ny determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. . . .

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying 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. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant acted responsibly under unforeseen difficult circumstances that were completely beyond his control, a substantial reduction of income in 2013, and there are clear indications that his financial issues are under control. He has since made a good-faith effort to address all of his admitted past-due debts, and has settled the one debt he denied, Subparagraph 1.g. The record establishes clear mitigation of financial security concerns under the provisions of AG ¶¶ 20(a), 20(b), 20(d), and 20(e).

### **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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a retired Army Colonel, who took reasonable and effective action to resolve the financial issues created by his significant reduction of income in 2013. The likelihood that financial problems will recur is minimal. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, eligibility, and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising under the guideline for Financial Considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.g: 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. National security eligibility is granted.

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Richard A. Cefola  
Administrative Judge