



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 08-09626  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

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

June 17, 2009

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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 March 13, 2008. On December 12, 2008, the Defense Office of Hearings and Appeals (DOHA) 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 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 acknowledged receipt of the SOR on December 17, 2008. He answered the SOR in writing on December 22, 2008, and requested a hearing before an Administrative Judge. DOHA received the request on January 2, 2009, and I received the case assignment on February 25, 2009. DOHA issued a notice of hearing the next day, on February 26, 2009, and I convened the hearing as scheduled on March

19, 2009. The Government offered Exhibits (GXs) 1 through 7, which were received by way of stipulation. Applicant testified on his own behalf and submitted Exhibits (AppXs) A through F without objection. DOHA received the transcript of the hearing (TR) on April 1, 2009. I granted Applicant's request to keep the record open until April 2, 2009, to submit additional matters. However, on March 20, 2009, the Applicant informed the undersigned, through Department Counsel, that he "was going to Spain on business for about six weeks;" and as such, asked for additional time in which to submit documentation. On June 9, 2009, through Department Counsel, he submitted Exhibits G through L, which were admitted without objection. The record closed on June 9, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, 1.o., 1.t. 1.w., 1.y.~1.a.a. and 2.a of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.b., 1.d.~1.n., 1.p.~1.s., 1.u., 1.v. and 1.x of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

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

The Applicant is retired from the United States Navy, and has a positive monthly cash flow of about \$700 (TR at page 51 line 12 to page 54 line 2). He is also receiving help from an on-line law firm to address his alleged past due debts (TR at page 54 line 7 to page 55 line 12, and AppX I).

1.a. It is alleged that the Applicant is indebted to Creditor A in the amount of about \$755 (GX 6 at page 2). The Applicant disputes the amount of this credit card debt, and his on-line law firm notes that Applicant's dispute of this debt is "under review" (TR at page 28 line 12 to page 30 line 3, and AppX I at page 3). I find this debt to be in dispute.

1.b. It is alleged that the Applicant is indebted to Creditor B in the amount of about \$128 (GX 6 at page 2). The Applicant disputes this debt as not being his debt, but has not done so formally through his on-line law firm (TR at page 30 line 10 to page 31 line 1). I find this debt to be outstanding.

1.c. It is alleged that the Applicant has an outstanding judgment to Creditor C in the amount of about \$1,019 (GX 6 at page 1). The Applicant admits this outstanding judgment (TR at page 31 line 20 to page 32 line 12). I find this judgment to be outstanding.

1.d. It is alleged that the Applicant is indebted to Creditor D in the amount of about \$584. The Applicant avers that this debt has been paid, and submits a March 2006 promissory note to that end, that matured in May of 2007 (TR at page 20 line 12 to

page 32 line 12, and AppX I at page 1). This debt does not appear on the Government's most recent February 2009 credit report (CR) (See GX 6). I find this debt has been paid.

1.e. It is alleged that the Applicant is indebted to Creditor E in the amount of about \$728 (GX 6 at page 2). The Applicant disputes this debt as not being his debt, and his on-line law firm notes that Applicant's dispute of this debt is "under review" (TR at page 28 line 12 to page 30 line 3, and AppX I at page 3). I find this debt to be in dispute.

1.f.~1.i. It is alleged that the Applicant is indebted to Creditor F, for student loans, in the combined amount of about \$19,586. The Applicant is current with his student loans, as evidenced by documentation from the creditor (TR at page 34 lines 4~16, and AppX A at pages 3~4). These debts do not appear on the Government's most recent February 2009 CR (See GX 6). I find that the Applicant is current with these debts.

1.m. It is alleged that the Applicant is indebted to Creditor M in the amount of about \$237(GX 6 at page 2). The Applicant disputes this debt as having been paid, and his on-line law firm notes that Applicant's dispute of this debt is "under review" (TR at page 37 line 20 to page 39 line 25, and AppX I at page 3). I find this debt to be in dispute.

1.n. It is alleged that the Applicant is indebted to Creditor N in the amount of about \$317 (GX 6 at page 2). The Applicant disputes this debt as not being his debt, and his on-line law firm notes this account as being "under review" (TR at page 28 line 12 to page 30 line 3, and AppX I at page 3). I find this debt to be in dispute.

1.o. It is alleged that the Applicant is indebted to Creditor O in the amount of about \$1,000 (GX 6 at page 3). The Applicant admits this past due debt (TR at page 42 lines 7~16). I find this debt to be outstanding.

1.p., 1.z. and 1.a.a. The Applicant filed for the protection of a Chapter 13 Bankruptcy in February of 1995, but later withdrew his petition (TR at page 48 line 16 to page 50 line 6). However, in July of 2001, he again filed for the protection of Bankruptcy (*Id*, and AppX L). He was eventually discharged of his debts in February of 2005 (*Id*). It is alleged that the Applicant is indebted to Creditor P for an outstanding judgement in the amount of about \$833. This debt was included in Applicant's Bankruptcy petition and was discharged, as evidenced by Applicant's Bankruptcy documentation (TR at page 42 line 19 to page 43 line 8, and AppX L).

