



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-04082
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

June 6, 2012

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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 March 12, 2010. On November 17, 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 December 19, 2011. He answered the SOR in writing on January 2, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on January 11, 2012, and I received the case assignment on March 13, 2012. DOHA issued a notice of hearing on March 26, 2012, and I convened the hearing as scheduled on April 12, 2012. The Government offered Exhibits (GXs) 1 through 8, which were received without objection. The

Applicant testified on his own behalf and submitted Exhibits (AppXs) A through D, which were received without objection. DOHA received the transcript of the hearing (TR) on April 24, 2012. I granted the Applicant's request to keep the record open until May 15, 2012, to submit additional matters. "Between May 11, 2012 and May 14th, 2012," he submitted, through Department Counsel, Exhibits E through J, which were received without objection. The record closed on May 15, 2012. Based upon a review of the 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.a., 1.c., 1.e.~1.g., 1.i.~1.k., 1.m., and 1.p.~1.v. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.b., 1.d., 1.h., 1.l., 1.n., and 1.o. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

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

In 2008, the Applicant opened "a high-end children's clothing store." (TR at page 41 line 2 to page 44 line 7, and AppX A.) With the collapse of the housing market that same year, however, his sales plummeted and he eventually lost the business. (*Id.*) This financial loss was compounded, "at the end of 2010," when his daughter "was born with Down Syndrome and also a severe case of pulmonary hypertension." (TR at page 44 line 7 to page 47 line 17, and AppX B.) Both of these untimely occurrences have caused the Applicant's current financial difficulties, as evidenced by the past due debts listed on the SOR:

1.a. is a debt to Creditor A in the amount of about \$206. (TR at page 25 line 3 to page 26 line 21.) The Applicant has engaged the services of a Debt Consolidation Service (DCS), to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 1.)

1.b. and 1.n. are one and the same debt to Creditor B in the amount of about \$1,447. (TR at page 26 line 22 to page 28 line 5.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to also address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 2.)

1.c. is a debt to Creditor C in the amount of about \$3,223. (TR at page 28 line 6 to page 29 line 2, and at page 57 line 15 to page 58 line 23.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.)

1.d. is a debt, the result of a foreclosure, to Creditor D in the amount of about \$47,701. (TR at page 29 line 3 to page 31 line 11, and at page 58 line 24 to page 60 line 6.) This is covered by the State Anti-Deficiency Statutes.<sup>1</sup> This is evidenced by a Form 1099-A issued to the Applicant by the Internal Revenue Service. (AppX I.) As a result, the Appellant is not subject to a deficiency judgement vis-a-vis this mortgage debt; i.e., he is under no legal obligation to pay this debt.

1.e. is a debt to Creditor E in the amount of about \$8,540. (TR at page 31 line 19 to page 32 line 2.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 3.)

1.f. is a debt to Creditor F in the amount of about \$25,481. (TR at page 32 lines 3~20.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 4.)

1.g. is a debt to Creditor G in the amount of about \$19,885. (TR at page 32 line 21 to page 33 line 4.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 5.)

1.h. is a debt to Creditor H in the amount of about \$1,022. (TR at page 33 lines 5~18.) The Applicant credibly avers that he paid this debt, and it does not appear on the Government's most recent April 2012 credit report. (*Id.*, and GX 8.) I find that this debt has been paid.

1.i. is a debt to Creditor I in the amount of about \$572. (TR at page 33 line 20 to page 34 line 10.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 6.)

1.j. is a debt to Creditor J in the amount of about \$1,698. (TR at page 34 lines 14~23.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 7.)

1.k. is a debt to Creditor K in the amount of about \$138. (TR at page 34 line 24 to page 35 line 3.) The Applicant has engaged the services of the DCS, to which he is

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<sup>1</sup>State's Code of Civil Procedure, Sections 577~582, in particular Section 580.

making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 8.)

1.l. is a debt to Creditor L in the amount of about \$397. (TR at page 35 lines 4~23.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 9.)

1.m. is a debt to Creditor M in the amount of about \$1,302. (TR at page 36 lines 5~11.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 10.)

1.n. has already been discussed, above, in conjunction with subparagraph 1.b.

1.o. is a debt to Creditor O in the amount of about \$3,243. (TR at page 36 lines 16~25.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 11.)

1.p. is a debt to Creditor P in the amount of about \$210. (TR at page 37 lines 1~8.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.)

1.q. is a debt to Creditor Q in the amount of about \$202. (TR at page 37 lines 9~24.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 12.)

1.r. is a debt to Creditor R in the amount of about \$2,365. (TR at page 37 line 25 to page 38 line 12.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.)

1.s. is a debt to Creditor S in the amount of about \$11,088. (TR at page 38 line 13 to page 39 line 9.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 4.)

1.t. is a debt to Creditor T in the amount of about \$134. (TR at page 39 lines 11~18.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 13.)

1.u. is a debt to Creditor U in the amount of about \$3,051. (TR at page 39 line 19 to page 40 line 2.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.)

1.v. is a debt to Creditor V in the amount of about \$656. (TR at page 40 lines 3~11.) The Applicant has engaged the services of the DCS, to which he is making monthly payments of \$800, in order to address this past due debt. (AppXs F and G.) He has also written a letter to this creditor seeking to settle this debt. (AppX E at page 14.)

### **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, and that are applicable in this case. 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.

However, the countervailing second and fourth Mitigation Conditions are clearly applicable here. 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., . . . a business downturn, . . . unexpected medical emergency), and the individual acted responsibly under the circumstances.*” Here, the Applicant’s financial situation is directly related to his loss of his children’s clothing store, and to his daughter’s illness. Since then, he has engaged a DCS and has written settlement letters to his creditors. Subparagraph 20(d) is applicable where, “*the individual initiated*

*a good-faith effort to repay overdue creditors or otherwise resolve debts.”* The Applicant is making monthly payments of \$800 to the DCS and hopes to have all debts resolved in 39 months. (Applicant’s Closing Statement at page 1.)

**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 his workplace. (AppX D.) 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 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:	FOR APPLICANT
Subparagraphs 1.a.~1.v.	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.

Richard A. Cefola  
Administrative Judge