



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-04393
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: John Stamford, Personal Representative

January 11, 2011

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**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 10, 2009. On April 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, J and E 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 April 16, 2010. He answered the SOR in writing on May 11, 2010, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on June 24, 2010. DOHA issued a notice of hearing on July 29, 2010, and I convened the hearing as scheduled on September 2, 2010. The Government offered

Exhibits (GXs) 1 through 11, which were received without objection. The Applicant testified on his own behalf, as did his Personal Representative. DOHA received the transcript of the hearing (TR) on September 15, 2010. I granted the Applicant's requests, one made at his hearing and the other after his hearing, to keep the record open until October 31, 2010, to submit additional matters. On September 28, 2010, he submitted Exhibit (AppX) A, on October 29, 2010, he submitted AppX B and on November 1, 2010, he submitted AppX C, which were received without objection. The record closed on November 2, 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.~1.c., 1.e., 1.g.~1.q., 1.s.~1.y., 2.a.~2.j., and 3.a. of the SOR, without explanations. He denied the factual allegations in Subparagraphs 1.d., 1.f., and 1.r. of the SOR.

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

The Applicant was divorced in 2002, and was unemployed or underemployed from about "2003 to 2007." (TR at page 60 line 16 to page 62 line 11; *see also* page 34 line 15 to page 39 line 15.) His divorce, coupled with his employment situation, have caused the Applicant's current financial situation.

1.a. The Applicant admits that he owes a debt to Creditor A in the amount of about \$451. (TR at page 42 line 22 to page 44 line 15, *see also* GX 7 at page 5.) Recently, on October 30, 2010, the Applicant has retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.b. The Applicant admits that he owes a debt to Creditor B in the amount of about \$340. (TR at page 44 line 16 to page 45 line 23; *see also* GX 7 at page 8.) On October 30, 2010, the Applicant retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.c. The Applicant admits that he owes a debt to Creditor C in the amount of about \$194. (TR at page 46 line 11 to page 47 line 7.) On October 30, 2010, the Applicant retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.d. The Applicant denies that he owes a debt to Creditor D in the amount of about \$2,576, but he admits that he has not "looked into it." (TR at page 47 lines 8~17; *but see* GX 7 at page 8.) I find that this debt is still outstanding.

1.e. The Applicant admits that he owes a debt to Creditor E in the amount of about \$230. (TR at page 47 line 18 to page 48 line 5.) On October 30, 2010, the

Applicant retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.f. The Applicant denies that he owes a debt to Creditor F in the amount of about \$169, but he admits that he has not finished his research vis-a-vis this debt. (TR at page 48 lines 6~16.) I find that this debt is still outstanding.

1.g. The Applicant admits that he owes a debt to Creditor G in the amount of about \$11,314, for back child support. (TR at page 39 line 20 to page 40 line 14, at page 48 line 17 to page 49 line 20, at page 64 line 10 to page 65 line 18; see *also* GX 8 at page 1.) He is making monthly payments of \$521.06 to the mother of his children, but of that only \$10.42 went towards his arrearage. (*Id.*, and AppX B at pages 3~7.) As of July 31, 2010, his arrearage is still \$11,301.74. (*Id.*) I find that this debt is still outstanding, and that the Applicant has yet to make a good faith effort to address his back child support.

1.h.~1.m., 1.p. and 1.q. The Applicant admits that he owes delinquent Federal student loans totaling about \$52,481. (TR at page 49 line 21 to page 51 line 25; see *also* GX 7 at pages 9~11.) Federal student loans are not dischargeable by way of bankruptcy; and as such, I find that these debts are still outstanding.

1.n. The Applicant admits that he owes a debt to Creditor N in the amount of about \$3,942. (TR at page 52 lines 1~4; see *also* GX 7 at page 9.) On October 30, 2010, the Applicant retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.o. The Applicant admits that he owes a debt to Creditor O in the amount of about \$6,315. (TR at page 52 lines 5~17.) On October 30, 2010, the Applicant retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.r. The Applicant denies that he owes a debt to Creditor R in the amount of about \$2,109, but he has submitted no documentation in support of his averment. (TR at page 52 line 18~17 to page 53 line 21; *but see* GX 7 at page 5.) I find that this debt is still outstanding.

1.s. The Applicant admits that he owes a debt to Creditor S in the amount of about \$1,124. (TR at page 53 line 22 to page 54 line 1.) On October 30, 2010, the Applicant retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.t. The Applicant admits that he owes a debt to Creditor T in the amount of about \$212. (TR at page 54 lines 2~5; see *also* GX 7 at page 6.) On October 30, 2010, the Applicant retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.u. The Applicant admits that he owes a debt to Creditor U in the amount of about \$645. (TR at page 54 lines 6~8; see *also* GX 7 at page 7.) On October 30, 2010, the Applicant retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.v. The Applicant admits that he owes a debt to Creditor V in the amount of about \$181. (TR at page 54 line 9 to page 55 line 7; see *also* GX 7 at page 7.) On October 30, 2010, the Applicant retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.w. The Applicant admits that he owes a debt to Creditor W in the amount of about \$54. (TR at page 55 lines 8~16; see *also* GX 7 at page 14.) On October 30, 2010, the Applicant retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.x. The Applicant admits that he owes a debt to Creditor X in the amount of about \$53. (TR at page 55 line 17 to page 56 line 5; see *also* GX 7 at page 14.) On October 30, 2010, the Applicant has retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

1.y. The Applicant admits that he owes a debt to Creditor Y in the amount of about \$114. (TR at page 56 lines 6~13; see *also* GX 7 at page 14.) On October 30, 2010, the Applicant retained the services of a bankruptcy attorney to address his past due indebtedness. (AppX C.) I find that this debt is still outstanding.

