



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



In the matter of:

ISCR Case No. 17-01058

Applicant for Security Clearance

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

August 1, 2018

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On May 10, 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 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 June 5, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 10, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 15, 2017, scheduling the hearing for September 13, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 14, which

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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.

were admitted into evidence. Applicant testified on his own behalf. Applicant presented 12 documents, which I marked Applicant's Exhibits (AppXs) A through L, and admitted into evidence. The record was left open until November 10, 2017, for receipt of additional documentation. On November 6, 2017, Applicant offered AppX M, which was also admitted into evidence. DOHA received the transcript of the hearing (TR) on September 22, 2017.

### **Findings of Fact**

Applicant admitted all the allegations of SOR, except for allegation ¶ 1.g., as he "cannot locate the source of this debt." After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

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

Applicant is a 39-year-old employee of a defense contractor. (GX 4 at page 5.) He has been employed with the defense contractor since 2006. (TR at page 13 line 13 to page 14 line 18.) Prior to that, from 2004~2006, Applicant was underemployed, which caused the past-due indebtedness that is of concern to the Government. (TR at page 24 line 15 to page 25 line 18.) He has held a security clearance since 2008. (GX 4 at page 35.) He is married, and has three children. (GX 4 at pages 17, and 21~22.)

1.a., 1.e., 1.j., and 1.k. Applicant owes a total of about \$103,000 in student loans that had been placed in a collection status. (TR at page 14 line 23 to page 31 line 6, at page 40 line 2 to page 41 line 8, and AppXs A and M.) Initially, his wages were garnished to address this substantial debt; but his wages have ceased being garnished, and Applicant is making monthly payments of \$1,200 towards his student loan debt. This is evidenced by a letter from the Federal government. (AppX M.) I find that Applicant is making a good-faith effort to address his student loan debt.

1.b. Applicant admitted that he had a past-due debt to Creditor B in the amount of about \$740. (TR at page 31 line 7 to page 33 line 21.) This debt "was satisfied" prior to the issuance of the SOR, as evidenced by documentation from Creditor B. (AppX B.) I find Applicant has addressed this alleged past-due debt.

1.c. Applicant admitted that he had a past-due debt to Creditor C in the amount of about \$625. (TR at page 34 lines 2~7.) This debt has a "current balance . . . [of] \$0.00," as evidenced by documentation from Creditor C. (AppX C.) I also find Applicant has addressed this alleged past-due debt.

1.d. Applicant admitted that he had a past-due debt to Creditor D in the amount of about \$552. (TR at page 33 line 22 to page 34 line 2.) This debt also has a "current balance . . . [of] \$0.00," as evidenced by documentation from Creditor D. (AppX D.) I find Applicant has addressed this alleged past-due debt.

1.e. This allegation has already been discussed, above.

1.f. Applicant admitted that he had a past-due debt to Creditor F in the amount of about \$2,087. (TR at page 34 line 9 to page 35 line 12.) This debt was settled for \$1,528.14 and paid, as evidenced by documentation from Creditor F. (AppX F.) I find Applicant has addressed this alleged past-due debt.

1.g. Applicant denies that he is indebted to Creditor G for a past-due medical bill in the amount of about \$696. (TR at page 35 line 13 to page 36 line 13.) Furthermore, it does not appear on the Government's most recent August 2017 credit report. (GX 10.) Applicant does aver, however; that if shown it is his debt, he will pay it. (TR at page 35 line 13 to page 36 line 13.) I find that Applicant is willing and able, in good-faith, to address this alleged past-due debt if it is legitimate.

1.h. Applicant admitted that he had a past-due debt to Creditor H in the amount of about \$358. (TR at page 36 line 4 to page 37 line 9.) This debt also has been paid, as evidenced by documentation from Creditor H. (AppX H.) I find Applicant has addressed this alleged past-due debt.

1.i. Applicant admitted that he had a past-due debt to Creditor I in the amount of about \$254. (TR at page 37 lines 10~21.) This debt also has been paid, as evidenced by documentation from Creditor I. (AppX I.) I find Applicant has addressed this alleged past-due debt.

1.j. and 1.k. These allegations have already been discussed, above.

### **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 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;
- (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's financial problems occurred during a two year period of underemployment. He has since addressed all the alleged past-due debts, except for a \$696 debt, which he is ready, willing and able to address if showed he owes it. He has thus demonstrated that future financial problems are unlikely. Mitigation under AG ¶¶ 20(a), (b), (d), and (e) has 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. His resolution of former financial delinquencies has eliminated the potential for pressure, coercion, or duress.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant is well respected by those who know him in his community and in the workplace.

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.k.: 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 for a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge