



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 14-00363  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

December 18, 2014

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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 August 8, 2013. On March 20, 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 April 3, 2014, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on June 9, 2014. Applicant initially submitted nothing in response to the FORM. The case was assigned to me on August 8, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information was denied by a Decision issued by the undersigned on August 21, 2014. However, unbeknownst to me, a JPAS 562 was issued on July 31, 2014; and as a result, I lacked jurisdiction to issue the August 21, 2014, Decision. That Decision was vacated on August 28, 2014.

“During the week of October 27, 2014,” however, the Chief Department Counsel discovered that Applicant’s “former employer was again sponsoring him” for a security clearance. (Appellate Exhibit 1.) As a result, the case was “reopened to provide Applicant with an opportunity to respond to the FORM.” (*Id.*) Applicant’s undated Response to the FORM was received by DOHA on November 20, 2014. The case was reassigned to me on December 5, 2014. Based upon a review of the pleadings and exhibits, to include Applicant’s Response, eligibility for access to classified information is denied

### **Findings of Fact**

In his Answer to the SOR, dated April 3, 2014, Applicant admitted the factual allegations in Paragraphs 1.a., 1.c., 1.f., 1.m., 1.p., 1.r., 1.t.~1.v., and 1.bb. of the SOR, with explanations. He denied the factual allegations in Paragraphs 1.b., 1.d., 1.e., 1.g.~1.l., 1.n., 1.o., 1.q., 1.s., and 1.w.~1.aa. of the SOR.

Applicant is 39 years of age, and attributes his current past-due indebtedness to being “unemployed from the dates of 12 December 2009 to 11 November 2011,” nearly two years. (Item 3 at page 1, and Item 4 at page 4.) In his Response he further avers that he “was going through personnel (*sic*) issues with family.” (Response at page 1.)

1.a. The first debt is a tax lien in favor of the IRS for about \$10,247. Applicant admits this debt and avers he is making payments to the IRS pursuant to a payment plan. He has submitted documentation as to the payment plan, and has also submitted a Certificate of Release of Federal Tax Lien from the IRS. (Item 3 at pages 4~5, and Response at page 2). This allegation is found for Applicant.

1.b. The second debt is to Creditor B in the amount of about \$10,197. (Item 14 at page 1.) Applicant denies this debt averring that he moved out of a “shared” apartment “not owing any money.” (Item 3 at page 1.) However, he has also submitted a most recent, November 2014, credit report, showing that this debt has been “Placed for collection.” (Response at page 8.) This allegation is found against Applicant.

1.c. The third debt is to Creditor C in the amount of about \$1,432. Applicant admits this debt, and has also submitted a most recent, November 2014, credit report, showing that this debt has also been “Placed for collection.” (Response at page 9.) This allegation is found against Applicant.

1.d. The fourth debt is a medical debt to Creditor D in the amount of about \$35. (Item 14 at page 1.) Applicant denies this debt averring that “the VA [Veterans Administration] will take care of this amount.” (Item 3 at page 1.) As he has submitted nothing in support of his bare averment, and as this debt still appears on Applicant’s June 2014 credit report, I find that it is past due. (Item 14 at page 1.) This allegation is found against Applicant.

1.e. The fifth debt is a medical debt to Creditor E in the amount of about \$550. (Item 14 at page 1.) Applicant denies this debt averring that it “has been paid in full.” (Item 3 at page 1.) However, he has also submitted a most recent, November 2014,

credit report, showing that this debt has been “Placed for collection.” (Response at page 10.) This allegation is found against Applicant.

1.f. The sixth debt is to Creditor F in the amount of about \$451. (Item 14 at page 1.) Applicant admits this debt averring that “the [cable TV] equipment was sent off to . . . [Creditor F] this morning [the date of his Answer, April 3, 2014].” (Item 3 at page 1.) However, he has also submitted a recent, October 2014, credit report, showing that this debt is still in “Collection.” (Response at page 17.) This allegation is found against Applicant.

1.g.~1.i., 1.w. and 1.x. I find that allegations 1.g. and 1.x. are one and the same debt. I also find that allegations 1h. and 1.w. are one and the same debt. The seventh through ninth debts are to Creditor G in an amount totaling about \$1,491. Applicant denies these debts. However, he has also submitted a most recent, November 2014, credit report, showing that two of these debt have been “Placed for collection.” (Response at page 10.) Furthermore, the third debt appears on Applicant’s February 2014 credit report. (Item 13 at page 2.) These allegations are found against Applicant.

1.j., 1.k. and 1.n. The tenth, eleventh and fourteenth debts are to Creditor J in an amount totaling about \$2,603. Applicant denies these debts, and has formally disputed them, as reflected on his most recent, November 2014, credit report. (Response at pages 9 and 11.) These allegations are found for Applicant.

1.l. The twelfth debt is to Creditor L in the amount of about \$1,962. Applicant denies this debt, and has formally disputed it, as reflected on his most recent, November 2014, credit report. (Response at page 11.) This allegation is found for Applicant.

