



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00937
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

June 11, 2015

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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 November 11, 2013. On April 30, 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 acknowledged receipt of the SOR on August 12, 2014. She answered the SOR in writing on August 27, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on December 2, 2014. DOHA issued a notice of hearing on December 10, 2014, and I convened the hearing as scheduled on January 20, 2015. The Government offered Exhibits (GXs) 1 through - 4, which were received without objection. Applicant testified on her own behalf. DOHA

received the transcript of the hearing (TR) on January 28, 2015. I granted Applicant's requests, one made at her hearing and three made after her hearing, all demonstrating good cause, to keep the record open until May 20, 2015, to submit additional matters. On May 20, 2015, she submitted Exhibits (AppXs) A through J, which were received without objection. The record closed on May 21, 2015. 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 allegation in Subparagraph 1.a. of the SOR, with an explanation. She also provided additional information to support her request for eligibility for a security clearance.

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

Applicant is 38 years old, and has a Bachelor's degree. (TR at page 20 line 11 to page 21 line 5.) She has worked for her current employer since 2002, and has held a security clearance "since 2003." (TR at page 21 line 6 to page 22 line 17.) She is active in her community and her church, doing volunteer work. (TR at page 24 line 7 to page 25 line 8.)

Applicant purchased a rental property in 2005. (TR at page 29 lines 1~12.) It cost her \$79,000, with two loans, one 80% and the other one 20%, from the same creditor (Creditor A). (TR at page 30 line 3 to page 31 line 11, and at page 47 lines 3~8.) Unfortunately, in 2007 and again in 2011, her rental property was vandalized by two different tenants. (TR at page 31 line 23 to page 34 line 13.) Despite having insurance to cover part of the damage; she had significant out-of-pocket expenses, and the property was unrentable for extended periods of time. (*Id.*) As a result, Applicant could not keep up her mortgage payments, and the rental property was eventually foreclosed on by Creditor A.

1.a. It is alleged that Applicant is indebted to Creditor A on her 20% second loan in the amount of about \$16,000. (GX 4 at page 1.) I find, that she has exercised due diligence, and has corresponded with Creditor A on or about February 13, 2015; March 23, 2015; April 13, 2015; and April 15, 2015, regarding the alleged second mortgage; as evidenced by response letters from Creditor A. (AppXs E~H.) Finally, on April 25, 2015, Creditor A provided Applicant with a "Form1099-A" showing that \$15,799.85 was reported to the Internal Revenue Service (IRS) as income to Applicant, as a result of a write-off of this debt by Creditor A. (AppX I.) I find that Applicant has acted responsibly in addressing 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 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 meeting her financial obligations. 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. . . . a business downturn . . . ), and the individual acted responsibly under the circumstances."* Applicant's past-due indebtedness is directly attributed to her rental property being repeatedly vandalized. 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 made a good-faith effort to resolve all of the alleged debt, and the creditor has written it off as a business loss, as evidenced a Form 1099-A reported to the IRS.

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. Applicant is well respected in her workplace. (AppX J.) 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, 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

**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