### **Guideline J - Criminal Conduct & Guideline E - Personal Conduct**

2.a~2.j. and 3.a. In August of **1994**, the Applicant was charged with Inflict Corporal Injury Spouse/Cohab. (GX 2 at page 9, and GX 5 at page 3.) He got into a shoving match with his spouse, but the charge was dismissed after they both attended marriage counseling. (TR at page 82 line 14 to page 83 line 24.)

In April of **1999**, the Applicant was arrested and charged, in part, for Obstruction of Highway Passageway, to which he pled no contest, and was fined. (GX 2 at page 6, and GX 4 at page 1.) He and a friend were playing bumper cars with their vehicles on a public highway. (TR at page 78 line 3 to page 82 line 9.)

In October of **2000**, the Applicant was arrested and charged with Public Intoxication. (GX 4 at page 6.) He initially failed to appear at his arraignment, but eventually appeared, forfeited his bail, and the case against him was terminated. (*Id.*, and TR at page 78 line 3 to page 82 line 9.)

During the period from May through August of **2001**, the Applicant was charged with Violating of a Protective Order four times. (GX 5 at page 3.) He and his wife were going through a divorce, and when he picked up their children, she claimed that he

violated her protective order. (TR at page 71 line 23 to page 73 line 6.) All four charges were dismissed as being “frivolous.” (*Id.*)

In December of **2001**, the Applicant was arrested and charged with Disorderly Conduct/Public Intoxication. He was thrown out of a club by a bouncer. (TR at page 76 line 12 to page 77 line 9.) He forfeited his bail, and the case against him was terminated. (*Id.*)

In September of **2002**, the Applicant was arrested and charged with Disorderly Conduct/Intoxication. He got into an argument with his fiancée, who dropped him off at the side of the road, where the police found and arrested the Applicant. (TR at page 75 line 13 to page 76 line 11.) He pled guilty, was fined and paid court costs. (*Id.*)

In December of **2006**, the Applicant was arrested and charged with Domestic Violence. He got into a shoving match with his 14 year old son. (TR at page 68 line 24 to page 71 line 22.) This charge was ultimately dismissed.

In September of **2007**, the Applicant was, in part, arrested for and found guilty of Driving Under the Influence and Failure to Yield to Public Safety Vehicle. (GX 2 at page 5, and GX 5 at page 3.) He nearly collided with a fire truck. (TR at page 73 line 7 to page 75 line 12.) He spent three days in jail awaiting his arraignment, was fined, paid court costs, and his drivers license was suspended for six months. (GX 2 at page 5, and GX 5 at page 3.)

About three years ago, in December of **2007**, the Applicant was charged with Violation of Temporary Protection Order. (GX 2 at page 8, and GX 5 at page 3.) He called his ex-fiancée about their children, but by doing so violated the Protection Order. (TR at page 65 line 22 to page 68 line 23.) He pled no contest and received a suspended sentence. This was the Applicant’s last act of Criminal Conduct or questionable Personal Conduct. (TR at page 94 line 13 to page 95 line 4.)

## **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 has significant past due debts, which he has yet to address. Only at the 12<sup>th</sup> hour has he looked into the possibility of filing for the protection of a bankruptcy.

I can find no countervailing Mitigation Condition that is applicable. The Mitigating Condition found in Subparagraph 20(b) is applicable where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, . . . divorce or separation), and the individual acted responsibly under the circumstances.”* Here, the Applicant was divorced in 2002, and unemployed or underemployed from about 2003 to 2007, but he has yet to seriously address his admitted past due debts.

### **Guideline J - Criminal Conduct**

Paragraph 30 of the adjudicative guidelines sets out the security concern relating to Criminal Conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The adjudicative guidelines set out certain conditions that could raise security concerns. Subparagraph 31(a) provides that *“a single serious crime or multiple lesser offenses”* may raise security concerns. The Applicant has been arrested or charged nine times, the last time in December of 2007. Here, this is countered by the mitigating condition in Subparagraph 32(a) as *“so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.”* Six of his nine arrests or charges occurred more than eight years ago, and his last two criminal charges occurred about three years ago. They are distant enough in time so as not to be of present security significance.

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

Paragraph 15 of the new adjudicative guidelines sets out the security concern relating to Personal Conduct:

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.

The adjudicative guidelines set out certain conditions that could raise security concerns. Subparagraph 16(d) arguably applies and provides that “*credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violation.*” This is countered, however, by Subparagraph 17(c) as “*so much time has passed . . . that it is unlikely to recur and does not cast a doubt on the individual’s reliability, trustworthiness, or good judgment.*” Again, the Applicant’s last criminal involvement was about three years ago.

### **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 who know the Applicant. (AppX A.) 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
Subparagraphs 1.a.~1.y.	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a.~2.j.	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.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