



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-05924
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

January 24, 2008

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on November 2, 2005. On August 15, 2007, the Defense Office of Hearings and Appeals (DOHA) 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, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 27, 2007, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on October 30, 2007. The Applicant responded to the FORM (Response) on December 18, 2007. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

## **Findings of Fact**

In his Answer to the SOR, dated September 27, 2007, Applicant admitted the factual allegations in all the Subparagraphs, with explanations.

### **Guideline F, Financial Considerations**

The Applicant's past due debts were caused, in part, by a stroke the Applicant suffered in 1996, and by his subsequent paralysis (Response at page 2). The Applicant now has a positive monthly cash flow of about \$673 (Government Exhibit (GX) 3 at page 21)

1.a. The Applicant was indebted to creditor #1 in the amount of about \$358 (GX 7 at page 7). On September 4, 2007, the creditor agreed to a settlement of this debt for "50% of the balance" (GX 3 at page 9). On September 17, 2007, the Applicant paid \$186 in settlement of this debt (GX 3 at page 7). An October 2007 Credit Report (CR), that post dates the issuance of the SOR, now lists this debt as "PAID COLLECTION" (GX 8 at page 3). I find this debt has been settled.

1.b. The Applicant was indebted to creditor #2 in the amount of about \$639 (GX 5 at page 5). In his answer to the SOR, the Applicant avers that this debt was settled for \$497 (GX 3 at page 3). On September 17, 2007, the Applicant paid \$497 towards this debt, but it is unclear if this debt has been settled to the satisfaction of the creditor (GX 3 at page 6). The October 2007 CR still lists this debt as "UNPAID" (GX 8 at page 1).

1.c. The Applicant was indebted to creditor #3 in the amount of about \$2,488 (GX 7 at page 7). In his answer to the SOR, the Applicant avers that this debt was settled for \$1,340 (GX 3 at page 3). The Applicant has also submitted a "CASHIER'S CHECK" drawn to the creditor in that amount (GX 3 at page 10). According to the October 2007 CR, the remaining balance has been "CHARGED OFF," and the "ACCOUNT CLOSED BY THE CREDIT GRANTER" (GX 8 at page 2). I find this debt has been settled.

1.d. The Applicant was indebted to creditor #4 (the Social Security Administration (SSA)) in the amount of about \$15,580, for overpayment of disability benefits (GX 7 at page 7, and Response at page 1). On September 14, 2007, the Applicant has contacted the SSA, and requested that he make monthly payments of \$100, in lieu a one lump payment (GX 3 at pages 16~26). The SSA has not yet responded to this request; and as such, this debt is still outstanding.

1.e. The Applicant was indebted to creditor #5 in the amount of about \$2,488<sup>1</sup> (GX 6 at page 2). This account is listed as “TRANSFERRED OR SOLD” (*Id*). It appears to have been sold to creditor #3. I find this debt has been settled.

1.f. The Applicant was indebted to creditor #6 in the amount of about \$181 (GX 7 at page 7). In his answer to the SOR, the Applicant avers this debt has been paid (GX 3 at page 3). This is corroborated by a letter from this creditor (GX 3 at page 8). I find this debt has been paid.

## **Policies**

When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider the revised 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 common sense 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 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 “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

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<sup>1</sup>The Government alleges that the past due amount is \$3,007, but this is not supported by the evidence cited by the Government. GX 5 at page 4 notes \$55 past due. GX 6 at page 2 notes **\$2,488** past due as noted above. GX 7 at page 7 notes \$0 as past due, and GX 8 at page 2 notes \$1,258 as past due.

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 AG 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 AG Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under AG Subparagraph 19(c), *“a history of not meeting financial obligations”* may raise security concerns. These are countered, however, by Subparagraph 20(b), as *“the conditions that resulted in the financial problem were largely beyond the person's control (e.g., . . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances.”* As noted above, the Applicant suffered a stroke in 1996, with subsequent paralysis.

More importantly, AG Subparagraph 20(d) applies where the evidence shows *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Here, the Applicant either paid, settled, or offered corroborating evidence that he has settled, all but one of the alleged past due debts. Only the SSA overpayment has not been settled, but the Applicant is making a good faith effort to set up a monthly payment plan. Applicant has a positive monthly cash flow of nearly \$700; and as such, can reasonably address a counter offer from the SSA.

### **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. The Administrative Judge should consider the nine adjudicative process factors listed at AG Subparagraph 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) 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." Under AG Subparagraph 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.

Here, the Applicant is addressing the Government's financial concerns as best he can. He has ignored none of the alleged past due debts, and has paid or settled all but one. He is only waiting for the SSA to respond to his payment plan offer.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns 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:	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

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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RICHARD A. CEFOLA  
Administrative Judge