



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-00038
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Ryan C. Nerney, Esquire

May 2, 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 July 21, 2014. On August 27, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and 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 September 17, 2015. He answered the SOR in writing (Answer) through counsel on November 2, 2015, and requested a hearing before an Administrative Judge. The Answer included (AppXs) A through L, which were subsequently admitted into evidence at the hearing without objection. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on January 5, 2016. DOHA issued

a notice of hearing on January 20, 2016, and I convened the hearing as scheduled on February 9, 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 17, 2016. I granted Applicant's request to keep the record open until February 23, 2016, to submit additional matters. Nothing further was submitted. The record closed on February 23, 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 denied all of the factual allegations in the Subparagraphs of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 55 year old employee of a federal contractor. (TR at page 15 line 24 to page 16 line 12.) He was born in Jamaica, initially moved to the United States when he "was two years old," moved to Canada with his family as a teenager (13 or 14 years old), and returned to the United States in 1997. (TR at page 19 line 15~25.) He became a U.S. citizen in 2007. (GX 1 at page 7.)

#### **Guideline C - Foreign Preference**

1.a. Applicant denies that he "currently possesses a Canadian passport." When he applied for a "Security Clearance and found out that . . . [he] really shouldn't have a foreign passport," Applicant surrendered his Canadian passport to the "Government Security Officer" at his employer's place of business on or about October 16, 2015. (TR at page 18 line 10 to page 20 line 21, and at page 38 line 10 to page 39 line 14.) This is evidenced by an email from that Government Security Officer. (AppX A.)

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

Applicant was unemployed from about December of 2010 to about April of 2012. (Tr at page 17 lines 3~21, and GX 1 at page 13.) Thereafter, he was underemployed until his current employment began in June of 2014. (Tr at page 17 lines 3~21, and GX 1 at pages 11~12.) Applicant's former spouse handled their financial matters, to include the filing of their tax returns; but with their divorce in November of 2013, she no longer provided this financial oversight. (TR at page 21 line 5~10, and GX 1 at pages 22~23.) This caused the alleged financial difficulties. He currently has a positive monthly cash flow of about \$1,109. (AppX I.)

2.a. Applicant denies that he failed to file his "Federal and state tax returns" for tax year 2012. When informed of this possibility by the Government, he confronted his former spouse as to the allegation. (TR at page 28 line 15 to page 31 line 25, and at 32 lines 13~19.) When she admitted to him their delinquency, he filed their 2012 income

tax returns in August of 2015, a few days prior to the issuance of the SOR. (TR at page 39 line 19 to page 40 line 13.) This is evidenced by those tax returns. (AppX B.)

2.b. Applicant denies that he is indebted to Creditor B for a past-due debt in the amount of about \$862. He thought his former spouse had paid this debt. (TR at page 22 at 1 to page 23 line 1.) When Applicant discovered this was not the case, he paid it by a “Cashier’s Check” about a month prior to the date he filed his Answer to the SOR. (*Id.*) This is evidenced by that Cashier’s Check. (AppX C.)

2.c. Applicant denies that he is indebted to Creditor C for a past-due debt in the amount of about \$539. He paid this debt by a “Cashier’s Check” about a month prior to the date he filed his Answer to the SOR. (Tr at page 23 lines 2~7.) This is evidenced by that Cashier’s Check. (AppX D.)

2.d. Applicant denies that he is indebted to Creditor D for a past-due debt in the amount of about \$322. He believes he paid this debt, and it does not appear on the Government’s most recent December 2015 credit report. (TR at page 23 line 8 to page 24 line 13, AppX E, and GX 4.) I find that Applicant has addressed this debt.

2.e. Applicant denies that he is indebted to Creditor E for a past-due debt in the amount of about \$589. In October 2015, he formally disputed this debt as not being his debt, but he has yet to hear from this creditor. (TR at page 24 line 14 to page 25 line 7, and AppXs E and F.) Furthermore, it does not appear on the Government’s most recent December 2015 credit report. (GX 4.) If it turns out that this is a legitimate debt, Applicant will pay it. (TR at page 24 line 14 to page 25 line 7.)

2.f. Applicant denies that he is indebted to Creditor F for a past-due, cable TV debt in the amount of about \$344. In October 2015, he formally disputed this debt as not being his debt. He never had this cable TV service, as it was not available in his residential area. (TR at page 26 line 8 to page 27 line 9, and AppX E.)

2.g. Applicant denies that he is indebted to Creditor G for a past-due debt in the amount of about \$331. He paid this debt as evidenced by correspondence from this creditor. (TR at page 27 lines 10~20, and AppX G.)

2.h. Applicant denies that he is indebted to Creditor H for a past-due debt in the amount of about \$272. He paid this debt by a “Cashier’s Check” about a month prior to the date he filed his Answer to the SOR. (Tr at page 27 line 21 to page 28 line 14.) This is evidenced by that Cashier’s Check. (AppX H.)

### **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 C - Foreign Preference

Paragraph 9 of the adjudicative guidelines sets out the security concern relating to Foreign Preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Subparagraph 10(a)(1) is applicable: *“exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.”* Here, the Applicant, a naturalized citizen, possessed a Canadian passport. This is clearly countered, however, by the mitigating conditions found under Subparagraph 11(e), the Applicant’s *“passport has been . . . surrendered to the cognizant security authority,”* his Government Security Officer. Foreign Preference is found for Applicant.

### 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 had undisputed delinquent debts. Under Subparagraph 19(g) *“failure to file annual Federal, state . . . income tax returns as required”* may also raise security concerns. Applicant failed to file his 2012 tax returns in a timely fashion. However, I find two countervailing Mitigating Conditions that are applicable here. Under Subparagraph 20 (b), it may be mitigating where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. loss of employment. . . divorce or separation), and the individual acted responsibly under the circumstances.”* Applicant’s failure to file tax returns in a timely fashion and his delinquent debts can be attributed to his divorce and his loss of income during an extended period of unemployment or underemployment.

Under Subparagraph 20 (d), it may also be mitigating where “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Applicant has filed his delinquent income tax returns, and is current with his debts. 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 is well respected in the workplace. (AppX L.) 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 alleged Foreign Preference and 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 C:	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a.	For Applicant
Subparagraph 2.b.	For Applicant

Subparagraph 2.c.	For Applicant
Subparagraph 2.d.	For Applicant
Subparagraph 2.e.	For Applicant
Subparagraph 2.f.	For Applicant
Subparagraph 2.g.	For Applicant
Subparagraph 2.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