



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 11-06651  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Marc G. Laverdiere, Esquire, Department Counsel  
For Applicant: *Pro se*

April 12, 2012

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations (e-QIP) on January 14, 2011. On November 21, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

The Applicant acknowledged receipt of the SOR on December 9, 2011. He answered the SOR in writing on December 29, 2011, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on January 20, 2012. The Applicant responded to the FORM (Response) on March 2, 2012. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

In his Answer to the SOR, dated December 29, 2011, the Applicant admitted the factual allegations in Paragraphs 1.a.~1.e., 1.g., 1.h., and 1.j. of the SOR, with explanations. He denied the factual allegations in Paragraphs 1.f., 1.i., and 1.k. of the SOR.

### Guideline F - Financial Considerations

The Applicant attributes his current financial difficulties to being laid off his job in October of 2001, and to his not obtaining “a job that provided health benefits until March of 2004.” (Response at page 2.) He was also unemployed in 2007 and again in 2009. (Item 6 at page 11.)

1.a. and i.h. The Applicant has failed to file his State A income tax returns for tax years 2004~2007; and owes about \$9,399 in back taxes as a result of a tax lien. (Item 8 at page 1.) He avers that he has “entered into a payment plan with . . . a debt collector for” State A, but has submitted no corroborating documentation in this regard. (Response at page 1.) I find that this debt is still outstanding, as alleged.

1.b. The Applicant is indebted to State B for about \$747 in back taxes as a result of a tax lien. (Item 8 at page 1.) He admits this allegation, and avers “this issue remains open.” (Response at page 1.) I find that this debt is still outstanding, as alleged.

1.c.~1.e. and 1.g. The Applicant has failed to file his Federal income tax returns for tax years 2005~2007; and as a result, owes about \$483,986 in back taxes as a result of tax liens. (Item 8 at page 1.) He avers that “the missing 2005 . . . [through] 2007 returns . . . will be submitted in January 2012 and then . . . [he] will then(*sic*) negotiate a payment plan with the IRS,” but has submitted no corroborating documentation in this regard. (Response at page 1.) I find that this debt is still outstanding, as alleged.

1.f. It is alleged that the Applicant is indebted to Creditor G in the amount of about \$103. He avers that this “debt was paid in full on 6 January 2011”; and as it does not appear on the Government’s most recent November 2011 credit report, I find that the Applicant has paid this debt.

1.i. It is alleged that the Applicant is indebted to Creditor I in the amount of about \$1,142. He avers that this “debt was paid in full on 5 April 2011”; and as it does not appear on the Government’s most recent November 2011 credit report, I find that the Applicant has paid this debt.

1.j. It is alleged that the Applicant is indebted to Creditor J in the amount of about \$2,000. He admits this allegation, and avers “this is my wife’s account and it remains unpaid at this time.” (Response at page 2.) I find that this debt is still outstanding, as alleged.

1.k. It is alleged that the Applicant is indebted to Creditor K in the amount of about \$900. He admits, in part, this allegation, and avers “that my wife has an unpaid account in the amount of \$271.28 . . . from 2005,” and that he “will be paying this off.” (Response at page 2.) I find that this debt is still outstanding, in the amount of \$271.28.

### **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.

I can find no countervailing Mitigating Condition that is 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, . . . and the individual acted responsibly under the circumstances.”* Here, while his financial difficulties can be attributed, in part, to his periods of unemployment, it does not explain why he failed to file both State and Federal tax returns.

### 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 record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. The Applicant has about \$500,000 in past due debts or back taxes. For this reason, 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.e.	Against Applicant
Subparagraph 1.f.	For Applicant
Subparagraphs 1.g. and 1.h.	Against Applicant
Subparagraph 1.i.	For Applicant
Subparagraphs 1.j. and 1.k.	Against Applicant

### **Conclusion**

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

Richard A. Cefola  
Administrative Judge