



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-05103
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew Henderson, Esquire, Department Counsel  
 For Applicant: Joseph A. Yanney, Esquire  
 Daniel A. Covarrubias-Klein, Esquire

October 13, 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 March 19, 2014. On May 19, 2015, 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 answered the SOR in writing on June 19, 2015, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on March 15, 2016. DOHA issued a notice of hearing on March 30, 2016, and I convened the hearing as scheduled on May 3, 2016. The Government offered Exhibits (GXs) 1

through 12, which were received into evidence. Applicant testified on his own behalf, as did his wife and the Contracting Program Security Officer (CPSO). He also submitted Exhibits (AppXs) A through DD, which were received into evidence. DOHA received the transcript of the hearing (TR) on May 16, 2016. I granted Applicant's request to keep the record open until June 3, 2016, to submit additional matters. On May 6, 2016, he submitted Exhibits DD2 through JJ, which were received without objection. As the undersigned was on leave on June 3<sup>rd</sup>, the record closed on June 13, 2016. 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, Applicant admitted the factual allegations in Subparagraphs 1.a., 1.b., 1.c. and 1.e. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.d. and 2.a. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

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

In 2005, Applicant began to experience significant issues with his health. (TR at page 49 line 3 to page 50 line 12.) This resulted in "four surgeries" related to a heart condition from September of 2005 until his last heart surgery in June of 2006. (*Id.*) During the same period, Applicant's spouse lost her \$80,000 a year position with a software company, took unemployment compensation benefits, and devoted her time taking care of Applicant. (TR at page 48 line 17 to page 50 line 20.) Furthermore, Applicant could not work for about "three months" after his first surgery, and for "a couple of weeks or a month" after the other three surgeries. (TR at page 51 line 6 to page 52 line 17.) This put great stress on Applicant's finances.

During this same period, Applicant's mother-in-law, who lived in another state, had "quadruple bypass surgery," which caused his spouse "to travel back and forth to . . . [the other state] to help . . . [her elderly] dad care for . . . [her] mom and to help her through cardiac rehab." (TR at page 52 line 18 to page 53 line 7.)

More recently, in 2010, Applicant was diagnosed as having "a brain tumor." This resulted in an "emergency surgery . . . on Mother's Day." (TR at page 66 line 1 to page 67 line 3.) He had a second surgery "four months later." (TR at page 67 lines 4~20.) Applicant still has a "residual . . . slow-growth tumor," which necessitates periodic monitoring. (TR at page 67 line 21 to page 68 line 3, see *also* AppXs C~F.)

Because of Applicant's fragile health, his spouse handled all of their financial affairs; and as a result, he was unaware of any financial deficiencies until his post e-QIP "security interview." (TR at page 84 lines 21~25, at page 86 lines 6~10, at page 90 lines 13~22, and at page 95 lines 20~24.) He is now obviously aware of these difficulties, and he and his spouse have taken significant financial course training in this

regard. (TR at page 70 line 19 to page 71 line 23, at page 85 line 24 to page 86 line 5, and AppXs AA~CC.)

1.a.~1.c. Applicant admits that he was indebted to the Federal Government (IRS), as the result of three tax liens, totaling about \$98,000. His spouse, who filed their income tax returns in a timely fashion, was unaware that their unemployment benefits were considered taxable income. (TR at page 58 line 9 to page 59 line 10, see *also* AppXs H~J and I~Q.) She was also unaware of the income tax ramifications of early withdrawals from a “401(k)” (a deferred income retirement plan). (TR at page 74 lines 2~21.) Although Applicant’s spouse has been making payments to the IRS since 2011, as evidenced by correspondence with the IRS (AppX K), tax liens are implemented when the amount owed is in excess of \$25,000. (TR at page 64 line 1 to page 65 line 4.) They are currently making monthly payments of \$2,000 to the IRS; and as a result, their tax liens should be paid off in 2019. (TR at page 87 line 19 to page 88 line 17, see *also* AppXs H~Q.) I find that Applicant is making a good-faith effort to address their income tax debt.

1.d. Applicant denies that he is indebted to Creditor D as the result of a foreclosure in the amount of about \$48,034. This alleged deficiency is covered by the state’s Anti-Deficiency Act, “[State] . . . Code 580 (d)”; and as a result, is not collectable (TR at page 60 line 8 to page 62 line 12.) Furthermore, because of Creditor D’s questionable lending practices, through an agreement with “federal banking regulators,” in 2013 Creditor D issued a check for \$500 to Applicant and his spouse. (AppX T.) I find that this alleged debt is not owed.

1.e. Applicant admits that he was indebted to Creditor E in the amount of about \$6,060. He co-signed a lease for a motor vehicle with his son. (TR at page 62 line 13 to page 63 line 12.) Unbeknownst to Applicant, his son quit making the car payments. (TR at page 90 lines 8~25.) Once discovered, the arrearage was paid, as evidenced banking documents. (AppX Y.) I find that this alleged debt is not owed.

## **Guideline E - Personal Conduct**

2.a. Applicant denies that he deliberately falsified his March 2014 e-QIP when he answered “No” to “**Section 26 - Financial Record: In the past seven (7) years,**” and he did not disclose his tax liens and the defaulted motor vehicle loan. (GX 1 at page 30.) Simply stated, because of his extremely fragile health, his spouse handled all of their financial matters; and as a result, kept the existence of these admitted financial deficiencies from Applicant. (TR at page 84 line 21 to page 85 line 23, at page 86 lines 6~14, at page 90 lines 13~22, and at page 95 line 20 to page 96 line 2.) This denial is supported by the testimony of his wife. (TR at page 63 lines 7~21, at page 76 line 9 to page 77 line 5, and at page 77 lines 20~22.) His trustworthiness in this regard is further supported by the testimony of his CPSO (TR at page 39 line 18 to page 44 line 4), and by a statement from his Director (AppX DD).

## 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 the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance 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 adverse 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 tax liens and had a significant past-due debt. 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(b) applies where "*the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment . . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances.*" Applicant's past-due debts are directly attributable to his fragile health and his spouse's unemployment. Subparagraph 20(c) applies where "*there are clear indications that the problem is being resolved or is under control.*" Subparagraph 20(d) applies where the evidence shows "*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*" Applicant is paying down his tax liens, and has paid the motor vehicle debt. Financial Considerations are found for 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."

Disqualifying Condition Subparagraph 16(a) applies where there is a "*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . .*" I find no wilful falsification here. Applicant did not intentionally falsify his e-QIP.

## **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. Those who know Applicant in the workplace speak most highly of him. (TR at page 39 line 18 to page 44 line 4, AppX DD.) The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has mitigated the security concerns arising from his alleged Financial Consideration 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:	FOR APPLICANT
Subparagraphs 1.a.~1.e.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge