



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-05989
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

November 10, 2015

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**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 20, 2013. On March 26, 2015, 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 April 6, 2015. He answered the SOR in writing on June 12 and June 15, 2015, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on July 27, 2015. DOHA issued a notice of hearing on August 13, 2015, and I convened the hearing as scheduled on September 16, 2015. The Government offered Exhibits (GXs) 1 through 5, which were received without objection. Applicant testified on his own behalf. DOHA

received the transcript of the hearing (TR) on September 24, 2015. I granted Applicant's request to keep the record open until October 16, 2015, to submit additional matters. He submitted no Exhibits. The record closed on October 16, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Procedural and Evidentiary Rulings**

### **Motion to Amend SOR**

At the hearing, Department Counsel moved to amend the SOR by adding Subparagraph 1.g., alleging "You [Applicant] are indebted to the IRS for \$17,000 on a tax lien, due to a 401K withdrawal . . . for tax years 2013 and 2014." (TR at page 30 lines 13~25.) Applicant had no objection to the motion; and as such, the SOR was so amended. (TR at page 31 lines 4~12.)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegation in Subparagraph 1.a. of the SOR, with explanation. At the hearing, he also admitted the added Subparagraph 1.g. Applicant denied the factual allegations in Subparagraphs 1.b.~1.f. of the SOR. He also provided additional information to support his request for a finding of eligibility for a security clearance.

### **Guideline f - Financial Considerations**

Applicant is a 55 year old employee of a Federal contractor. (GX 1 at page 5, and TR at page 17 lines 5~11.) He has worked for his current employer for "about 15 years," but this is the first time he has applied for a security clearance. (*Id.*) In part, Applicant attributes his current financial difficulties to a divorce from his "first marriage." (TR at page 17 lines 18~21.)

1.a. Applicant admits that he filed for the protection of a Chapter 13 bankruptcy in January of 2012, and that it was dismissed in March of 2012. (TR at page 17 line 16 to page 18 line 25.) He explains that he "had fallen about four months behind . . . [on his] mortgage." Based on what he now views as bad advice from counsel, he applied for the protection of bankruptcy. (*Id.*) Applicant did not follow through with this bankruptcy; and as a result, it was dismissed.

1.b. Applicant denies that he is indebted to Creditor B for a past-due debt in the amount of about \$6,900. (TR at page 19 line 8 to page 20 line 12.) His averment is supported by the Government's most recent September 2015 credit report that shows this account is not past due. (TR at page 20 line 13 to page 21 line 13, and GX 5 at page 3.) This allegation is found for Applicant.

1.c. Applicant denies that he is indebted to Creditor C for a past-due, gas credit card, debt in the amount of about \$446. (TR at page 20 line 13 to page 21 line 13.) He avers that he will provide supporting documentation in this regard. (*Id.*) He has provided no such documentation; and as the allegation is supported by the Government's August 2014 credit report (GX 3), this allegation is found against Applicant.

1.d. Applicant denies that he is indebted to Creditor D for a past-due credit card debt in the amount of about \$9,500. (TR at page 21 line 14 to page 22 line 4.) He again avers that he will provide supporting documentation in this regard. (*Id.*, and TR at page 25 lines 11~25.) He has provided no such documentation; and as the allegation is supported by the Government's January 2014 credit report (GX 2 at page 4), this allegation is found against Applicant.

1.e. Applicant denies that he is indebted to Creditor E for a past-due medical debt in the amount of about \$50. (TR at page 22 lines 5~11.) He avers that he will make inquires as to this debt. (*Id.*) He has provided nothing further in this regard; and as the allegation is supported by the Government's January 2014 credit report (GX 2 at page 5), this allegation is found against Applicant.

1.f. Applicant denies that he is indebted to Creditor F for another past-due medical debt in the amount of about \$84. (TR at page 22 lines 12~24.) He again avers that he will make inquires as to this debt. (*Id.*) He has provided nothing further in this regard; and as the allegation is supported by the Government's January 2014 credit report (GX 2 at page 5), this allegation is found against Applicant.

1.g. Applicant admits that he is indebted to the IRS for \$17,000 on a tax lien for tax years 2013 and 2014. (TR at page 26 line 23 to page 28 line 3.) He avers that he has made arrangements with the IRS to make monthly payments of \$600, and that he would provide supporting documentation in this regard. (*Id.*, and TR at page 28 line 4 to page 31 line 12.) As Applicant has provided no such documentation, 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 (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. (AG Paragraph 2.) 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. AG Paragraph 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information 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. 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 AG 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 significant past-due debts, which he has not yet resolved. I can find no countervailing Mitigating Condition that is applicable here. Under Subparagraph 20(b), the indebtedness may be attributed to a failed marriage that was beyond his control. However, he has not provided any documentary evidence showing he has *“acted responsibly under the circumstances.”* Financial Considerations are found against Applicant.

### **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 the circumstances. Under AG 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. The record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. Applicant has failed to fully respond to the Government’s concerns; and as such, has failed to address the alleged past-due debts. For this reason, I conclude Applicant has not mitigated the security concerns under the whole-person concept arising from his Financial Considerations.

## **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:	AGAINST APPLICANT
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola  
Administrative Judge