



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



In the matter of: )  
)  
) ISCR Case No. 15-02903  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: James B. Norman, Esquire, Chief Department Counsel  
Aubrey De Angelis, Esquire, Department Counsel  
For Applicant: *Pro se*

April 5, 2017

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**Decision on Remand**  
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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 21, 2014. On October 30, 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 November 13, 2015. He answered the SOR in writing on November 26, 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 May 9, 2016. DOHA issued a notice of hearing on May 25, 2016, and I convened the hearing as scheduled on June 23, 2016. The Government offered Exhibits (GXs) 1 through 5,

which were received without objection. Applicant testified on his own behalf, as did a financial debt consolidator, and submitted Exhibits (AppXs) A through C, which were received without objection. DOHA received the transcript of the hearing (TR) on July 1, 2016. I granted Applicant's request to keep the record open until July 22, 2016, to submit additional matters. On July 21, 2016, he submitted Exhibit D, which was received without objection. The record closed on July 22, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information was denied in a Decision dated December 27, 2016. Applicant appealed that Decision.

On March 8, 2017, the Honorable Appeal Board (Board) issued a Remand Decision (RD). The Board avers, "we are persuaded by Applicant's argument that the Judge's whole-person analysis did not address significant favorable evidence." (Board RD at page 2.) The Board further avers, in part the following:

Applicant's resolution of the three debts in question [allegations 1.a., 1.b. and 1.g. noted below under Findings of Fact] was not due simply to having waited out his creditors but to his own initiative in having sought the assistance of a financial counselor [noted above as Applicant's witness]. The Judge's failure to make findings about this and discuss the findings in his analysis impairs his decision. . . .

Evidence that Applicant hired a financial counselor, with the result that a substantial portion of his delinquent debts have been resolved, plausibly raises Mitigating Condition 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]" . . . .

In this case, the Judge made no findings at all about Applicant's financial advisor and his successful efforts at persuading the creditors to forgive substantially all of Applicant's debts. As a result, the Judge's analysis failed to consider an important aspect of the case, in particular the applicability of Mitigating Condition 20(c).

We conclude that the most appropriate resolution of this appeal is to remand the case to the Judge for him to make appropriate findings about Applicant's mitigating evidence and analyze those findings in light of 20(c). In doing so, the Judge should address the extent to which Applicant has demonstrated a responsible plan accompanied by concomitant conduct. (Board RD at page 3.)

In light of the Honorable Board's remand instructions, I make the following Findings of Fact:

## Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

### Guideline F - Financial Considerations

Applicant is a 57-year-old "Survivability Engineer." (TR at page 51 line 1 to page 52 line 21.) He attributes his past and present financial difficulties to his spouse quitting her job, and to the downturn of the housing market in 2007~2008. (TR at page 28 line 18 to page 29 line 3, at page 62 lines 5~16; See also at page 64 line 14 to page 65 line 3.)

1.h.<sup>1</sup> In July of 2008, Applicant filed a Chapter 13 Bankruptcy petition. (AppX D at page 4.) As he was told this filing would impact on his security clearance, Applicant did not follow through with the petition; and as a result, it was dismissed in October of 2008. (TR at page 27 lines 8~25, at page 66 line 11 to page 68 line 8, and at page 73 lines 13~21.)

1.a. and 1.b. Creditor A wrote off as a business loss the two credit card debts related to home improvements made to Applicant's Home #1, totaling about \$17,923. (TR at page 62 line 22 to page 64 line 7, and at page 73 lines 15~21.) This is evidenced by a "Combined Tax Statement" from Creditor A. (AppX C.) These allegations are found for Applicant.

1.g. Creditor G wrote off as a business loss the mortgage debt related to Applicant's Home #2, totaling about \$106,848. (TR at page 29 line 5 to page 50 line 6, and at page 7 line 24 to page 73 line 14.) This is evidenced by tax documentation from Creditor G. (AppX B.) This allegation is found for Applicant.

1.c.~1.f. Applicant has yet to pay medical bills totaling about \$1,090. It appears from his testimony that Applicant's financial debt consolidator was unaware of these medical bills. (TR at page 44 line 2 to page 45 line 25.) Applicant averred at his hearing that he would address these debts, and the record was kept open for an additional month in order for him to provide supporting evidence that he had done so. (TR at page 73 line 22 to page 74 line 19.) On July 21, 2016, Applicant offered a post-hearing credit report (AppX D) showing that three of the four alleged past-due debts, totaling about \$1,090, remain unpaid. This is clearly not a good-faith effort to address these three admitted past-due debts. Allegation 1.e. is no longer listed as past due; and as such, is found in favor of Applicant. (TR at page 73 line 22 to page 74 line 19, and AppX D at page 4.) However, allegations 1.c., 1.d., and 1.f. are found against Applicant.

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<sup>1</sup>The allegations will be discussed chronologically, and not as they appear on the SOR.

## 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. (AG Paragraph 2.) 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. AG Paragraph 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 AG 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. These may be mitigated by Subparagraph 20(b) where *"the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn . . .), and the individual has acted responsibly under the circumstances."* Although Applicant can attribute his financial difficulties to his wife quitting her job and the downturn in the housing market in 2007~2008, he was given an opportunity to submit documentation of responsible action vis-a-vis his delinquent medical debts. Applicant has only addressed one small debt identified on the SOR. The mortgage debt and loans were forgiven by their creditors after default. He has submitted evidence showing that, for the most part, the medical debts are still past due, as alleged in Subparagraphs 1.c., 1.d. and 1.f. He has not acted responsibly under the circumstances. Subparagraph 20(c) under Mitigating Conditions is not applicable as there are no *"indications that the problem is being resolved,"* since there is no indication that three of the debts have been satisfied or reduced. Although Applicant does have a financial debt consolidator, this counselor was of little help at Applicant's hearing regarding these admitted past-due medical debts. He knew little about them. Therefore, I can find no countervailing Mitigating Condition that is applicable here. Financial Considerations are found against 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. Applicant has failed to fully respond to the Government's concerns; and as such, has failed to meaningfully address all the alleged past-due debt. For this reason, I conclude Applicant has not mitigated the security concerns under the whole-person concept 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:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.b.	For Applicant
Subparagraphs 1.c. and 1.d.	Against Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	Against Applicant
Subparagraphs 1.g. and 1.h.	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.

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Richard A. Cefola  
Administrative Judge