



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



In the matter of: )  
)  
) ISCR Case No. 15-00208  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew Henderson, Esquire, Department Counsel  
For Applicant: Ryan C. Nerny, Esquire

July 21, 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 May 17, 2012. On September 27, 2015, 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 October 6, 2015. He answered the SOR in writing (Answer) through counsel on November 16, 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 January 13, 2016. DOHA issued a notice of hearing on January 26, 2016, and I convened the hearing as scheduled on March 9, 2016. The Government offered Exhibits (GXs) 1 through 7, which were received without objection. Applicant testified

on his own behalf and submitted Exhibits (AppXs) A through L, which were also included with his Answer, and AppXs M through EE, all of which were received without objection. DOHA received the transcript of the hearing (TR) on March 15, 2016. I granted Applicant's request to keep the record open until March 23, 2016, to submit additional matters. On March 23, 2016, he submitted AppXs FF through HH, which were admitted into evidence. The record closed on March 23, 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 denied all the factual allegations in the Subparagraphs of the SOR. He also provided additional information to support his request for eligibility for a security clearance. (AppXs A~L.)

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

Applicant is 52 years old, and has worked for his current employer in the security realm for 21 years. (TR at page 17 line 25 to page 18 line 19.) He has held a security clearance for "approximately 30 years," when his current employment is coupled with a prior employment going back to 1986. (TR at page 18 line 23 to page 19 line 14.) He also served in the Army National Guard for six years, reaching the rank of Sergeant (E5). (TR at page 20 line 6 to page 21 line 7, at page 64 line 19 to page 65 line 7, and AppX A.)

Applicant was hospitalized on two occasions, once due to his diabetes and once due to "back surgery." (TR at page 24 line 8 to page 25 line 21.) This contributed to his current financial difficulties. He also had a mailing address in another state, which further exacerbated his ability to pay his debts in a timely fashion. (TR at page 25 line 25 to page 26 line 25.)

1.a. Applicant denies that he is indebted to Creditor A for an alleged past-due debt in the amount of about \$6,914. (TR at page 21 line 8 to page 23 line 13.) Since June of 2014, he has been making monthly payments of \$25 to Creditor A pursuant to a settlement agreement, as evidenced by that agreement, by a payment log and by cancelled checks. (AppX Q.) It does not appear as past due on the Government's most recent March 2016 credit report. (GX 6 at pages 5~6.) This allegation is found for Applicant.

1.b. and 1.c. Applicant denies that he is indebted to Creditor B for two alleged past-due debts totaling about \$3,714. (TR at page 23 line 14 to page 24 line 3, and at page 27 line 1 to page 28 line 15.) These credit card debts have been settled and paid, as evidenced by correspondence from Creditor B. (AppXs M and N.) Furthermore, they do not appear on the Government's most recent March 2016 credit report. (GX 6.) These allegations are found for Applicant.

1.d. Applicant denies that he is indebted to Creditor D for an alleged past-due debt in the amount of about \$1,298. (TR at page 28 line 20 to page 29 line 11.) Since December of 2015, he has been making monthly payments of \$54.96 to Creditor D pursuant to a settlement agreement, as evidenced by that agreement, and by correspondence from Creditor D. (AppX P.) Furthermore, it does not appear as past due on the Government's most recent March 2016 credit report. (GX 6 at page 5.) This allegation is found for Applicant.

1.e. and 1.f. Applicant denies that he is indebted to Creditor E for two alleged past-due debts totaling about \$1,615. (TR at page 29 line 12 to page 31 line 8.) These gasoline credit card debts have been settled and paid, as evidenced by correspondence from Creditor E. (AppXs R and S.) They do not appear as past due on the Government's most recent March 2016 credit report. (GX 6.) These allegations are found for Applicant.

1.g. Applicant denies that he is indebted to Creditor G for an alleged past-due debt in the amount of about \$706. (TR at page 31 line 9 to page 32 line 18.) This medical bill was "paid in full" in December of 2015, as evidenced by correspondence from Creditor G. (AppX T.) It does not appear on the Government's most recent March 2016 credit report. (GX 6.) This allegation is found for Applicant.

1.h. Applicant denies that he is indebted to Creditor H for an alleged past-due debt in the amount of about \$441. (TR at page 32 line 19 to page 35 line 15.) This medical bill was also paid in December of 2015, as evidenced by correspondence from Creditor H. (AppX X.) It does not appear on the Government's most recent March 2016 credit report. (GX 6.) This allegation is found for Applicant.

1.i. and 1.j. These are one and the same debt. Applicant denies that he is indebted to Creditor I for an alleged past-due debt in the amount of about \$165. (TR at page 33 line 16 to page 36 line 16.) Applicant avers credibly that this medical bill was also paid in January of 2015. (See AppXs V and Y.) It does not appear on the Government's most recent March 2016 credit report. (GX 6.) This allegation is found for Applicant.

1.k. Finally, Applicant denies that he is indebted to Creditor K for an alleged past-due debt in the amount of about \$131. (TR at page 36 line 7 to page 37 line 10.) This medical bill was also paid in December of 2015, as evidenced by correspondence from Creditor K. (AppX U.) It does not appear on the Government's most recent March 2016 credit report. (GX 6.) This allegation is found for Applicant.

### **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 conditions that could raise security concerns. Under Subparagraphs 19(a) and 19(c) an *"inability or unwillingness to satisfy debts"* and *"a history of not meeting financial obligations"* may raise security concerns. Applicant has had substantial past-due indebtedness. However, I find a countervailing Mitigating Condition that is applicable here. Under Subparagraph 20(b), it may be mitigating where *"the conditions that resulted in the financial problem were largely beyond the person's control (e.g., . . . medical emergency . . . ), and the individual acted responsibly under the circumstances."* Applicant's alleged past-due indebtedness can be attributed to his diabetes and to his unexpected back surgery, but he has now addressed all of the alleged past-due debt. He has also received financial counseling, in compliance with the mitigating condition under Subparagraph 20(c). (AppX K) Financial Considerations is found for Applicant.

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of 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. Applicant is highly respected in the work place. (AppXs B, C and CC.) The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has mitigated the security concerns arising from his Financial Considerations, under the whole-person concept.

### **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
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	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