



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



In the matter of:	)	
	)	
	)	ISCR Case No. 17-03912
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
 For Applicant: *Pro se*  
 03/27/2019

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**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the security concerns raised by her unwillingness to repay a debt to a former employer incurred under unfavorable circumstances. Clearance is denied.

**Statement of the Case**

On January 31, 2018, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to deny her security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on September 26, 2018, I admitted Government’s Exhibits (GE) 1 through 4,

<sup>1</sup> The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective June 8, 2017.

without objection. Applicant did not submit any documentation. DOHA received the transcript (Tr.) on October 4, 2018.

### **Findings of Fact**

Applicant, 34, has worked for her current employer, a federal contracting company, since February 2018. She was initially granted access to classified information when she served in the U.S. Navy between 2004 and 2008. She completed her most recent security clearance application in July 2016, while working for a different employer, and disclosed a \$200 delinquent debt. An April 2016 entry in the Joint Personnel Adjudication System (JPAS) indicated that Applicant resigned from a position in September 2015 after allegations that she falsified her timecard in June 2015. The ensuing investigation also revealed that Applicant owed that employer a \$13,000 debt for tuition assistance.<sup>2</sup>

Between October 2012 and September 2015, Applicant worked for a different federal contracting company. She accepted tuition assistance to pursue her graduate degree with the understanding that she would be required to repay any benefits she received if she left the company within 12 months of receipt. In July 2015, Applicant learned that she was the subject of an investigation into allegations that she was doing schoolwork during work hours. While the investigation did not substantiate that allegation, it prompted a review of her time cards, which showed that Applicant over charged her time on three days in June 2015. Applicant believes a coworker with whom she had a bad relationship made the initial allegation of misconduct.<sup>3</sup>

In September 2015, Applicant resigned in lieu of termination. Upon her resignation, Applicant signed a promissory note, agreeing to repay \$13,000 in tuition assistance benefits. Under the terms of the promissory note, she agreed to pay \$1,088 from her last paycheck and \$665.01 for 18 months. She claims that the employer told her that someone would contact her with the details of submitting her monthly payments. Because no one from the company reached out to her, she did not make any payments. However, the promissory note provided payment instructions, including point of contact information.<sup>4</sup>

When she reported the resignation on her July 2016 security clearance application, Applicant indicated that she left the job “for a better opportunity.”<sup>5</sup> She then reported three months of unemployment. When asked about the disclosure during her August 2017 interview, Applicant admitted that she was concerned about how the departure would affect her background investigation. She also admitted that she quit the job before she was fired. At the hearing, Applicant stated that she was not informed that

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<sup>2</sup> Tr. 13-14; GE 2 - 4.

<sup>3</sup> Tr. 15-16, 21-22.

<sup>4</sup> Tr. 16-18; GE 1 - 4.

<sup>5</sup> GE 1.

she was going to be fired, but that she chose to leave on her own terms before the investigation was completed. She claims to have contacted her former employer after the background interview to honor the promissory note, but she failed to follow through.<sup>6</sup>

Applicant and her husband have a household income of over \$200,000. In 2017, they purchased a home for \$725,000 and a vehicle for \$80,000. She testified that she has the means to repay the education benefits, but has chosen not to do so, prioritizing other issues in her life.<sup>7</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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.

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 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 safeguard

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<sup>6</sup> Tr. 18-19, 23, 34-38; GE 1, 4.

<sup>7</sup> Tr. 19, 27-30, 33-34.

classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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**

Failure to meet one’s 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 or sensitive information.<sup>8</sup> Applicant admits that she owes a previous employer \$13,000. She has been on notice since her August 2017 background interview that the outstanding debt raised a potential issue. Despite having the means to pay the debt, she is unwilling to do so.<sup>9</sup> She failed to present any evidence to explain, rebut, refute, or mitigate the underlying concern. None of the financial considerations mitigating condition apply.

### **Whole-Person Concept**

Accordingly, doubts remain about Applicant’s security worthiness. In reaching this decision, I have considered the whole-person factors at AG ¶ 2(d). It is not the purpose of security clearance adjudications to serve as debt collection proceedings, but rather to determine if an applicant’s treatment of their financial obligations is indicative of an inability to follow the rules related to the protecting and handling of classified information. Here, Applicant’s continued unwillingness to repay her debt raises ongoing issues about her judgment and trustworthiness. Her inconsistent statements during the adjudication process regarding the circumstances of her September 2015 resignation also raise concerns about her credibility and reliability. While Applicant’s finances are not a likely source of vulnerability or exploitation, her behavior regarding the treatment of her outstanding debt support a negative whole-person assessment that indicates that she may not honor her fiduciary duty to the government when faced with negative or seemingly unfair consequences.

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<sup>8</sup> AG ¶ 18.

<sup>9</sup> AG ¶ 19(b).

## **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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a: Against Applicant

## **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge