



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-01224
	)	
	)	
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 her Electronic Questionnaires for Investigations Processing (e-QIP) on April 24, 2013. On December 19, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. On May 20, 2014, DoD amended the SOR (ASOR) detailing the security concerns under Guideline E for Applicant. These actions were 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 January 3, 2014. She failed to acknowledge receipt of the ASOR, but was tendered a copy when her hearing was initially convened on June 30, 2014. She answered the SOR in writing (Answer) on January 15, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request on January 28,

2014, and I received the case assignment on May 22, 2014. DOHA issued a notice of hearing on May 27, 2014, and I initially convened the hearing as scheduled on June 30, 2014. However, it soon became obvious that Applicant was in need of a Spanish interpreter; and as a result, her hearing was reconvened on September 18, 2014, with an interpreter present. The Government offered Exhibits (GXs) 1 through 4, which were received without objection. Applicant testified on her own behalf, as did her husband, and submitted Exhibit (AppX) A, which was received without objection. DOHA received the transcript of the hearing (TR) on September 24, 2014. I granted Applicant's request to keep the record open until October 17, 2014, to submit additional matters. She submitted nothing further on her behalf. The record closed on October 17, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her written Answer to the SOR, and in her verbal answer to the ASOR at her reconvened hearing, Applicant admitted the factual allegations in Subparagraphs 1.a.~1.e., and 1.k.~1.m. of the SOR, with explanations. She denied the factual allegations in Subparagraphs 1.f.~1.j. of the SOR. She also denied the factual allegations in Subparagraphs 2.a. and 2.b. of the ASOR. She further provided additional information to support her request for eligibility for a security clearance.

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

Applicant's husband attributes their current financial difficulties to a failed "trucking company" that they "tried to own" in 2013. (TR at page 59 lines 14~24.)

1.a. Applicant admits she is indebted to the IRS as a result of a tax lien in the amount of about \$28,925. (TR at page 32 lines 16~24.) She avers, "I haven't paid it." (*Id.*) I find that this Federal lien is still outstanding.

1.b. Applicant admits she is indebted to the IRS as a result of another tax lien in the amount of about \$6,359. (TR at page 32 line 25 to page 33 line 16.) When asked if it was "stilled owed," she answered, "Yes." (*Id.*) I find that this Federal lien is also still outstanding.

1.c. Applicant admits she is indebted to a State taxing authority as a result of a tax lien in the amount of about \$2,686. (TR at page 33 line 17 to page 34 line 2.) When asked if it was "stilled owed," she answered, "Yes." (*Id.*) I find that this State lien is still outstanding.

1.d. and 1.e. It is alleged that Applicant is indebted to Creditor D for two past-due debts, the first one for \$5,027, and the second one for \$2,237. She avers that she is making monthly payments of \$300 on the first debt, and has paid the second debt. (TR at page 34 line 3 to page 39 line 7.) Her averment is supported by documentation

that Applicant submitted with her Answer. (Answer at pages 10~14.) I find for Applicant as to these two allegations.

1.f. Applicant now admits she is indebted to Creditor F in the amount of about \$7,148. (TR at page 39 line 10 to page 40 line 6.) She avers, “that one is not paid off.” (*Id.*) I find that this past-due debt is still outstanding.

1.g. Applicant now admits she is indebted to Creditor G in the amount of about \$3,666. (TR at page 40 lines 7~14.) She avers, “it’s not paid.” (*Id.*) I find that this past-due debt is still outstanding.

1.h. Applicant now admits she is indebted to Creditor H in the amount of about \$1,472. (TR at page 40 lines 15~23.) She avers, “it hasn’t been paid.” (*Id.*) I find that this past-due debt is still outstanding.

1.i. Applicant now admits she is indebted to Creditor I in the amount of about \$1,467. (TR at page 40 line 24 to page 41 line 7.) She avers, “same thing, not paid.” (*Id.*) I find that this past-due debt is still outstanding.

1.j. It is alleged that Applicant is indebted to Creditor J for a past-due debt in the amount of about \$718. She avers, “I don’t remember that one,” but offers nothing further in this regard. (TR at page 41 line 8 to page 42 line 3.) As this debt does appear on Applicant’s May 2013 Credit Report (CR), I find that this past-due debt is still outstanding. (GX 2 at page 11.)

1.k. It is alleged that Applicant is indebted to Creditor K for a past-due debt in the amount of about \$526. She avers, “it is paid,” but offers nothing further in this regard. (TR at page 42 line 4 to page 43 line 2.) As this debt also does appear on Applicant’s May 2013 CR, I find that this past-due debt is still outstanding. (GX 2 at page 12.)

1.l. It is alleged that Applicant is indebted to Creditor L for a past-due debt in the amount of about \$258. She avers, “it has been paid,” but offers nothing further in this regard. (TR at page 43 lines 5~22.) As this debt does appear on Applicant’s May 2013 CR, I find that this past-due debt is still outstanding. (GX 2 at page 12.)

1.m. It is alleged that Applicant is indebted to Creditor M for a past-due debt in the amount of about \$258. She avers, “that’s paid,” but offers nothing further in this regard. (TR at page 43 line 25 to page 44 line 16.) As this debt does appear on Applicant’s May 2013 CR, I find that this past-due debt is still outstanding. (GX 2 at page 12.)

### **Guideline E - Personal Conduct**

2.a. Applicant answered, “No,” to “Section 26 - Financial Record . . . Taxes,” averring that she paid and/or filed her Federal and State taxes in the last seven years.

(TR at page 44 line 19 to page 48 line 9, and GX 1 at page 39.) In light of her admitted tax liens noted above in allegations 1.a.~1.c., I find this to be a wilful falsification.

2.b. Applicant again answered, “No,” to “Section 26 - Financial Record . . . Delinquency Involving Routine Accounts,” averring that she had no past-due debts, in the last seven years. (TR at page 48 line 10 to page 50 line 8, and GX 1 at pages 39~40.) In light of her admitted past-due debts noted above in allegations 1.f.~1.i., I also find this to be a wilful falsification.

## **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 significant past due debts that she has yet to address, to include Federal and State tax liens totaling about \$38,000. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Subparagraph 20(d) applies where the evidence shows *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Applicant has failed to submit documentation, apart from her submissions in her Answer as to allegations 1.d. and 1.e., showing that she has made a good-faith effort to address her significant debts. I can find no other countervailing Mitigating Condition that is applicable here. Financial Considerations are found against the Applicant.

## **Guideline E - Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”

The following Disqualifying Condition under Subparagraph 16(a) applies. It provides that the “*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . .*” may be disqualifying. I can find no countervailing Mitigating Condition here, as the Applicant could have easily answered her e-QIP honestly, which she certified as “true, complete, and correct.” Personal Conduct is found against the 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. Her employer speaks most highly of Applicant. (AppX A). However, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from her Financial Considerations and related Personal Conduct.

### **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
Subparagraphs 1.a.~1.c.	Against Applicant
Subparagraphs 1.d. and 1.e.	For Applicant
Subparagraphs 1.g.~1.m.	Against Applicant
Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b.:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola  
Administrative Judge