



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



Appearances

For Government: Andrea M. Corrales, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

02/20/2025

Decision on Remand

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On January 22, 2024, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F (Financial Considerations). 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 April 1, 2024, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on June 20, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 1, 2024, scheduling the hearing for July 23, 2024. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 7, which were admitted into evidence. Applicant testified on his own behalf. The record was left open until

September 23, 2024, for receipt of additional documentation. Applicant submitted two packets of documents, which I marked and admitted into evidence as Applicant's Exhibits (AppXs) A and B. DOHA received the transcript of the hearing (TR) on August 5, 2024.

On November 14, 2024, the undersigned issued a Decision denying Applicant national security eligibility for a security clearance. On January 28, 2025, the Appeal Board remanded that Decision.

Remand Order

The Appeal Board stated: Our review of the record confirms that – contrary to the Judge's findings - AppX A contains documents regarding the debt alleged at SOR ¶ 1.g. Specifically, Applicant submitted proof of a payment plan and an initial payment under that plan. AppX A at 13~14. The Judge apparently overlooked these documents.

The undersigned considered AppX A, but it was unclear that AppX A at pages 13 to 14 applied to SOR ¶ 1.g. Applicant's exhibit makes no reference to "JPMCB CARD," rather it is styled coming from "CHASE CARDMEMBER SERVICES." The Appeal Board has now clarified this discrepancy; and as such, I now make the following Findings of Fact and Formal Findings:

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, and 1.g~1.n. He denied SOR allegations ¶¶ 1.b~1.f. and 1.o. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 65-year-old employee of a defense contractor. He has been employed with the defense contractor since May 2020. He is twice divorced, and has no children. (GX 1 at pages 5, 12 and 30~32.) Applicant attributes his current financial difficulties to periods of underemployment, working for the Peace Corps in Africa; for the US AID (Agency for International Development) in Nicaragua, Colombia, and Lebanon; for the National Organization of Migration (NOM) in Afghanistan; and for the U.S. Military "for large-scale training exercises." (TR at page 16 line 2 to page 18 line 24.) He also attributes his financial difficulties to his most recent divorce. (TR at page 53 line 19 to page 54 line 14.)

Guideline F - Financial Considerations

1.a. Applicant admits that he has a past-due debt to Creditor A in the amount of about \$3,927. (TR at page 48 line 25 to page 50 line 20, and Answer at page 22.) Since December of 2021, he has been making monthly payments of \$100 towards the original, past-due debt of \$6,645. This is evidenced by documentation from Creditor A (Answer at pages 20~22.)

1.b.~1.f. Applicant denies that he is not current with his student loans, the past-due amount being about \$1,406. He is current with his student loans, as evidenced by documentation from the creditor. (TR at page 40 line 17 to page 43 line 6, and Answer at page 39.)

1.g. and 1.h. Applicant admits that he has two past-due debts to Creditor G, in the amounts of \$5,109 and \$5,687, respectively. (TR at page 52 line 10 to page 53 line 18.) He is making monthly payments of \$212 towards the \$5,109 admitted debt, as evidenced by AppX A at pages 13~14; and he has made arrangements to make monthly payments of \$158 towards the \$5,687 admitted debt. (Cover page of post hearing exhibits.)

1.i. Applicant admits that he had a past-due debt to Creditor I in the amount of about \$4,717. He has submitted an IRS Form 1099-C showing the creditor has written-off this debt, and Applicant has included this debt as in his 2023 IRS income tax filing. (AppX B.)

1.j. Applicant admits that he has another past-due debt to Creditor A in the amount of about \$10,115. (TR at page 44 line 18 to page 48 line 24, and Answer at page 17.) Since December of 2022, he has been making monthly payments of \$50 towards this original, past-due debt. This is evidenced by documentation from Creditor A (AppX A at pages 17~19.)

1.k.~1.n. Applicant admits that he owed the Federal Government about \$32,054 in back taxes for tax years 2015, 2016, 2019 and 2020. Since May of 2023, he has been making monthly payments of \$540 towards his back-taxes, and currently owes about \$28,092. (TR at page 19 line 19 to page 24 line 15, at page 31 line 9 to page 36 line 11, and AppX A at pages 7~10.)

1.o. Applicant admits that he owes back taxes, for tax years 2014 and 2015, to his state, but denies the amount alleged. (TR at page 24 line 22 to page 29 line 25.) It alleges that he owes \$12,721, but he has submitted documentation that through a payment plan his state tax debt has been reduced to \$9,306. (Answer at pages 14~16.)

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 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.

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 has significant past-due indebtedness. He also had Federal and state income tax delinquencies. 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
- (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 can attribute his financial difficulties to periods of underemployment and to a divorce. He has now addressed all the alleged past-due indebtedness. Applicant has demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has been sufficiently 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.

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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant performs well at his job. (AppX A the last page.) 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.o:

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.

Richard A. Cefola
Administrative Judge