



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-02092
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew Henderson, Esquire, Department Counsel  
For Applicant: *Pro se*

April 19, 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 April 21, 2014. On November 2, 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 that same date, 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 January 19, 2016. DOHA issued a notice of hearing on January 26, 2016, and I convened the hearing as scheduled on February 17, 2016. The Government offered Exhibits (GXs) 1 through 4, which were received without objection. Applicant testified on his own behalf. DOHA

received the transcript of the hearing (TR) on February 25, 2016. I granted Applicant's request to keep the record open until March 17, 2016, to submit additional matters. On February 18, February 19, and March 3, 2016, he submitted Exhibits (AppXs) A~E, which were received without objection. The record closed on March 17, 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, it is unclear if Applicant admitted or denied the two factual allegations. At his hearing, Applicant admitted the factual allegations Subparagraphs 1.a. and 1.b. of the SOR, with explanations.

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

Applicant is a 38 year old former U.S. Marine, who seeks a security clearance in conjunction with his employment. (GX 1 at pages 5 and 15.)

1.a. and 1.b. Applicant admits that, as a result of a foreclosure of his "townhouse," he was indebted to Creditor A for over \$272,000 on a primary mortgage, and was indebted to Creditor B for over \$69,000 on a second mortgage. (TR at page 19 line 11 to page 31 line 20.) He purchased this townhouse with the hope of amassing some equity; but when the housing market crashed, he defaulted on the mortgages and the two loans were foreclosed by the holders of the mortgages. (*Id.*) Since the foreclosure, Applicant has been provided with Internal Revenue Service (IRS) Forms 1099-A and 1099-C as to these loans, which indicate the debts have been cancelled by the creditors. As a result, Applicant owes nothing as to the two mortgage loans. This is also evidenced by a December 2015 credit report showing that these mortgage loans are not past due. (GX 4 at page 6 entries #16 and #17, and AppX A at pages 8~11.) I find Applicant has resolved these two mortgage loans.

### **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 two conditions that could raise security concerns. Under Subparagraphs 19(a) and 19(c) an “*inability or unwillingness to satisfy debts,*” and “*a history of not meeting financial obligations.*” may raise security concerns. Applicant’s mortgage loans were foreclosed upon by the lenders. 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’s foreclosed mortgages were forgiven by the mortgage holders and are resolved. 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. Applicant has offered eight letters of recommendation (AppXs A and C~E), and numerous Certificates of Training (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

### **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