



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-06729
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

March 30, 2016

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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 June 2, 2014. On May 13, 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 answered the SOR in writing (Answer) on June 12, 2015, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on October 26, 2015. Applicant responded to the FORM (Response) on November 17, 2015. Department Counsel had no objection, and the Response is entered into evidence. The case was assigned to me on December 15, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in Paragraphs 1.a., and 1.b., of the SOR, with explanations. He denied the factual allegations in Paragraphs 1.c., 1.d., and 1.e. of the SOR, also with explanations.

### Guideline F - Financial Considerations

Applicant is a 45 year-old employee of a defense contractor. (Item 5 at pages 5 and 8~9.) He has been so employed since March of 2004. (Item 5 at page 9.) He is also a member of the Army Reserve as a Lieutenant Colonel. (Item 5 at pages 10~11, and Response at page 1.) In October of 2007, he reported to active duty (as a then-Major) for deployment to Iraq. (Item 4 at page 9.) His call to active duty was for "400 days," which extended it through 2008. (*Id.*)

1.a. and 1.c. These appear to be one and the same past-due debt to Creditor A in the amount of about \$5,277. In August of 2007, pursuant to "the Servicemembers Civil Relief Act (SCRA)," Applicant asked that his interest payments be reduced to "6% per annum," as he expected his "entry into military service . . . [to] materially . . . [affect his] ability to meet this obligation." (Item 4 at page 11, and 50 U.S.C. App. 501 et seq.) However, this debt, which is now a judgment against Applicant, still appears on an October 2015 credit report (CR). (Item 13 at page 1.) Although he avers "I need to . . . have the judgment vacated/reversed," there is no evidence that Applicant has, in fact, addressed this outstanding judgment. (Item 4 at page 5.) In his Response, Applicant attributes his failure to address this judgment to his "spouse [who] primarily handled the responsibility of paying our bills." (Response at page 1.) He has also submitted court documents showing he is divorcing said spouse. (Response at pages 2~5.) However, as Applicant has failed to submit documentation showing he is addressing this judgment, I find it to be outstanding.

1.b. This is an alleged past-due debt to Creditor B for an automobile loan in the amount of about \$8,823. Applicant avers that in 2012, "the engine seized up . . . [and the automobile was] towed to a local auto repair shop. The engine was considered a total loss . . . . The vehicle return/disposal was handled between . . . [Creditor C] and the repair shop." According to the Government's most recent October 2015 CR, "Scheduled Payment[s]" of "\$367" are being made towards this debt, and it is not past due. (Item 13 at page 2.) This allegation is found for Applicant.

1.d. This is an alleged past-due debt to Creditor D in the amount of about \$5,353. Applicant has received an IRS Form 1099-MISC vis-a-vis this debt; and as such, Department Counsel admits that "it does not appear that Applicant owes anything further on this account." (Item 4 at page 20, and Form at page 7.) This allegation is found for Applicant.

1.e. Applicant has formally disputed this alleged past-due debt to Creditor E in the amount of about \$466. This formal dispute is noted on the Government's most recent October 2015 CR. (Item 13 at page2.) I find that Applicant is making a good-faith effort to address this debt.

## 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 *a/so* 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 a significant judgment, which he has not yet formally addressed.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant now attributes his outstanding judgment to his estranged wife's lack of action, he has failed to act *"responsibly under the circumstances,"* as required by Subparagraph 20(b) with respect to his debt. Furthermore, Subparagraph 20(d) requires that *"the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."* Applicant has yet to credibly address his outstanding judgment. Accordingly, Applicant has not met his burden of persuasion.

### 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 Applicant's eligibility and suitability for a security clearance. Applicant has a outstanding judgment against him, which he has yet to address. For these reasons, 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.	For Applicant
Subparagraph 1.e.	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola  
Administrative Judge