1.q. and 1.z. It is alleged that the Applicant is indebted to Creditor Q for an outstanding judgement in the amount of about \$1,280. This debt was included in Applicant's Bankruptcy petition and was discharged, as evidenced by Applicant's Bankruptcy documentation (TR at page 43 lines 9~15, and AppX L).

1.r. It is alleged that the Applicant is indebted to Creditor R in the amount of about \$244 (GX 6 at page 2). The Applicant disputes this debt, and his on-line law firm notes this account as being “deleted” (TR at page 43 line 17 to page 44 line 7, and AppX I at page 2). I find the Applicant successfully disputed this debt.

1.s. It is alleged that the Applicant is indebted to Creditor S in the amount of about \$7,625 (GX 6 at page 3). The Applicant disputes this debt (TR at page 44 line 8 to page 45 line 3). This was the voluntary repossession of a truck, towards which he avers he owes nothing further (*Id*). His on-line law firm notes this account as being in dispute since “04/16/07” (AppX I at page 3). I find this debt to be in dispute.

1.t. and 1.u. It is alleged that the Applicant is indebted to Creditor T for two debts, one for about \$275 and the other for \$1,760. The Applicant disputes these phone bills, and his on-line law firm notes the smaller debt is “under review,” and the larger debt as being in dispute since “06/13/07” (TR at page 45 line 6 to page 47 line 3, and AppX I at page 2). These debts do not appear on the Government’s most recent February 2009 CR (See GX 6). I find these debts to be in dispute.

1.v. It is alleged that the Applicant is indebted to Creditor V in the amount of about \$420. The Applicant denies this debt, and it does not appear on the Government’s most recent February 2009 CR (TR at page 47 lines 4~8, and See GX 6). I find the Applicant does not owe this debt.

1.w. and 1.x. It is alleged that the Applicant is indebted to Creditor W for two debts totaling about \$488. The Applicant disputes these debts as having been “paid,” and his on-line law firm notes that these debts have been “deleted” (TR at page 47 lines 11~21, and AppX I at page 2). These debts do not appear on the Government’s most recent February 2009 CR (See GX 6). I find the Applicant successfully disputed these debts.

1.y. Lastly, it is alleged that the Applicant is indebted to Creditor Y in the amount of about \$320. The Applicant dispute this debt as having been paid (TR at page 47 line 24 to page 48 line 14). This debt does not appear on the Government’s most recent February 2009 CR (See GX 6). I find the Applicant successfully disputed ths debt.

### **Guideline E - Personal Conduct**

In answer to Sections 28.a. and 28.b. on his May 2008 e-QIP, the Applicant failed to disclose his delinquent debts in excess of 90 and 180 days (GX 3 at pages 26~27). The Applicant testified, credibly, that he was in hurry to complete the e-QIP, and had no intention to withhold information from the Government (TR at 56 line 2 to page 59 line 8). His character is attested to by those who know the Applicant in the workplace (AppXs G and H, see *a/so* AppXs B~F). I find this not to be a wilful falsification.

## 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 ¶ 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 AG ¶ 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 ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated some delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(d) where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," may be mitigating. Here, the Applicant has a positive monthly cash flow of about \$700. I have given the Applicant the benefit of the doubt as to the numerous debts that are still in dispute; and despite the undersigned giving the Applicant more than two months to address his remaining past due debts, his debts to creditors B, C and O remain outstanding. These are not insignificant debts, but total in excess of over \$2,000.

### **Guideline E - Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 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."

I find no disqualifying conditions applicable in this case, as Applicant's omissions in answering Sections 28.a. and 28.b. were not "deliberate" as required under AG ¶ 26(a). I find no willful falsification.

## 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 ¶ 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." Under AG ¶ 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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: | AGAINST APPLICANT |
|---------------------------|-------------------|
| Subparagraph 1.a:         | For Applicant     |
| Subparagraph 1.b:         | Against Applicant |
| Subparagraph 1.c:         | Against Applicant |
| Subparagraph 1.d:         | For Applicant     |
| Subparagraph 1.e:         | For Applicant     |
| Subparagraph 1.f:         | For Applicant     |
| Subparagraph 1.g:         | For Applicant     |
| Subparagraph 1.h:         | For Applicant     |
| Subparagraph 1.i:         | For Applicant     |
| Subparagraph 1.j:         | For Applicant     |
| Subparagraph 1.k:         | For Applicant     |
| Subparagraph 1.l:         | For Applicant     |
| Subparagraph 1.m:         | For Applicant     |
| Subparagraph 1.n:         | For Applicant     |
| Subparagraph 1.o:         | Against Applicant |
| Subparagraph 1.p:         | For Applicant     |
| Subparagraph 1.q:         | For Applicant     |

|                     |               |
|---------------------|---------------|
| Subparagraph 1.r:   | For Applicant |
| Subparagraph 1.s:   | For Applicant |
| Subparagraph 1.t:   | For Applicant |
| Subparagraph 1.u:   | For Applicant |
| Subparagraph 1.v:   | For Applicant |
| Subparagraph 1.w:   | For Applicant |
| Subparagraph 1.x:   | For Applicant |
| Subparagraph 1.y:   | For Applicant |
| Subparagraph 1.z:   | For Applicant |
| Subparagraph 1.a.a. | For Applicant |

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola  
Administrative Judge