



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



In the matter of: )  
)  
) ISCR Case No. 17-00853  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

October 25, 2018

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On April 19, 2017, 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 Guidelines F and E.<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 4, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 16, 2017. The Defense Office of Hearings and Appeals (DOHA) originally issued a notice of hearing on August 21, 2017, scheduling the hearing for September 25, 2017. The hearing was initially convened as scheduled, but it became abundantly clear that Applicant had little idea as to what his hearing encompassed. (Transcript (TR) #2 at page 4 line 19 to page 6 line 7.) As a result, the hearing was continued until November 20, 2017. (TR.) The Government offered Exhibits (GX) 1 through 5, which were admitted without objection.

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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.

Applicant testified on his own behalf. Applicant presented two documents, which I marked Applicant's Exhibits (AppXs) A and B, and received into evidence. The record was left open until February 23, 2018, for receipt of additional documentation. On February 22, 2018, Applicant presented an additional document, which I marked as AppX C, and received into evidence. DOHA received TR #2 on December 5, 2017.

### **Findings of Fact**

Applicant is 65 years old. His wife passed away in 2012. (GX 1 at page 5 and AppX B.) He attributes his past-due indebtedness to losing his will to live with the passing of his wife. (TR at page 15 line 16 to page 17 line 10.)

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

1.a. Applicant admits that he is indebted to Creditor A for a past-due store debt in the amount of about \$7,585. (TR at page 18 line 12 to page 19 line 2.) Despite having been given three months to address this substantial debt, Applicant has submitted nothing in this regard. This allegation is found against Applicant.

1.b. Applicant admits that he is indebted to Creditor B for a past-due credit card debt in the amount of about \$5,040. (TR at page 19 lines 3~19.) Applicant has made intermittent \$10~\$25 payments towards this debt from June of 2016 until September of 2017, but has submitted nothing more current in this regard. (AppX C at page 5.) This allegation is found against Applicant.

1.c. Applicant admits that he is indebted to Creditor C for a past-due automobile loan in the amount of about \$4,572. (TR at page 17 line 16 to page 18 line 11.) Despite having been given three months to address this substantial debt, Applicant has submitted nothing in this regard. This allegation is found against Applicant.

1.d. and 1.g. These are one and the same past-due debt to Creditor D in the amount of \$114. (TR at page 19 lines 20~25.) Despite having been given three months to address this admitted debt, Applicant has submitted nothing in this regard. These allegations are found against Applicant.

1.e. Applicant has paid this admitted past-due phone debt, as evidenced by documentation from Creditor E. (TR at page 20 lines 14~20, and AppX C at page 2.) This allegation is found for Applicant.

1.f. Applicant has paid this admitted past-due gasoline debt, as evidenced by documentation from Creditor F. (TR at page 20 lines 2~11, and AppX C at page 4.) This allegation is also found for Applicant.

## **Guideline E – Personal Conduct**

2.a. At his hearing, Applicant's admitted that he falsified his December 2015 Security Clearance Applicant when he answered "No" to two questions under **Section 26 – Financial Record Delinquency Involving Routine Accounts**. (TR at page 21 line 12 to page 22 line 10, and GX 1 at page 23.) This allegation is found against Applicant.

### **Policies**

When evaluating an applicant's suitability for a security clearance, 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, "Any 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, "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 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, "Any 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 *a/s/o* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

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

The concern under this guideline 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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports (GXs 3~5), establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of these mitigating conditions have been established. Although Applicant had attributed his past-due indebtedness to his wife's passing, his financial problems are not under control.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.d., and 1.g. against Applicant. As stated, SOR ¶¶ 1.e. and 1.f. are found for Applicant.

### **Guideline E - Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of his SCA, the following disqualifying condition could apply:

AG ¶ 16 (a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted falsifying his SCA. Therefore, AG ¶ 16(a) is established.

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors in AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the mitigating conditions outlined above, none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment. He provided no information that indicates he was ill-advised in completing his SCA. Falsifying information is a serious offense and Applicant has not shown that similar lapses in judgment are unlikely to recur. Further, he failed to take responsibility for his actions. He has not provided sufficient information in this record to demonstrate that he has met his burden of proof to mitigate the concern under Guideline E, Personal Conduct.

## **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common-sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant deliberately falsified his SCA, and he has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

## **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a. ~ 1.d:	Against Applicant
Subparagraphs 1.e. and 1.f.:	For Applicant
Subparagraph 1.g.:	Against Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
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### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's national security eligibility. Clearance is denied.

Richard A. Cefola  
Administrative Judge