



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-14431
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Gregory A. Schnitzer, Esquire

September 24, 2013

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

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on September 29, 2011. On February 25, 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 on March 6, 2013. She answered the SOR in writing through counsel on March 19, 2013, and requested a hearing before an Administrative Judge. DOHA received the request on March 21, 2013, and I received the case assignment on April 30, 2013. I granted Applicant's request for a delay until June 25, 2013, in order for her counsel to be available. DOHA issued a notice of hearing on May 3, 2013, and I convened the hearing as scheduled on June 25,

2013. The Government offered Exhibits (GXs) 1 through 5, which were received without objection. Applicant testified on her own behalf, and also call her husband and their realtor to testify. DOHA received the transcript of the hearing (TR) on July 5, 2013. I granted Applicant's requests, one made at her hearing and the other made after her hearing, to keep the record open until August 19, 2013, to submit additional matters. On August 19, 2013, she submitted Exhibits (AppXs) A and B, which were received without objection. The record closed on August 26, 2013, the date the Exhibits were forwarded by Department Counsel. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in Subparagraph 1.a. of the SOR, with explanation. She denied the factual allegations in Subparagraph 1.b. of the SOR.

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

Applicant's "husband lost his job in 2009," and "had two knee operations," also in 2009, which has caused him to be disabled and unable to work. (TR at page 41 line 4 to page 43 line 16, at page 45 line 6 to page 46 line 2 and at page 55 line 15 to page 56 line 15.) This, coupled with the crash of the housing market in 2008, has caused Applicant's current financial difficulties.

1.a. It is alleged that Applicant is indebted to Bank A on a refinanced mortgage debt in the amount of about \$75,000. (GX 5 at page 1.) In answer to the SOR, Applicant admits this debt, but then defers to her husband's testimony "because he handle (*sic*) all the property." (TR at page 29 line 6 to page 30 line 10.) Her husband testified at length they could not keep up with the payments on their rental property, which they had refinanced "four to five times"; and as such, they "let the house go." (TR at page 58 line 2 to page 62 line 2.) He avers that he has made a good faith effort to follow up on this foreclosure debt, but Applicant has failed to submit anything in writing in support of this contention. (TR at page 74 line 14 to page 77 line 19.)

Both Applicant and her husband further deferred to their realtor as to the particulars of the foreclosure of this property. This witness avers that, in her conversations with the creditor, she was informed that "there was no balance due on the loan." (TR at page 82 line 14 to page 86 line 6.) She further testified in this Video Teleconference (VTC) hearing that she had an IRS Form 1099-A, that was "hard to read," for tax year 2010, which showed taxable income of "\$70,500" credited to Applicant and her husband. (TR at page 93 line 20 to page 94 line 24.) However, Appellant's Exhibit B is certified by Applicant's "tax preparer" to be the entirety of Applicant's filing for tax year 2010. There is no such IRS Form 1099-A contained therein. Instead of Applicant and her husband declaring an additional \$75,500 in income, they rather declared a loss of \$31,113 under "Sales of Business Property" on

IRS form 4797. (AppX B, see tax return for tax year 2010.) I find that this rather substantial debt is still outstanding.

1.b. It is alleged that Applicant is indebted to Bank B on a past-due mortgage debt in the amount of about \$357,000. (GX 5 at page 2.) In answer to the SOR, Applicant denies this debt. Applicant avers she is current with this debt, and this averment is supported by the post hearing documentation submitted by Applicant. (TR at page 23 line to page 24 line 5, at page 27 lines 7~23, and AppX A at pages 24, 26 and 27.) This mortgage debt has been assumed by Bank C, who's documentation shows that Applicant is current with this modified loan. (AppX A at pages 24, 26 and 27, and GX A at page 2.) I find this modified loan is not past due.

### **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 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. 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 she has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant’s past-due indebtedness can be attributed to the crash of the housing market in 2008, and her husband’s unemployment and disability in 2009, she has failed to show a good-faith effort to address her substantial debt to Bank A. Applicant, her husband and their realtor testified as to how this admitted past-due debt was addressed; however, the documentation submitted by the Government and by Applicant belie their assertions. Accordingly, Applicant has not met her 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 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 \$75,000 in past-due indebtedness that she has yet to address. If she resolves this debt, she may be eligible for access to classified information in the future. For these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept arising from her 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

### **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

