



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01648

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

August 16, 2018

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On May 30, 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 July 6, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 5, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 8, 2017, scheduling the hearing for September 27, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 4, 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 two documents, which I marked Applicant's Exhibits (AppXs) A and B, and admitted into evidence. The record was left open until November 30, 2017, for receipt of additional documentation. On November 30, 2017, Applicant offered AppX C, which was also admitted into evidence. DOHA received the transcript of the hearing (TR) on October 5, 2017.

### **Findings of Fact**

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

Applicant is a 40-year-old employee of a defense contractor. (GX 1 at pages 5 and 14.) He has been employed with the defense contractor since August of 2016. (GX 1 at page 14.) He has held a security clearance since about September of 2005. (GX 1 at page 38.) Applicant served in the U.S. Air Force from 2006~2010. (TR at page 17 line 4 to page 20 line 14, and GX 1 at page 21, and AppX C at page 3.) He is divorced from his former spouse. (See TR at page 28 line 23 to page 31 line 24.)

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

1.a. Applicant admits that he was indebted to the Internal Revenue Service (IRS) as the result of a tax lien in the amount of about \$19,169. While deployed overseas with the Air Force, from 2001~2013, Applicant was under the impression that his overseas income was excluded from taxation, as long as Applicant filed the appropriate documentation with the IRS. (TR at page 20 line 19 to page 26 line 13.) Applicant hired an attorney to do those filings. (*Id.*) Said attorney did not do the required filings; and as a result, was prosecuted by the Department of Justice. (TR at page 20 line 19 to page 26 line 13, and AppX A at page 1.) Applicant has since paid the tax lien, as evidenced by documentation from the IRS. (AppX A at pages 2~8.) This allegation is found for Applicant.

1.b. Applicant admits that he owes about \$9,275 to Creditor B, as the result of an automobile repossession of a vehicle that he co-owned with his former spouse. (TR at page 28 line 23 to page 31 line 24.) This past-due debt also appears on Applicant's most recent September 2017 credit report (CR). (AppX B at pages 16 and 22.) Despite having been given more than two months after his hearing to address this admitted debt, Applicant has submitted nothing further in this regard. (TR at page 35 line 15 to page 36 line 23.) This allegation is found against Applicant.

1.c. Applicant admits that he owes a past-due debt of about \$2,428 to Creditor C, as the result of "a timeshare" he co-owned with his former spouse. (TR at page 31 line 25 to page 33 line 6.) This past due-debt also appears on Applicant's most recent September 2017 credit report (CR). (AppX B at pages 15 and 20.) Again, despite having been given more than two months after his hearing to address this admitted debt, Applicant has submitted nothing further in this regard. (TR at page 36 line 23 to page 37 line 12.) This allegation is also found against Applicant.

1.d. Applicant avers that he paid an alleged past-due debt to Creditor D in the amount of about \$162. (TR at page 26 line 16 to page 27 line 13.) This averment is supported by Applicant's most recent September 2017 CR. This allegation is also found for Applicant.

1.e. Applicant avers that he paid an alleged past-due debt to Creditor E in the amount of about \$1,198. (TR at page 27 line 14 to page 28 line 13.) This averment is supported by Applicant's most recent September 2017 CR. This allegation is found for Applicant.

1.f. Applicant avers that he paid an alleged past-due debt to Creditor F in the amount of about \$119. (TR at page 28 lines 14~22.) This averment is supported by Applicant's most recent September 2017 CR. 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. Four are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had a significant tax lien, and other 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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;
- (f) the affluence resulted from a legal source of income; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial problems are ongoing. He has a history of delinquencies. Although he has addressed his tax lien and his smaller past-due debts, two admitted debts remain outstanding totaling about \$11,703. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not 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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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: AGAINST APPLICANT

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

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola  
Administrative Judge