



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-10507
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

March 30, 2016

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

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 19, 2012. On May 30, 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 on June 19, 2015, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on October 14, 2015. Applicant responded to the FORM (Response) on November 18, 2015. Department Counsel had no objection, and the Response is entered into evidence. The case was assigned to me on December 8, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

## **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 Paragraph 1.c. of the SOR.

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

Applicant is a 49 year-old employee of a federal contractor for whom he has worked for nearly 28 years. (Item 3 at pages 5 and 9). He attributes his financial difficulties to his wife's "short term disability" early in 2008, and her changing jobs "between 2008 and 2009 . . . to be closer to home and medical appointments." (Response at page 2.) Applicant now lives within his monthly budget. (Response at "addendum" 7.)

1.a. and 1.b. It is alleged that Applicant failed to file his Federal and state income tax returns for tax years "2006, 2007, 2008 and 2009." These allegations are based on an uncertified subject interview taken from the Applicant in July of 2012. (Item 6.) This uncertified interview is suspect, at best, as there is no mention of his failing to file a Federal income tax return for tax year 2007. (Item 6 at page 2.) That being said, it is clear that Applicant did have difficulties filing past Federal and state income tax returns in a timely fashion. As a result, in June of 2015, he hired a Certified Public Accountant (CPA) to address his tardy returns. (Item 2 at page 7.) Said CPA has now filed Applicant's delinquent Federal and state income tax returns, as evidenced by those returns. (Response at "addendum[s]" 2 and 4.) He has also submitted additional Federal and state tax returns demonstrating that he is current with these taxing authorities. (Response at "addendum 1.) I find that Applicant has made a good-faith effort to file his delinquent tax returns.

1.c. Applicant denies that he is indebted to Creditor C for an auto in the amount of about \$21,000. He has submitted a letter from Creditor C stating that the "loan was paid in full on 11/12/2013 in the amount of \$8,702.34." (Item 2 at page 6.) However, in the FORM, Department Counsel points to a September 2015 credit report showing a past-due amount of \$3,033. (Item 4 at page 2.) In his Response, Applicant has answered this concern by submitting a November 2015 document from Creditor C demonstrating Applicant is current with Creditor C. (Response at "addendum" 6.) I find that Applicant has made 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. 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 two conditions that could raise security concerns. Under Subparagraphs 19(a) and 19(c) an *“inability or unwillingness to satisfy debts,”* and *“a history of not meeting financial obligations.”* may raise security concerns. Applicant had delinquent taxes and a delinquent car loan. Under Subparagraph 19(g) *“failure to file annual Federal, state . . . income tax returns as required”* may also raise security concerns. Applicant failed to file several years of tax returns in a timely fashion. 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. . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances.”* Applicant’s failure to file tax returns in a timely fashion and his delinquent car loan can be attributed to his wife’s ill health and her related loss of income. 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 filed his delinquent income tax returns, is current with those taxing authorities, and is current with his car loan. Financial Considerations is found for Applicant.

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. 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

### **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