



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-00633
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: Ryan C. Nerney, Esquire

May 25, 2016

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on July 20, 2014. On August 7, 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 answered the SOR in writing (Answer) on September 3, 2015, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on September 28, 2015. Applicant responded to the FORM (Response with Exhibits A~P) on or about November 24, 2015. Department Counsel had no objection, and the documents are entered into evidence. The case was assigned to me on January 5, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in Paragraphs 1.b. and 1.c. of the SOR, with explanations. She denied the factual allegations in Paragraph 1.a. of the SOR.

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

Applicant is a 40 year old Logistics Management Analyst, and has worked for her current employer since June of 2009. (Item 2 at pages 5 and 10.) In her Answer to the SOR, and reiterated in her Response to the FORM, Applicant attributes her past-due debts, in part, to her husband being underemployed in 2009, her child being hospitalized in 2014, and her suffering a broken ankle that required surgery in 2015.

1.a. Applicant denies that she is indebted to Creditor A for a past-due debt in the amount of about \$149. Attached to her Answer is an extract from a credit report showing that this debt has been "Paid, Closed." (Answer at page 3.) I find that Applicant has resolved this debt.

1.b. Applicant admits that she was indebted to Creditor B for a past-due debt in the amount of about \$3,843. Attached to her Response is an Exhibit, which includes a letter from Creditor B and a Cashier's Check, showing that this debt has been settled in full for \$1,922. (Response at Exhibit P.) I find that Applicant has also resolved this debt.

1.c. Applicant also admits that she is indebted to Creditor C, for by far the largest past-due debt, in the amount of about \$27,785. She avers that she made monthly payments of \$200 until October 2011 towards this past-due debt. (Answer at page 1.) This averment is supported by a November 2015 credit report. (Response at Exhibit J page 2.) She further avers that she has been trying to "settle this debt" (Answer at page 2, and Response at page 3), but she has offered nothing in support of this averment. I find that this rather substantial debt is still unresolved.

## **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 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 significant past-due debt, which she has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant attributes her past-due debt to her husbands underemployment and to unexpected medical emergencies, she has failed to act “*responsibly under the circumstances,*” as required by Subparagraph 20(b) with respect to her very significant debt to Creditor C. Furthermore, Subparagraph 20(d) requires that “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Applicant has yet to credibly address her past-due debt to Creditor C totaling over \$27,000. Accordingly, Applicant has not met her burden of persuasion.

### **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. Applicant is highly regarded in the work place. (Response at Exhibits A, E and G.) However, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. Applicant has about \$27,000 in past-due indebtedness that she has yet to address. Should she address this debt in the future, above and beyond mere averments, she should not be dissuaded from applying for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept arising from her 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
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	Against 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.

Richard A. Cefola  
Administrative Judge