



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-05639
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: Ronald Talmo, Esquire

December 10, 2015

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**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 17, 2012. On January 21, 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 February 13, 2015. He answered the SOR in writing on March 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 July 13, 2015. DOHA issued a notice of hearing on July 16, 2015, and I convened the hearing as scheduled on August 12, 2015. The Government offered Exhibits (GXs) 1 through 4, which were received without objection. Applicant testified on his own behalf and

submitted Exhibits (AppXs) 1 through 25, which were received without objection. DOHA received the transcript of the hearing (TR) on August 20, 2015. I granted Applicant's requests, one made at his hearing and two made after his hearing, to keep the record open until November 16, 2015, to submit additional matters. On September 10, and November 16, 2015, he submitted Exhibits 26, 27, and a written closing argument, which were received without objection. The record closed on November 16, 2015. 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. He also provided additional information to support his request for eligibility for a security clearance.

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

Applicant is 52 years old, has held a security clearance for 30 years, and has never had a security clearance violation. (TR at page 65 line 25 to page 74 line 6, and GX 1 at page 5.) Post-Hurricane Katrina, he, in partnership with others, made real-estate investments in New Orleans. (TR at page 29 line 6 to page 43 line 14.) Because of ever changing real-estate ordinances in New Orleans, he defaulted on two rehabilitation construction loans, which represent the vast majority of the alleged past-due debts. (*Id.*)

1.a. and 1.d. These are one and the same construction loan debt. Applicant was indebted to Creditor A in the amount of about \$94,500. After investing \$15,000 of his own monies, Applicant was informed that the property, a triplex, was not rehabilitated to historic standards; and as such, could not be occupied. (TR at page 48 line 21 to page 56 line 4, page 80 line 7 to page 81 line 18, AppXs 1~4, and AppX 26 at pages 1, 4 and 5.) It was eventually repossessed by Creditor A; and this creditor has chosen not to pursue a deficiency judgment in this regard, as evidenced by correspondence from his real-estate attorney, and by an August 31, 2015 credit report. (*Id.*) I find that this debt has been satisfied by the repossession.

1.b. Applicant was indebted to Creditor B in the amount of about \$36,984. After rehabilitating this single family residence, Applicant was informed that the property could not be rented, but must be owner occupied. (TR at page 26 line 6 to page 43 line 14, page 63 line 22 to page 64 line 11, and at page 79 line 13 to page 80 line 6.) As Applicant is a resident of another state and unwilling to move to New Orleans, it was eventually repossessed by Creditor B; and this creditor submitted an Internal Revenue Service (IRS) form 1099 forgiving this debt, as evidenced by correspondence from the IRS, and by an August 31, 2015 credit report. (AppX 26 at page 2, and AppX 27 at page 3.) I find that this debt has been satisfied by the repossession.

1.c. Applicant has paid the alleged, \$97 past-due cell phone debt to Creditor C, as evidence by his banking records and by an August 31, 2015 credit report. (TR at page 56 line 10 to page 57 line 25, at page 74 lines 10~17, AppXs 6 and 7, and AppX 26 at page 7.)

1.d. This allegation has already been discussed, above.

1.e. Applicant has relinquished his property interest in a time share; and as such, his \$928 past-due debt to Creditor E has been forgiven, as evidence by correspondence from Creditor E and by an August 31, 2015 credit report. (TR at page 58 line 5 to page 59 line 16, at page 74 line 18 to page 75 line 3, AppX 5, and AppX 26 at page 3.)

1.f. Applicant does not owe a \$2,790 past-due debt to Creditor F. He testified credibly that he did not co-sign for a friend's apartment, but only permitted his name to be used as a reference. (TR at page 59 line 16 to page 61 line 5, and at page 75 lines 15~24.) He further avers that his friend has paid this debt. (*Id.*) Applicant's credibility in this regard is attested to by those who authored 14 letters of recommendation, and by the fact the debt does not appear on the Government's most recent June 29, 2015 credit report. (GX 4, and AppXs 10~24.)

1.g. Applicant has paid the alleged, \$1,327 past-due debt to Creditor G, as evidence by correspondence from Creditor G. (TR at page 61 lines 6~23, at page 75 lines 4~14, AppXs 8 and 9.)

### **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 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 had difficulty meeting his financial obligations. However, 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 has made a good-faith effort to resolve all of the alleged past-due debt.

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 workplace. (AppX 10~24.) 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
Subparagraphs 1.a.~1.g.	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