



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



In the matter of:

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) ISCR Case No. 15-03208  
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Applicant for Security Clearance

**Appearances**

For Government: Aubrey De Angelis, Esquire, Department Counsel

For Applicant: *Pro se*

November 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 August 4, 2014. On February 24, 2016, 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 March 7, 2016. He answered the SOR in writing on March 22, 2016, 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 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs)

A through H, 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 22, 2016, he submitted Exhibit I, which was received without objection. On July 26, 2016, Department Counsel indicated that she had no objection. The record closed on July 26, 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 all the Subparagraphs of the SOR, with explanations.

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

Applicant is a 55-year-old "Standards Lab Technician." (TR at page 28 line 25 to page 31 line 6.) He has been married for "23 years," has three children ranging in age from 16~25, and has worked for his current employer since May of 2003. (*Id.* and GX 1 at page 9.)

1.a. Because Applicant's wife was a self-employed "consultant," they were required to file their taxes on a quarterly basis. (TR at page 31 lines 10~19.) They "fell behind" with these filings, and in about 2006, they hired a one-man firm to address their deficiency. (TR at page 31 line 20 to page 32 line 16.) "Unfortunately, he passed away." (*Id.*) They then hired another firm, "TaxMasters," which averred in October of 2009, "we were able to determine that you do not owe the Internal Revenue Service at this time. However, we are working to complete your **2005-2008** tax returns and this may have an impact on the amount you owe." (TR at page 35 line 20 to page 36 line 21, and AppX B at page 1, emphasis in original.) Unfortunately for Applicant, in 2012, TaxMasters went bankrupt, as evidenced by the records of their bankruptcy. (TR at page 39 lines 6~20, and AppX B at pages 3~11.) As a result, early in 2013, Applicant hired a third tax preparation service, which filed their 2005~2009 federal and state income tax returns that are of concern to the Government. (AppX B at page 12.)

1.g. Through the auspices of this third tax preparation service, Applicant is current with his state taxing authority, as evidenced by documentation from his state taxing authority. (AppX A.)

1.b.~1.f. and 1.h. Through the auspices of this third tax preparation service, Applicant established "an installment payment plan" with the Internal Revenue Service (IRS) by which he was making monthly payments of \$734 towards the approximate \$246,000 owed. This is evidenced by documentation from the IRS. (AppX C.) Most recently, as Applicant is now current with the state taxing authority, he has increased that amount to \$1,000 per month towards the now \$207,000 owed, as evidenced by documentation from the IRS. (TR at page 41 lines 10~12, and AppX I at pages 3~9.) I find that this is a good-faith effort to address his back federal taxes.

## 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 a condition that could raise security concerns. Under Subparagraph 19(g) "*failure to file annual Federal, state . . . income tax returns as required*" may raise security concerns. Applicant failed to file several years of federal and state tax returns in a timely fashion. However, I find a countervailing Mitigating Condition that is applicable here. Under Subparagraph 20 (d), it may be mitigating where "*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*" Applicant filed his delinquent income tax returns, is current with the state taxing authority, and has an installment payment plan with the IRS. 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. A friend, who also knows Applicant in the

work place, speaks most highly of him. (AppX B.) 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

### **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