



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-14994
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

November 8, 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 August 5, 2011. On June 15, 2012, 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 June 22, 2012. He answered the SOR in writing (Answer) on July 9, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on July 13, 2012, and I received the case assignment on August 24, 2012. DOHA issued a notice of hearing on August 29, 2012, and I convened the hearing as scheduled on October 4, 2012. The Government offered Exhibits (GXs) 1 through 10, which were received without

objection. The Applicant testified on his own behalf and submitted Exhibits (AppXs) A through L, which were received without objection. DOHA received the transcript of the hearing (TR) on October 15, 2012. I granted the Applicant's request to keep the record open until October 18, 2012, to submit additional matters. On October 18, 2012, he submitted Exhibits M through U, through Department Counsel, who forwarded them on October 19, 2012. They were received without objection. The record closed on October 19, 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., and 1.c. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.b. and 1.d. 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 who has an annual net income of about \$258,000 and a net worth of about \$2,065,000, miscalculated his deductions on his 2007 Federal Income Tax Return. (TR at page 42 line 18 to page 45 line 21, at page 49 line 11 to page 50 line 24, at page 64 lines 2~7, Answer at page 2, and AppX T.) In the past, he was able to take deductions for Passive Losses on his real estate holdings. But as he was transitioning from one residence to another in 2007, he later discovered that he was unable to take Passive Losses on his rental property, which his family was forced to live in for part of the year. (*Id.*) This, coupled with two crashes of his personal computer on which he did his Federal and State tax returns, caused the Applicant's alleged financial difficulties. (TR at page 49 line 11 to page 50 line 24, at page 64 lines 2~7, and Answer at page 2.) He has since hired a Certified Public Accountant (CPA), has addressed his alleged back taxes; and has a positive monthly cash flow of about \$5,183. (TR at page 60 line 18 to page 61 line 3, and AppX L.)

1.a. The Applicant is making monthly payments of \$1,000 towards the \$9,696 he owes the Internal Revenue Service (IRS) for tax year 2007, as evidenced by an Installment Agreement with the IRS. (TR at page 38 line 25 to page 42 line 8, and AppX S.)

1.b. The Applicant has filed his 2008 Federal Income Tax Return; and as a result, has a \$3,200 "Refund due" from the IRS, as evidenced by documentation from the IRS. (TR at page 47 lines 9~17, at page 50 line 25 to page 52 line 25, and AppXs N~R.)

1.c. The \$3,200 refund noted above has been credited towards the Applicant's 2010 Federal Income Tax Return; and he has since paid the \$96.13 remainder, as evidenced by documentation from the IRS. (TR at page 56 line 1 to page 57 line 13, and AppXs N~R.)

1.d. The Applicant has paid the \$7,231 owed to the State taxing authority for tax year 2010, as evidenced by documentation from that taxing authority. (TR at page 49 lines 5~10, at page 57 line 17 to page 59 line 3, and AppXs H and I.)

### **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 fourth Mitigating Condition is clearly applicable here. The Mitigating Condition found in Subparagraph 20(d) is applicable where, “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Once the Applicant was informed that he could not deduct Passive Losses on his 2007 Federal Income Tax Return; and weathered the crashing of his person computer on which he did his tax returns, he hired a CPA. He has since paid all of his alleged back taxes; except for tax year 2007, towards which he is making monthly payments of \$1,000 to the IRS, pursuant to an Installment Agreement.

### **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 the workplace. (AppX M.) 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.d. 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