



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



In the matter of: )  
)  
) ISCR Case No. 14-01915  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

September 19, 2016

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on October 31, 2013. On October 15, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 October 24, 2014. He answered the SOR in writing on February 28, 2015, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on April 28, 2015. Applicant did not respond to the FORM. The case was assigned to me on April 26, 2016. 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, Applicant admitted the factual allegations in Paragraphs 1.a.~1.d., 1.f.~1.i., 1.k., 1.l., and 2.a.~2.e. of the SOR, with explanations. He denied the factual allegations in Paragraphs 1.e. and 1.j. of the SOR.

Applicant is a 32-year-old "Marine technician," who works for a "sailing center." (Item 5 at pages 5 and 11.)

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

1.a. and 1.c. Applicant admits that he is indebted to Creditor A for two past-due debts totaling about \$15,347. He avers that he is "in the process of settling these debts," but has offered nothing further in this regard. These allegations are found against Applicant.

1.b. and 1.f. Applicant avers that these are one and the same debt, and admits that he is indebted to Creditor B for a past-due debt totaling from about \$765 to about \$2,184. He further avers that he "called and set up a payment plan," but has offered nothing further in this regard. These allegations are found against Applicant.

1.d. Applicant admits that he is indebted to Creditor D for a past-due debt of about \$2,504. He avers that he is "in the process of settling this debt," but has offered nothing further in this regard. This allegation is found against Applicant.

1.e. Applicant denies that he is indebted to Creditor E for a past-due debt of about \$1,557. He avers that he "had an allotment setup . . . [and it] should have been paid off." As this alleged debt does not appear on the Government's most recent, April 2015, credit report, this allegation is found for Applicant.

1.g. Applicant admits that he is indebted to Creditor G for a past-due debt of about \$722. He avers that he "lost" his employment, "called them and had set something back up with them," but has offered nothing further in this regard. This allegation is found against Applicant.

1.h. and 1.i. Applicant admits that he is indebted to Creditor H for two past-due debts totaling about \$871. He avers that he "called and reset up payments," but has offered nothing further in this regard. These allegations are found against Applicant.

1.j. Applicant denies that he is indebted to Creditor J for a past-due debt of about \$300. He denies any knowledge of this debt. As this alleged debt does not appear on the Government's most recent, April 2015, credit report, this allegation is found for Applicant.

1.k. Applicant admits that he is indebted to Creditor K for a past-due debt of about \$271. He avers that he "set something up through the Collection Agency," but has offered nothing further in this regard. This allegation is found against Applicant.

1.l. Applicant admits that he is indebted on delinquent fines and court costs as the result of convictions in about August of 2012, and in about July of 2013. This allegation is found against Applicant.

### **Guideline E - Personal Conduct**

2.a. Applicant admits that in answer to "Section 26 - Financial Record Delinquency Involving Enforcement," he was less than candid with the Government as to judgments in favor of Creditors A and B. I find this to be a wilful falsification.

2.b. Applicant admits that in answer to "Section 26 - Financial Record Delinquency Involving Routine Accounts," he was less than candid with the Government as to any outstanding debts. I also find this to be a wilful falsification.

2.c. Applicant admits that in November of 2011, he was fired from his job for safety violations.

2.d. Applicant admits that in June of 2008, he received non-judicial punishment for "fighting."

2.e. Applicant admits to a pattern of law and rule violations from about May of 2005 to about March of 2014, as evidenced by 11 motor vehicle code related convictions.

### **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 significant past due debts that he has yet to address. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Subparagraph 20(d) applies where the evidence shows “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Applicant has failed to submit any documentation showing that he has made a good-faith effort to address the vast majority of his significant past-

due debts. I can find no countervailing Mitigating Condition that is applicable here. Financial Considerations are found against the Applicant.

### **Guideline E - Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 15: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information."

The following Disqualifying Condition under Subparagraph 16(a) applies. It provides that the "*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . .*" may be disqualifying. I can find no countervailing Mitigating Condition here, as the Applicant could have easily answered his e-QIP honestly, which he certified as "true, complete, and correct." Under Subparagraph 16(d)(3) there is also "*a pattern of dishonesty or rule violations,*" as evidenced by 11 motor vehicle code related convictions, his being fired from his job, and by non-judicial punishment. Personal Conduct is found against the Applicant.

### **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. For these reasons, I conclude Applicant has not mitigated the security concerns arising from his Financial Considerations, and Personal Conduct.

## **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.d.	Against Applicant
Subparagraph 1.e.	For Applicant
Subparagraphs 1.f.~1.i.	Against Applicant
Subparagraph 1.j.	For Applicant
Subparagraphs 1.k. and 1.l.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.~2.e.	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