



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



In the matter of: )  
 )  
 ) ISCR Case No. 09-01800  
 SSN: )  
 )  
 Applicant for Security Clearance )

**Appearances**

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

May 20, 2010

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on July 2, 2008. On August 28, 2009, 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant acknowledged receipt of the SOR on September 4, 2009. He answered the SOR in writing (Response) on October 13, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on December 1, 2009, and I received the case assignment that same date. DOHA issued a notice of hearing on December 7, 2009, and I convened the hearing as scheduled on January 26, 2010.

The Government offered Exhibits (GXs) 1 through 9, which were received without objection. The Applicant testified on his own behalf and submitted Exhibit (AppX) A, which was received without objection. DOHA received the transcript of the hearing (TR) on February 2, 2010. I granted the Applicant's two requests, one at his hearing and the other one subsequent to his hearing, to keep the record open until March 28, 2010, to submit additional matters. On March 26, 2010, he submitted AppXs B through J, which were received without objection. The record closed on March 29, 2010. 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, the Applicant admitted the factual allegations in Subparagraphs 1.a. through 1.c. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.d. through 1.j. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

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

After 20 years of service, the Applicant, a Lieutenant Commander, retired from the Navy in 1992. (TR at page 31 lines 2~25, at page 34 line 25 to page 45 line 3, and AppX B.) Once retired, he initially had a significant reduction of income, until he found permanent employment. (TR at page 47 lines 21~25.) He also burdened himself with the student loans of both his daughter and his son. (TR at page 45 line 4 to page 46 line 11.) This contributed greatly the Applicant's current financial difficulties.

1.a. The Applicant is indebted to Creditor A for a credit card debt in the amount of about \$14,377. (TR at page 57 line 9 to page 60 line 19, and GX 9 at page 2.) The Applicant averred that he would address this admitted debt; but despite having been given two months after his hearing to do so, he has submitted nothing in this regard. (TR at page 88 line 18 to page 89 line 6.) I find that this debt has not been addressed; and as such, is still outstanding.

1.b. The Applicant was indebted to Creditor B for a credit card debt in the amount of about \$3,504. (TR at page 56 line 14 to page 57 line 8.) The Applicant settled this debt for \$1,807, and paid the agreed to amount in December of 2009. (*Id.*) This is evidenced by "Proof of Delivery" of a cashier's check, and by a letter from the successor creditor of this debt. (AppX A.)

1.c. The Applicant was indebted to Creditor C for a credit card debt in the amount of about \$12,906. (TR at page 62 line 3 to page 63 line 19, and at page 89 line 7 to page 90 line 2.) The Applicant settled this debt for \$7,200, and will be making monthly payments of \$200 beginning in March of 2010. (*Id.*, and AppX C.) This is evidenced by "Settlement Agreement and Release" from the creditor. (AppX C.)

1.d. The Applicant was indebted to Creditor D for a credit card debt in the amount of about \$15,307. (TR at page 63 line 20 to page 66 line 1.) The Applicant settled this debt, which increased to about \$29,657 including interest, for \$17,800 in January of 2007. (*Id.*, and Response at Encl 2.) He avers credibly that it has “been paid off.” His credibility is attested to by those who know the Applicant. (AppXs G and H.) Furthermore, it does not appear on the Applicant’s most recent January 2010 credit report. (GX 9.)

1.e. and 1.g. The Applicant filed his Federal Income Tax Returns for tax year 2004 in January of 2008, and for tax year 2005 in August of 2009. (TR at page 77 line 14 to page 80 line 4, at page 81 lines 16~22 at page 83 line 23 to page 84 line 3, at page 85 line 20~23, at page 90 lines 3~23, and Response at Encls 3 and 7.) In March of 2010 the Applicant retained counsel to address the \$27,855 owed in back taxes for tax year 2004. (AppX E.) This counsel is “in the initial process of gathering the necessary financial data and Income source information. (*Id.*)

1.f., and 1.h.~1.j. The Applicant filed his state income tax return for tax year 2004 in January of 2008, and for tax years 2005 and 2006 in August of 2009. (TR at page 81 lines 16~22 at page 83 line 23 to page 84 line 3, at page 90 line 24 to page 91 line 17, and Response at Encls 3~6.) In March of 2010 the Applicant retained counsel to also address the \$16,059 owed in back taxes for tax years 2005 and 2006. (AppX E.)

### **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 commonsense decision. According to 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. The Applicant has significant past due debts and back taxes that are still outstanding. Subparagraph 19(g) is also applicable, as there was a “*failure to file annual Federal, state . . . income tax returns as required . . .*”

The Mitigating Condition found in Subparagraph 20(b) is arguably applicable where “*the conditions that resulted in the financial problem were largely beyond the*

*person's control (e.g., loss of employment, . . .), and the individual acted responsibly under the circumstances.”* With his retirement from the Navy, the Applicant's income was substantially reduced; and as such, he could not keep paying on his credit card and his children's college loan payments. However, Subparagraph 20(d) under the Mitigating Conditions is not applicable, as there is not enough evidence to show *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Here, the Applicant has offered nothing to show that he has addressed his significant credit card debt to creditor A, and he has only recently begun to address his state and Federal back taxes, which are substantial.

### **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. Here, he has the unqualified support of those with whom he works and know him in the community. (AppXs G and H.) However, 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.:	Against Applicant
Subparagraphs 1.b.~1.d.:	For Applicant
Subparagraphs 1.e. and 1.f.:	Against Applicant
Subparagraphs 1.g.~1.j.:	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