



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



In the matter of:

ISCR Case No. 15-05490

Applicant for Security Clearance

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

May 10, 2017

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On November 29, 2014, Applicant submitted a security clearance application (e-QIP). On May 6, 2016, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on July 15, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on September 8, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 12, 2016, scheduling the hearing for September 29, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 5, which were admitted without objection. Applicant offered one post-hearing Exhibit

(AppX) A on October 31, 2016, which was admitted without objection. Applicant testified on his own behalf, as did his wife who handles their finances. The record then closed on October 31, 2016. DOHA received the transcript of the hearing (TR) on October 7, 2016.

### **Findings of Fact**

Applicant is 56 years old. (GX 1 at page 5,) He has been employed with a Government contractor as a “Tool Maker” for “about eight years.” (TR at page 20 lines 12~24.) He is married and has three children. ( TR at page 21 line 24 to page 22 line 9.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR identified two medical debts to the same provider totaling approximately \$46,000. Applicant denied these medical bills, explaining that they should have been paid through his employer’s health insurance. (Answer) The alleged debts were listed on a December 2014 credit report (CR), but do not appear on the Government’s most recent September 2016 CR. (GXs 3 and 5.)

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

Due to having jobs in different states, Applicant and his wife were living apart in 2012, when he had a medical emergency. (TR at page 32 line 24 to page 39 line 5, and Answer.) He had two gall bladder operations. (*Id.*) After his recovery, Applicant took his present job in the same state where his wife lived; and as a result, they both reside together. (TR at page 32 line 24 to page 39 line 5.) However, the medical bills, which should have been covered by his former employer’s health insurance, were sent to Applicant’s former address. (*Id.*)

1.a. The alleged past-due medical debt to Creditor A in the amount of \$45,857 “has been resolved and the status has been updated as paid”; and as such, does not appear on the Government’s most recent September 2016 CR. (TR at page 23 at lines 10~19, at page 39 line 6 to page 41 line 18, at page 43 at lines 2~16, AppX A at page 2, and GX 5.) I find that this debt has been paid.

1.b. The alleged past-due medical debt to Creditor A in the amount of \$260 has also been paid; and as such, does not appear on the Government’s most recent September 2016 CR. (TR at page 41 at line 19 to page 42 line 12, AppX A at pages 3~5, and GX 5.) I find that this debt has also been paid.

## 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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2(a) describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 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 ¶ 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 ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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 to obtain 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 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 EO 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 for Financial Considerations is set out in AG ¶ 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 AG ¶ 19. One is potentially applicable in this case:

(a) inability or unwillingness to satisfy debts.

Applicant accumulated a significant amount of medical debt, which arguably, had he checked the mail at his prior residence more often, would not have become past-due. The evidence is sufficient to raise the above disqualifying condition.

One Financial Considerations mitigating conditions under AG ¶ 20 is potentially applicable:

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. . . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances.

The evidence shows that the alleged past-due debts have been paid. His behavior happened so long ago, and occurred under such circumstances, that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(b) provides mitigation.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 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.

Under AG ¶ 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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has mitigated Financial Considerations security concerns.

### **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

### **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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge