



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-04976
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

September 26, 2011

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

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 26, 2009. On March 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines E and 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), and effective within the Department of Defense after September 1, 2006.

The Applicant acknowledged receipt of the SOR on April 28, 2010. He answered the SOR in writing on July 22, 2010, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on August 2, 2010. A notice of hearing (NOH) was originally issued on August 2, 2010, setting the case for hearing on September 2, 2010. However, on August 6, 2010, the Applicant informed DOHA that he was deployed to Afghanistan until

April of 2011. As a result, the September hearing was cancelled, and a second NOH was issued setting the case for hearing on April 13, 2011, and I convened the hearing on that date. The Government offered Exhibits (GXs) 1 through 9, which were received without objection. The Applicant testified on his own behalf and submitted Exhibits (AppXs) A through G, which were received without objection. DOHA received the transcript of the hearing (TR) on April 21, 2011. I granted the Applicant's request to keep the record open until May 13, 2011, to submit additional matters. On May 2, 2011, he submitted Exhibit H, which was received without objection, and on May 13, 2011, he submitted Exhibit I, which was also received without objection. The record closed on May 13, 2011. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, the Applicant admitted the factual allegations in Subparagraphs 1.f., and 2.e. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.a.~1.e. and 2.a.~2.d. of the SOR.

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

1.a.~1.f. In April of 1998, the Applicant filed for the protection of a Chapter 7 Bankruptcy. (GX 7.) He had a taxi cab business that failed. (TR at page 38 line 10 to page 40 line 7.) In 2007, the Applicant had a pizza business that was profitable until the business downturn in 2008. (TR at page 40 line 8 to page 41 line 2.) This business failure caused his current financial difficulties, which began to end with his deployment as a linguist to Afghanistan in February of 2009. (*Id.*, and AppXs H and I.) He now has a positive monthly cash flow of about \$356. (AppX A.)

It is alleged that the Applicant has a past due debt to Creditor A in the amount of about \$490. (GX 6 at page 3.) This credit card debt was settled for \$73.62 and paid in February of 2010. (TR at page 41 line 3 to page 43 line 14, and AppXs E and G.) This is evidenced by a cancelled check, and by correspondence from the successor creditor of this debt. (AppXs E and G.)

It is alleged that the Applicant has a past due debt to Creditor B in the amount of about \$75. (GX 2 at page 7.) This satellite TV debt was paid in February of 2010, as evidenced by correspondence from the successor creditor of this debt. (TR at page 43 line 15 to page 44 line 7, and AppX D.)

It is alleged that the Applicant has a past due debt to Creditor C in the amount of about \$2,641. (GX 9 at page 2.) This debt, the lease of a "credit card machine" that was used in the Applicant's pizza business, was paid in April of 2010, as evidenced by correspondence from the creditor. (TR at page 44 lines 8~24, and AppX C.)

It is alleged that the Applicant has a past due debt to Creditor D in the amount of about \$59. (GX 2 at page 13.) This car insurance debt was paid in February of 2010,

as evidenced by a cancelled check. (TR at page 44 line 25 to page 45 line 20, and AppX F.)

Finally, it is alleged that the Applicant has a past due debt to Creditor E in the amount of about \$10,000. (GX 2 at page 11.) This car loan debt was included in his 1998 Bankruptcy, and the creditor verifies that the “account is closed with a zero balance.” (TR at page 45 line 23 to page 47 line 7, and AppX B.)

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

2.a.-2.d. When the Applicant executed his e-QIP in February of 2009, he answered “No,” that “for the last 7 years,” as to any “bills or debts turned over to a collection agency”; as to “any account or credit card suspended, charged off, or cancelled for failing to pay as agreed”; as to being “over 180 days delinquent on any debts(s)”; and as to being “currently over 90 days delinquent on any deb(s).” The Applicant’s wife handled their debts, and he testified credibly as follows:

Like I mentioned earlier, I wasn’t aware about (*sic*) those things when I first printed out my Credit Report. When I gave it to the recruiter, she didn’t see anything on that. So, that’s why I wasn’t aware about (*sic*) all of those. It showed [up] later on, on my credit [report]. (TR at page 47 line 22 to page 48 line 2, and AppX H.)

His trustworthiness and credibility is attested to by one who knows the Applicant’s conduct in a combat environment, and by Certificates of Appreciation for his combat support in Afghanistan. (AppX H at pages 2 and 3, and AppX I.)

2.d. The Applicant admits to having an extra marital affair in 2006, when he was separated from his wife, an affair she is yet unaware of. (TR at page 48 line 10 to page 49 line 11, and at page 54 lines 12~17.) If faced with the option of improperly disclosing classified information, or telling his wife of his infidelity, the Applicant repeatedly stated that he would not betray the U.S., but would tell his wife. (*Id.*)

### **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 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 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. Applicant had several past due debts that he had been unable to address in a timely fashion. 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. Subparagraph 20(b) applies where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., . . . business downturn . . . ) and the individual acted responsibly under the circumstances.”* Here, the Applicant’s pizza business failed as a result of the 2008 business downturn, but he has since acted responsibly vis-a-vis his debts. Subparagraph 20(d) applies where the evidence shows *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* In early 2010, the Applicant addressed four of the five alleged past due debts. The fifth debt was discharged by way of Bankruptcy more than 10 years ago.

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

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 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.”

Although I find no wilful falsification of his e-QIP here, the Disqualifying Condition under Subparagraph 16(e) does apply. It provides that the *“concealment of information about one’s conduct, that creates a vulnerability to exploitation”* may be disqualifying. This is countered, however, by Mitigating Condition 17(e) in that *“the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.”* The Applicant has stated in no uncertain terms that he would tell his wife of his extra-marital affair, when they were separated, rather than betray the U.S.

#### **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 AG 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. Those who know the Applicant in his combat support role in Afghanistan speak most highly of the Applicant. (AppX H at pages 1 and 2, and AppX I). Thus, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has mitigated the security concerns arising from his Financial Considerations and Personal Conduct.

### **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 J:	FOR APPLICANT
Subparagraphs 1.a.~1.f.:	For Applicant
Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraph 2.a:~2.e.	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.

Richard A. Cefola  
Administrative Judge