



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



In the matter of: )  
)  
) ISCR Case No. 14-00450  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

August 1, 2014

---

**Decision**

---

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 12, 2013. On March 14, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 15, 2014, supplementing that answer on May 5, 2014, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on May 29, 2014. Applicant failed to respond to the FORM. The case was assigned to me on July 21, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

In his Answer and Supplemental Answer to the SOR, Applicant admitted the factual allegations in Paragraphs 1.a.~ 1.k., 1.m.~1.o., 1.q.~1.t., 2.a., and 2.b. of the SOR, with explanations. He denied the factual allegations in Paragraphs 1.l., 1.p., and 2.c.1.<sup>1</sup> of the SOR. Applicant failed to answer Paragraphs 2.c.2 and 2.d.; and as such, I consider them denied.

Applicant is 44 years of age, and is employed by a “Non-government” employer. (Item 5 at pages 5 and 10.)

### Guideline F - Financial Considerations

1.a.~1.k., 1.m.~1.o., and 1.q.~1.t. In his Supplemental Answer to the SOR, Applicant admits he is indebted to 15 different creditors for past due debts totaling about \$49,000. He offers little further in this regard, except to say “I am working to pay off all my debts, I will not stop until they are paid in full.” I find these debts to be outstanding.

1.l. and 1.p. In his Supplemental Answer to the SOR, Applicant denies these two debts, totaling about \$1,131. These allegations are supported by a fairly recent September 13, 2013 credit report. (Item 9 at pages 9 and 10.) He offers little further in this regard, except to say, “I am currently disputing” these debts. I find these debts to be outstanding.

### Guideline E - Personal Conduct

2.a. In 2002, Applicant admits that he was charged with a felony, “Shoot . . . at Occupied Vehicles,” and was found guilty of “Misdemeanor Brandishing a Firearm.” (Item 10 at page 1.)

2.b. In October of 2004, Applicant was charged with two felonies and two misdemeanors. (Item 10 at pages 1~2.) He pled guilty to the two misdemeanors: “Sexual Battery” and “Indecent Exposure.” (*Id.*)

2.c.1. In an October 2003 interview, related to Paragraph 2.b. above, Applicant falsified material facts in that he stated he did not do anything which might have been misconstrued by the complaining victim as a sexual advance. In an October 28, 2013, interview he admitted hugging the complaining victim and slipping his hand down her pants. (Item 7 at page 5.)

2.c.2. In August 2013, Applicant falsified material facts in response to “Section 22 - Police Record” on his e-QIP. He failed to disclose that he was charged with a felony in 2002, and with two felonies in 2004. (Item 5 at page 24.)

---

<sup>1</sup>There are two separate Paragraphs 2.c.’s alleged; and as such, I ave designated the first one as 2.c.1 and the second one as 2.c.2.

2.d. In August 2013, Applicant again falsified material facts in response to “Section 22 - Police Record” on his e-QIP. He failed to disclose that he was charged with an offense related to firearms in 2002. (Item 5 at page 24.)

### **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 *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, which he has not yet resolved. I can find no countervailing Mitigating Condition that is applicable here.

### Guideline E - Personal Conduct

The security concern for Personal Conduct is set out in AG 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 guideline notes several conditions that could raise security concerns. Under Subparagraph 16(a), *"deliberate omissions, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form"* may raise security concerns. Here, Applicant was not candid about his past criminal conduct on his August 2013 e-QIP. Under Subparagraph 16(b), *"deliberately providing false or misleading information concerning relevant facts to an . . . investigator, security official . . . or other official government representative"* may also raise security concerns. Here, Applicant was not candid about his past criminal conduct during his October 2003 interview. Again, I find no countervailing mitigating condition that is applicable here. Applicant's last willful falsification was less than a year ago. I also find *"a pattern of dishonesty or rule violations"* under Subparagraph 16(d)(2), when his falsifications are coupled with his 2002 and 2004 misdemeanor convictions.

### 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 \$50,000 in past-due indebtedness that he has yet to address. He was also not candid with the government, and has demonstrated a pattern of rule violations. For these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept arising from his Financial Considerations and 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.t.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.~2.d.	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