



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-10690
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: Julia Szafraniec, Esquire

June 12, 2013

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on April 7, 2011. On November 28, 2012, 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 11, 2012. She answered the SOR in writing through counsel on December 31, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on January 9, 2013, and I received the case assignment on March 25, 2013. DOHA issued a notice of hearing on April 2, 2013, and I convened the hearing as scheduled on April 25, 2013. The Government offered Exhibits (GXs) 1 through 11, which were received without objection. Applicant testified on her own behalf and submitted Exhibits (AppXs) A

through V, which were received without objection. DOHA received the transcript of the hearing (TR) on May 6, 2013. I granted Applicant's request to keep the record open until May 23, 2013, to submit additional matters. On May 23, 2013, she submitted Exhibits W through Z, to which Department Counsel on May 29, 2013, stated he had no objection. They were also admitted into evidence. The record closed on May 29, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.a.~1.f. of the SOR, with explanations. She denied the factual allegations in Subparagraphs 1.g. and 1.h. of the SOR.

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

1.a. In **October of 1996**, Applicant filed for the protection of a Chapter 13 Bankruptcy. (TR at page 45 line 16 to page 47 line 1, at page 47 line 14 to page 48 line 24, at page 63 line 14 to page 65 line 10, GX 1, and GX 8 at page 1.) She lost her job in 1996, and was unemployed or underemployed until Applicant secured permanent employment in 1998. (TR at page 101 lines 3~18.) As a result, she was unable to keep up with her court-ordered monthly payments, and Applicant's bankruptcy was dismissed in October of 2000.

1.b. and 1.c. In **October of 2000**, Applicant again filed for the protection of a Chapter 13 Bankruptcy. (GX 8 at page 1.) It was dismissed in September of 2001, as an amended filing of the bankruptcy was made ten days later in October of 2001. (*Id.*, and TR at page 65 line 11 to page 67 line 11, and at page 101 line 20 to page 102 line 10.) Applicant owned two properties, one in which she and her family lived, and the other was a multiplex rental. Her tenants did not pay their rent; and until she was able to get an unlawful detainer, she could not evict them and get new paying tenants. (TR at page 79 line 9 to page 80 line 19.) As a result of this lack of rental income, she was unable to keep up with her court-ordered monthly payments, and Applicant's bankruptcy was dismissed in March of 2004.

1.d. and 1.e. In **November of 2007**, Applicant filed for the protection of a Chapter 13 Bankruptcy. (GX 8 at page 1.) It was dismissed in March of 2008; as she initially failed to pay the filing fee, but Applicant re-filed four days later also in March of 2008. (*Id.*, and TR at page 69 line 16 to page 73 line 8, 79 line 9 to page 80 line 19, and at page 100 lines 18~24.) In 2006, Applicant was diagnosed as suffering from Bells Palsy and Multiple Sclerosis, as evidenced by her medical records. (TR at page 102 lines 14~19, and AppX W.) That same year her two sons were involved in separate motor vehicle accidents. Her sons' injuries were not covered by medical insurance. (GX 7 at page 13.) As a result of these unexpected medical conditions, she was unable to keep up with her court-ordered monthly payments, and Applicant's bankruptcy was dismissed in June of 2009.

1.f. Most recently, in **June of 2012**, Applicant filed for the protection of a Chapter 13 Bankruptcy. (GX 8 at page 1.) Applicant is current with her court ordered monthly payments, as evidenced by her Chapter 13 Trustee's Debtor's Status Report. (TR at page 49 line 4 to page 50 line 6, at page 73 line 9 to page 74 line 23, at page 78 lines 3~22, at page 81 line 12 to page 82 line 15, and AppX N.) The first and second mortgage arrearages, alleged as 1.f.(1) and 1.f.(3), are included in this Chapter 13 Bankruptcy. (TR at page 50 lines 7~15, and at page 52 line 19 to page 55 line 12.) Applicant also has a Loan Modification Agreement vis-a-vis her first mortgage holder, 1.f.(1), as evidenced by documentation from the mortgage holder. (AppX V.) Applicant disputes the alleged time share debt, 1.f.(2), as she avers it has been paid, and it does not appear on her two most recent credit reports. (GX 11 and AppX Z.)

1.g. It is alleged that Applicant has a past due debt to a medical provider in the amount of about \$67. (GX 11 at page 1.) Applicant has formally disputed this debt as not being her debt (AppX Y), and there are no delinquencies listed on her May 23, 2013, credit report. (AppX Z.)

1.h. It is alleged that Applicant has a past due debt to a medical provider in the amount of about \$524. (GX 11 at page 1.) Applicant testified, credibly, that she has settled and paid this debt, and there are no delinquencies listed on her May 23, 2013, credit report. (TR at page 55 line 13 to page 56 line 6, and AppX Z.)

### **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 making her mortgage payments, off and on, since 1996. However, I find two countervailing Mitigating Conditions that are applicable here. Under Subparagraph 20 (b), where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. loss of employment, a business downturn, unexpected medical emergency), and the individual acted responsibly under the circumstances,”* may be

mitigating. Applicant was forced to repeatedly file for the protection of Chapter 13 Bankruptcies due to her loss of meaningful employment in the late 1990s, due to free loading tenants in the early 2000s, and to medical emergencies in 2006. 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 addressed all of her debts through her June 2012 bankruptcy filing, she is current with her court ordered payments, and has no delinquencies noted on her most recent May 2013 credit report.

### **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 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 speak most highly of her, as evidenced by the testimony of her former supervisor (TR at page 89 line 9 to page 99 line 20), and by 5 letters of recommendation. (AppXs Q~U.) 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.

## **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

## **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