



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 12-05824  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

November 20, 2014

---

**Decision**

---

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on November 14, 2011. On May 8, 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 answered the SOR in writing on June 18, 2014, sworn to on June 19, 2014, 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 24, 2014. DOHA issued a notice of hearing on August 15, 2014, and I convened the hearing as scheduled on September 2, 2014. The Government offered Exhibits (GXs) 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AppX) A, which was also

received without objection. DOHA received the transcript of the hearing (TR) on September 10, 2014. I granted Applicant's request to keep the record open until October 17, 2014, to submit additional matters. On October 17, 2014, he submitted by U.S. Mail, AppX B, which was received on October 21, and Department Counsel noted no objection on October 23, 2014. The record closed the next day, on October 24, 2014, when AppX B was received at the DOHA Telework Site. 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.a., 1.f., 1.h., 1.j., 1.n., and 1.o. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.b.~1.e., 1.g., 1.i., and 1.k.~1.m. 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 58 year old Navy veteran. (TR at page 23 line 15 to page 26 line 13.) He retired after 25 years of honorable service as a Senior Chief. (TR at page 25 line 4 to page 26 line 13.) Applicant was born and raised in New Orleans; and when Hurricane Katrina devastated that city, he overextended himself financially by helping his extended family. (TR at page 28 line 23 to page 29 line 9, and at page 41 line 19 to page 42 line 16.) This, coupled with his wife losing her job, caused the financial difficulties at issue. (TR at page 41 line 24 to page 42 line 2.)

1.a. Applicant admits that he is indebted to Creditor A on a credit card debt in the amount of about \$3,332. (TR at page 28 line 10 to page 29 line 23.) He is making a monthly payment towards this debt, as evidenced by a document showing a \$150 monthly payment to this Creditor, which is also his credit union. (*Id.*, and AppX B at Encl 1.) I find that this debt is being resolved.

1.b. It is alleged that Applicant is indebted to Creditor B in the amount of about \$1,552. He has formally disputed this past-due debt in writing, and it does not appear on the Government's most recent, September 2014, credit report (CR). (TR at page 29 line 24 to page 31 line 6, AppX B at Encl 8, and GX 7.) I find that this debt is not past due.

1.c. It is alleged that Applicant is indebted to Creditor C in the amount of about \$7,869. He formally disputed this past-due debt; and as a result, it has been "DELETED" from his CR, as evidenced the CR's "Online Dispute Service." (TR at page 31 line 7 to page 32 line 14, and AppX B at Encl 3.) I find that this debt is not past due.

1.d. It is alleged that Applicant is indebted to Creditor D in the amount of about \$141. He formally disputed this past-due debt; and as a result, it has been "DELETED"

from his CR, as evidenced the CR's "Online Dispute Service." (TR at page 32 line 15 to page 33 line 8, and AppX B at Encls 2 and 3.) I find that this debt is not past due.

1.e. It is alleged that Applicant is indebted to Creditor E in the amount of about \$8,420. He formally disputed this past-due debt; and as a result, it has been "DELETED" from his CR, as evidenced the CR's "Online Dispute Service." (TR at page 33 line 9 to page 34 line 6, and AppX B at Encl 3.) I find that this debt is not past due.

1.f. It is alleged that Applicant is indebted to Creditor F in the amount of about \$117. He avers, credibly, that he has paid this debt, and it does not appear on the Government's most recent CR. (TR at page 34 lines 7~24, *see also* GX 7.) Furthermore, his credibility is attested to by those who know him in the work place and in his community. (AppX A.) I find that this debt is not past due.

1.g. It is alleged that Applicant is indebted to Creditor G in the amount of about \$32. He has formally disputed this past-due debt in writing, and it does not appear on the Government's most recent CR. (TR at page 35 lines 1~20, AppX B at Encl 7, and GX 7.) I find that this debt is not past due.

1.h. and 1.i. It is alleged that Applicant is indebted to Creditor H, as the result of a foreclosure, in the amount of about \$178,927 on his primary mortgage loan, and in the amount of about \$45,115 on his second mortgage loan. Applicant believes that this property was resold for more than he owed on it. Furthermore, he never received tax forms from the lender indicating otherwise. He formally disputed these past-due debts; and as a result, they have been "DELETED" from his CR, as evidenced the CR's "Online Dispute Service." (TR at page 38 line 10 to page 39 line 8, at page 42 line 17 to page 47 line 24, at page 51 line 1 to page 58 line 4, and AppX B at Encl 3.) I find that these debts are not past due.

1.i. It is alleged that Applicant is indebted to Creditor I in the amount of about \$5,141. He has formally disputed this past-due debt in writing, and it does not appear on the Government's most recent CR. (TR at page 35 line 24 to page 36 line 8, AppX B at Encl 4, and GX 7.) I find that this debt is not past due.

1.j. It is alleged that Applicant is indebted to Creditor J in the amount of about \$82. He avers, credibly, that he has paid this debt, and it does not appear on the Government's most recent CR. (TR at page 37 lines 13~19, *see also* GX 7.) I find that this debt is not past due.

1.k. It is alleged that Applicant is indebted to Creditor K in the amount of about \$6,528. He formally disputed this past-due debt; and as a result, it has been "DELETED" from his CR, as evidenced the CR's "Online Dispute Service." (TR at page 37 line 20 to page 38 line 9, and AppX B at Encl 3.) I find that this debt is not past due.

1.l. This alleged past-due debt has already been discussed in conjunction with Subparagraph 1.h., above.

1.m. It is alleged that Applicant is indebted to Creditor M in the amount of about \$8,808. He has formally disputed this past-due debt in writing, and it does not appear on the Government's most recent CR. (TR at page 39 lines 14~20, AppX B at Encl 6, and GX 7.) I find that this debt is not past due.

1.n. It is alleged that Applicant is indebted to Creditor N in the amount of about \$53. He avers, credibly, that he has paid this debt, and it does not appear on the Government's most recent CR. (TR at page 39 line 21 to page 40 line1, see *also* GX 7.) I find that this debt is not past due.

1.o. It is alleged that Applicant is indebted to Creditor O in the amount of about \$21,421. He has formally disputed this past-due debt in writing, and it does not appear on the Government's most recent CR. (TR at page 40 line 2 to page 41 line 10, at page 58 lines 5~25, AppX B at Encl 9, and GX 7.) I find that this debt is not past due.

### **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. loss of employment . . . ), and the individual acted responsibly under the circumstances.*” Applicant’s past-due indebtedness is directly attributed to Hurricane Katrina in 2005, and his wife losing her job soon thereafter. 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 either paid, is paying, or has made a good-faith effort to resolve all of the alleged 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. Those who know Applicant in the workplace and in the community speak most highly of him. (AppX A.) 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 his 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 |

|                   |               |
|-------------------|---------------|
| Subparagraph 1.g. | For Applicant |
| Subparagraph 1.h. | For Applicant |
| Subparagraph 1.i. | For Applicant |
| Subparagraph 1.j. | For Applicant |
| Subparagraph 1.k. | For Applicant |
| Subparagraph 1.l. | For Applicant |
| Subparagraph 1.m. | For Applicant |
| Subparagraph 1.n. | For Applicant |
| Subparagraph 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola  
Administrative Judge