



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



In the matter of: )  
)  
) ISCR Case No. 08-08646  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: John N. Griffith, Esquire

December 23, 2011

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on January 14, 2008. On January 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for the 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.

The Applicant acknowledged receipt of the SOR on January 31, 2011. She answered the SOR in writing through counsel on February 7, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on June 3, 2011, and I received the case assignment on the same date. DOHA issued a notice of hearing on June 6, 2011, and I convened the hearing as scheduled on June 30, 2011. The Government offered Exhibits (GXs) 1 through 9, which were received without

objection. The Applicant testified on her own behalf, and submitted Exhibits (AppXs) A through L, which were received without objection. DOHA received the transcript of the hearing (TR) on July 11, 2011. I granted the Applicant's request to keep the record open until July 29, 2011, to submit additional matters. She submitted nothing further. The record closed on July 29, 2011. 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, the Applicant admitted the factual allegations in Subparagraph 1.a., of the SOR, with explanation. She denied the factual allegations in Subparagraphs 1.b. through 1.d. of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

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

The Applicant "was medically retired from the Navy," in 1987, where she served for six years. (TR at page 17 line 13 to page 20 line 7, at page 44 line 20 to page 46 line 19, and GX 1 at pages 13~14.) She has addressed all of the alleged past due debts, and has a positive monthly cash flow of over \$1,000. (TR at page 38 line 11 to page 41 line 1, and AppX G.)

1.a. It is alleged that the Applicant has a tax lien against her, in favor of the Internal Revenue Service, in the amount of about \$38,559. Between 2001 and 2005, the Applicant "was a 1099 employee [self employed]." (TR at page 20 line 13 to page 33 line 8, at page 39 line 16 to page 40 line 21, and at page 56 line 4 to page 65 line 24.) She filed income tax returns, but failed to pay her taxes. At one point she owed as much as \$42,000 to the IRS. (*Id.*) She has sought out professional services to pay back this lien, as evidenced by documentation by that tax relief service, and since 2006 has been making month payments of \$500 towards the lien. (AppXs A~C.)

1.b. It is alleged that the Applicant is indebted to Creditor B in the amount of \$2,538. The Applicant denies ever having a debt with this creditor, and it does not appear the Government's most recent June 2011 credit report (CR). (TR at page 33 line 9 to page 35 line 15, at page 50 line 11 to page 51 line 20, and GX 9.) I find that this is not the Applicant's debt.

1.c. It is alleged that the Applicant is indebted to Creditor C in the amount of \$80. The Applicant denies that this debt is past due; and on a recent 2011 CR, it is listed as "paid." (TR at page 35 line 16 to page 36 line 10, at page 50 lines 3~10, and AppX C.)

1.d. Finally, it is alleged that the Applicant is indebted to Creditor D in the amount of \$461. The Applicant again denies that this debt is past due; and on a recent 2011 CR, it is listed as "PAID ACCOUNT/ZERO BALANCE." (TR at page 36 line 11 to page 38 line 10, at page 49 lines 5~16, and AppX D.)

## 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 ¶ 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 ¶ 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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. The Applicant had two past debts that have since been paid, and has a significant tax lien.

However, this is countered by the fourth Mitigation Condition. Subparagraph 20(d) is applicable where "*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*" She has paid all of her past due debts, except for the tax lien towards which she is paying \$500 each month.

### 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 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 Applicant is well respected in the work place. (AppXs H and I.) The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her 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
Subparagraphs 1.a.~1.f.	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.

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Richard A. Cefola  
Administrative Judge