1.m. The thirteenth debt is to Creditor M in the amount of about \$260. Applicant admits this debt, and he has submitted a recent, October 2014, credit report, showing that this debt is still in “Collection.” (Response at page 13.) This allegation is found against Applicant.

Allegation 1.n. has already been discussed, above.

1.o. The fifteenth debt is to Creditor O in the amount of about \$143. Applicant denies this debt, but offers little else. (Item 3 at page 1.) As this debt still appears on Applicant’s February 2014 credit report, I find that it is past due. (Item 13 at page 2.) This allegation is found against Applicant.

1.p. The sixteenth debt is to Creditor P in the amount of about \$641. Applicant admits this debt, and avers to have paid \$1,000 towards this and another debt owed to this creditor. (Item 3 at page 1.) He has also submitted a payment agreement with the creditor (Item 3 at 7), and on his most recent, November 2014, credit report it is noted as “Closed - Paid.” (Response at page 3.) This allegation is found for Applicant.

1.q. The seventeenth debt is to Creditor Q in the amount of about \$308. Applicant denies this debt, claiming it was “paid,” but offers little else. (Item 3 at page

2.) As this debt still appears on Applicant's February 2014 credit report, I find that it is past due. (Item 13 at page 2.) This allegation is found against Applicant.

1.r. The eighteenth debt is to Creditor R in the amount of about \$222. Applicant admits this debt, but offers his most recent, November 2014, credit report, where it is noted as "Paid collection." (Response at page 12.) This allegation is found for Applicant.

1.s. The nineteenth debt is to Creditor S in the amount of about \$13,025. Applicant denies this debt, claiming the amount is wrong for this car repossession, but offers little else. (Item 3 at page 2.) As this debt still appears on Applicant's February 2014 credit report, I find that it is past due. (Item 13 at page 2.) This allegation is found against Applicant.

1.t. The twentieth debt is to Creditor T in the amount of about \$16,497. Applicant admits this debt, claims the amount is wrong, but offers little else. (Item 3 at page 2.) I find that it is past due. This allegation is found against Applicant.

1.u. The twenty first debt is to Creditor U in the amount of about \$17,646. Applicant admits this debt, but offers little else. (Item 3 at page 2.) I find that it is past due. This allegation is found against Applicant.

1.v. The twenty second debt is to Creditor V in the amount of about \$3,045. Applicant admits this debt, and has submitted "a monthly payment plan" showing he has made only one payment of \$50 to this creditor in September 2013. (Item 3 at page 6, and Response at page 22.) I find that it is past due. This allegation is found against Applicant.

Allegations 1.w. and 1.x., are duplicate debts, and have already been discussed, above.

1.y. The twenty third debt is to Creditor Y in the amount of about \$116. Applicant denies this debt, claiming it was "paid in full," but offers little else. (Item 3 at page 2.) As this debt appears on Applicant's August 2013 credit report, I find that it is past due. (Item 12 at page 8.) This allegation is found against Applicant.

1.z. The twenty fourth debt is to Creditor Z in the amount of about \$174. Applicant denies this debt, but offers little else to support his denial. (Item 3 at page 2.) As this debt appears on Applicant's August 2013 credit report, I find that it is past due. (Item 12 at page 8.) This allegation is found against Applicant.

1.aa. The twenty fifth debt is to Creditor AA in the amount of about \$357. Applicant denies this debt, and has submitted documentation from the creditor showing it has been paid. (Item 3 at page 8.) This allegation is found for Applicant.

1.bb. The twenty sixth debt is to Creditor BB in the amount of about \$2,479. Applicant admits this debt, claims he "will begin making payments", but offers little else. (Item 3 at page 2.) I find that it is past due. This allegation is found against Applicant.

## 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 significant past-due debts, which he has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant can attribute his past-due debts to his nearly two years of unemployment, he has failed to act *"responsibly under the circumstances,"* as required by Subparagraph 20(b) with respect to the majority of 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 address 18 debts totaling in excess of \$68,000. 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 his eligibility and suitability for a security clearance. Applicant has over \$68,000 in past-due indebtedness that 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.	For Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	Against Applicant
Subparagraph 1.n.	For Applicant
Subparagraph 1.o.	Against Applicant
Subparagraph 1.p.	For Applicant
Subparagraph 1.q.	Against Applicant
Subparagraph 1.r.	For Applicant

Subparagraph 1.s.	Against Applicant
Subparagraph 1.t.	Against Applicant
Subparagraph 1.u.	Against Applicant
Subparagraph 1.v.	Against Applicant
Subparagraph 1.w.	Against Applicant
Subparagraph 1.x.	Against Applicant
Subparagraph 1.y.	Against Applicant
Subparagraph 1.z.	Against Applicant
Subparagraph 1.aa.	For Applicant
Subparagraph 1.bb.	Against 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