



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 11-08772  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

February 10, 2014

---

**Decision**

---

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 27, 2010. On August 28, 2013, the Department of Defense (DOD) 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.

Applicant acknowledged receipt of the SOR soon thereafter. He answered the SOR in writing on September 28, 2013, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on October 18, 2013. Applicant responded to the FORM on December 7, 2013 (Response #1), and December 9, 2013 (Response #2). 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 September 28, 2013, Applicant all admitted the factual allegations in the Subparagraphs of the SOR, except for Subparagraph 1.e., with explanations.

### Guideline F - Financial Considerations

Applicant is 49 years of age, and served on active duty for ten years with the Army, from 1984~1994. (e-QIP at pages 5 and 15.) He is twice divorced, in 1994 and again in 2003, and he has two children. (e-QIP at pages 17~18 and 20~21, and Item 7 at pages 7~8.)

1.a. The SOR alleges that Applicant is indebted to Creditor A, pursuant to a judgment, in the amount of about \$6,088. Applicant avers that he contacted this creditor "and was told" that Creditor A does not "have an account in . . . [his] name." (Response #2 at page 1.) However, according to the Government's most recent credit report from May of 2013, this March 2009 judgment against Applicant is still outstanding. (Item 5 at page 1.) These are not mutually exclusive statements; i.e., although Applicant may not have an account with Creditor A, he can still have an outstanding judgment against him in favor of Creditor A. I find that this significant judgment is still outstanding.

1.b. The SOR alleges that Applicant is indebted to Creditor B, pursuant to a judgment, in the amount of about \$835. (Item 5 at page 1.) Applicant has submitted documentation showing that on December 5, 2013, he has paid Creditor B's legal counsel \$1,803 in satisfaction of this judgment. (Response #2 at pages 3 and 5.) I find that this judgment has been satisfied.

1.c. The SOR alleges that Applicant is indebted to Creditor B, pursuant to another judgment, in the amount of about \$970. (Item 5 at page 1.) Applicant has also submitted documentation showing that on December 5, 2013, he has paid Creditor B's legal counsel \$1,197 in satisfaction of this judgment. (Response #2 at pages 3 and 8.) I find that this judgment has been satisfied.

1.d. The SOR alleges that Applicant is indebted to Creditor B, pursuant to a third judgment, in the amount of about \$1,068. (Item 5 at page 1.) Applicant has submitted a December 2013 letter to Creditor B asking "assistance in settling this matter." (Response #2 at page 9.) Applicant has had nearly six years to address this judgment, and only now seeks assistance in this regard. I find that this January 2008 judgment is still outstanding.

1.e. The SOR alleges that Applicant is indebted to Creditor E in the amount of about \$994. (Item 5 at page 1.) Applicant initially denied this allegation, but has submitted documentation from Creditor E showing that this past-due debt "was settled in full on 12-05-2013." (Response #2 at page 11.) I find that this debt has been satisfied.

1.f. The SOR alleges that Applicant is indebted to Creditor F in the amount of about \$1,148. (Item 5 at page 1.) In February of 2011, he failed to return “equipment” to this creditor for “TV Converter(s) and remote controls.” (Response #2 at page 11.) Applicant has now submitted documentation showing that the requested “equipment” was shipped to the creditor in December of 2013, nearly three years after the fact. Although it appears that this debt may have been satisfied (there is no receipt from the creditor, only a “ship date of December 5, 2013”), I do not consider this to be a prompt “good faith effort” on Applicant’s part.

1.g. The SOR alleges that Applicant is indebted to Creditor G in the amount of about \$1,683. (Item 5 at page 2.) Applicant has submitted nothing in this regard. I find that this debt is still outstanding.

1.h. The SOR alleges that Applicant is indebted to Creditor H as the result of a foreclosure in the amount of about \$137,000. (Item 5 at page 2.) Applicant has submitted a tax document from the creditor showing a “.00 ENDING BAL”. (Response #2 at page 12.) I find that this debt has been satisfied.

1.i. The SOR alleges that Applicant is indebted to Creditor I in the amount of about \$319. (Item 5 at page 2.) Applicant has submitted nothing in this regard. I find that this debt is still outstanding.

1.j. The SOR alleges that Applicant is indebted to Creditor J in the amount of about \$648. Applicant has submitted nothing in this regard to this admitted debt. I find that this debt is still outstanding.

1.k. The SOR alleges that Applicant is indebted to Creditor K in the amount of about \$136. (Item 6 at page 8.) Applicant has submitted nothing in this regard. I find that this debt is still outstanding.

## **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. (AG Paragraph 2.) 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 has a significant past-due debt, which he has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Subparagraph 20(c) requires that “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Applicant has yet, in good faith, to address two outstanding judgments totaling in excess of \$7,000, and five other past due debts totaling in nearly \$4,000. Accordingly, Applicant has not met his burden of persuasion.

### **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. The record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. Applicant has over \$11,000 in outstanding judgments and past-due indebtedness that he has yet to resolve. For these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept 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
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant

Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	Against Applicant
Subparagraph 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