



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 14-04091  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

September 22, 2015

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 16, 2013. On November 11, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on December 5, 2014. He answered the SOR in writing on December 18, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and it was assigned to another Administrative Judge. I received the case assignment on February 24, 2015. DOHA had already issued a notice of hearing on February 19, 2015, and I convened the hearing as scheduled on March 25, 2015. The Government offered Exhibits (GXs) 1 through 5, which were

received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) A through F, which were received without objection. DOHA received the transcript of the hearing (TR) on April 1, 2015. I granted Applicant's requests, one made at his hearing and three made after his hearing, to keep the record open until July 22, 2015, to submit additional matters. On June 17, July 15, and July 22, 2015, he submitted Exhibits G, H, and I, respectively, which were received without objection. As the undersigned was on leave on July 22, 2015, the record closed on August 5, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.b., and 1.c. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.a., 1.d., 1.e., and 1.f. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

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

Applicant is a 43 year old "Operations Manager." (TR at page 31 lines 3~8, and GX 1 at page 5.) He attributes the alleged financial difficulties to his 2012 divorce. (TR at page 39 line 15 to page 41 line 7.) Half of the alleged past-due debts are related to real estate owned during that failed marriage.

1.a. This alleged debt is to Creditor A, on a real estate mortgage account, with a past-due amount of about \$19,856, on a balance of about \$434,051. (GX 5 at page 5.) This property was sold by foreclosure; and the amount owed is "\$0.00," as evidenced by an Internal Revenue Service (IRS) Form 1099-C, and a June 2015 credit report (CR). (TR at page 50 line 21 to page 54 line 14, and AppXs G at pages 1~2 and H at page 1.) This allegation is found for Applicant.

1.b. This alleged debt is to Creditor B, on another real estate mortgage account, with a past-due amount of about \$6,482, on a balance of about \$378,787. (GX 5 at page 2.) This second property was sold by short sale; and the amount owed is "\$0," as evidenced by documentation from Creditor B. (TR at page 54 line 19 to page 57 line 8, and AppXs G at pages 3~7 and H at pages 2~4.) This allegation is found for Applicant.

1.c. This alleged debt is to Creditor C, on a home equity line account for the real estate property in subparagraph 1.b., above, with a past-due amount of about \$1,540, on a balance of about \$95,998. (GX 5 at page 2.) Again, this property was sold by short sale; and "settled in full," as evidenced by documentation from Creditor C. (TR at page 57 line 9 to page 59 line 16, and AppX I.) This allegation is found for Applicant.

1.d. This alleged debt is to Creditor D in a past-due amount of about \$13,839. (GX 4 at page 2.) This debt has been "Settled in Full," as evidenced by documentation

from Creditor C. (TR at page 59 line 17 to page 61 line 21, and AppX B.) This allegation is found for Applicant.

1.e. This alleged debt is to Creditor E in a past-due amount of about \$7,146. (GX 4 at page 1.) His payment “of \$2,200.00 on 07/31/10 . . . constitutes settlement-in-full,” as evidenced by documentation from Creditor C. (TR at page 61 line 22 to page 63 line 2, and AppX C.) This allegation is found for Applicant.

1.f. This last alleged debt is to Creditor F in a past-due amount of about \$7,130. This debt has “been settled, and resolved,” as evidenced by court documents. (TR at page 63 lines 3~21, and AppX D.) This allegation is found for Applicant.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, 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 useful in evaluating an applicant’s eligibility for access to classified information.

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 the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 2(c), 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. Paragraph 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters 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 10865 provides that 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 Paragraph 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 19(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly under Subparagraph 19(c), “*a history of not meeting financial obligations*” may raise security concerns. Applicant has had difficulty meeting his financial obligations. However, I find two countervailing Mitigating Conditions that are applicable here. Under Subparagraph 20(b), it may be mitigating where “*the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. . . . divorce or separation), and the individual acted responsibly under the circumstances.*” Applicant’s past-due indebtedness is directly attributed to his 2012 divorce. Under Subparagraph 20(d), it may also be mitigating where “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Applicant has made a good-faith effort to resolve all of the alleged past-due debts.

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of Applicant’s conduct and all the circumstances. Under Paragraph 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.

The administrative judge should also consider the nine adjudicative process factors listed at AG Paragraph 2(a):

- (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 considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case, and that Applicant is well respected in his workplace. (AppXs E and F.) The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has mitigated the security concerns arising from her Financial Considerations, under the whole-person concept.

### **Formal Findings**

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For 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 clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola  
Administrative Judge