



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



In the matter of: )  
)  
) ISCR Case No. 17-04160  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

12/27/2018

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke her eligibility for a security clearance to work in the defense industry. Applicant mitigated the concerns raised by an investigation into her travel and time reporting by her former employer. Clearance is granted.

**Statement of the Case**

On April 30, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the personal conduct guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke Applicant’s security clearance.

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<sup>1</sup> The DOD CAF 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*, implemented on June 8, 2017.

Applicant timely answered the SOR and requested a hearing.<sup>2</sup> At the hearing, convened on November 27, 2018, I admitted Government's Exhibits (GE) 1 through 3, and Applicant's Exhibits (AE) A through M, without objection. Applicant and her daughter testified. DOHA received the transcript on December 6, 2018.

### **Findings of Fact**

Applicant, 49, has worked for her current employer, a federal contractor since October 2016. She was initially granted access to classified information in 1997 when she began her career with a different federal contracting company. She held a clearance without incident until August 2016, when her former employer filed an incident report in the Joint Personnel Adjudication System (JPAS), reporting that Applicant was under investigation for time card fraud and fraudulent expense reports.<sup>3</sup>

On June 7, 2016, Applicant received an email from the accounts payable department about a travel expense reimbursement request that required additional information before it could be paid. Upon reviewing the document, Applicant realized the voucher was for her daughter, an employee who worked in a different state for another division of the company. Applicant did not supervise her daughter, approve her travel claims, or have any involvement in the details of her daughter's employment. However, Applicant ordered accounts payable to reject the claim. She then called her daughter to ask about the reimbursement request. That same day, Applicant sent an inquiry to the company's ethics department asking how to handle the situation. The ethics department instructed Applicant to elevate the issue and report it to all parties who needed to be informed. From the emails in the record, Applicant's direct supervisor was aware of the situation.<sup>4</sup>

When Applicant spoke to her daughter, she claimed that the reimbursement request was a mistake. Applicant was unsatisfied by the conversation and suspected something else was amiss. Applicant decided to go to her daughter's home. When Applicant arrived, she discovered that her daughter was addicted to opioids. Her daughter's home was in disarray and her 2-year-old grandson was not being properly cared for. Days after Applicant's arrival, her daughter resigned her job and entered a 30-day in-patient drug-treatment program. Applicant returned home with her grandson. After completing treatment, Applicant's daughter moved in with Applicant to continue with aftercare and counseling. Applicant's daughter, now 27, has been sober for two years. She works for a national retailer and attends college. At the hearing, she described the details of her fraudulent activity.<sup>5</sup>

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<sup>2</sup> Department Counsel provided discovery to Applicant on June 22, 2018. The discovery letter is appended to the record as Hearing Exhibit (HE) I.

<sup>3</sup> Tr. 81; GE 1, GE 3.

<sup>4</sup> Tr. 28, 48, 71-73; GE 2, AE H.

<sup>5</sup> Tr. 22, 26, 41-42, 48-52, 61.

Applicant's daughter's job involved traveling at least twice per month. Her expenses ranged from a few hundred dollars to several thousand dollars depending on the length of her project. After each trip she would send an expense report to her supervisor, who, after approving the report, would send it to the accounts payable department for payment. In 2014, Applicant's daughter began abusing opioids and became addicted. As her addiction grew, she needed more money to buy pills. After examining emails related to older travel claims, Applicant's daughter devised a plan to submit fraudulent vouchers. Instead of sending the expense report to her supervisor for approval, Applicant's daughter, who knew her mother had the authority to approve travel vouchers, electronically copied her mother's signature from personal documents and signed the expense reports. She then emailed the approved expense report directly to the accounts payable department, which would, seeing Applicant's authorization, pay the claim. Because Applicant and her daughter do not share the same surname, Applicant's daughter figured that no one would discover their relationship.<sup>6</sup>

At first, Applicant's daughter would submit a legitimate expense report to her supervisor and also submit a second voucher with some variations, bearing her mother's stolen signature, directly to accounts payable. Soon, she began creating expense reports for fake trips or resubmitting paid vouchers with minor changes. As she filed more reports they became internally inconsistent, for example, reporting air travel to one city, but lodging expenses in another city. It is unclear from the record how or when the internal audit and legal departments learned about Applicant's daughter's fraudulent expense reports, though it is likely the alert came from the accounts payable department after Applicant rejected the June 2016 claim. From the emails in the record between Applicant and her supervisor, it appears that the issue was being investigated before Applicant's June 28, 2016 meeting with the general counsel. During the meeting, Applicant learned that her daughter received over \$96,000 from fraudulent travel claims. Applicant also learned that the company also audited her travel claims and time cards and discovered three duplicate travel claims for almost \$7,000. One claim was filed in 2015, two were filed in 2016. The investigation did not find any evidence of time card fraud.<sup>7</sup>

Between 2013 and 2016, Applicant lived in another state, and traveled to the company's headquarters every week. The company reimbursed her weekly travel and lodging expenses. In addition to her weekly travel to headquarters, Applicant also traveled extensively for her job. Between 2006 and 2016, she estimates that she submitted over 100 travel expense reports each year. Sometimes Applicant submitted the reports herself and sometimes her assistant submitted reports on her behalf. She believes that miscommunication between them may have led to the duplicate expense reports. Applicant admits that she was aware of one 2015 duplicate report, but failed to report it because she was distracted by the events in her personal life, specifically, her

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<sup>6</sup> Tr. 18, 28-29, 33-34, 37-49.

<sup>7</sup> Tr. 36-40; GE 2.

husband's diagnosis and treatment for a serious medical issue. She was unaware of the two 2016 duplicate claims.<sup>8</sup>

After being presenting with the results of the internal audits, Applicant tendered her resignation to her supervisor. Her supervisor discouraged her from doing so, but Applicant, who was embarrassed by the extent of her daughter's fraud and her own negligence, believed that resigning was the only ethical option. When the company filed the incident report in JPAS, the report indicated that Applicant resigned before the internal investigation was complete. Applicant focused her efforts on protecting her daughter from criminal liability. To that end, she agreed to repay the \$96,000 received by her daughter and the \$7,000 of her own duplicate expenses, if the company agreed not to press criminal charges against her daughter. Applicant and the company entered into a settlement and restitution agreement in August 2016. She resolved the debt using proceeds from her retirement and other cash savings. In September 2016, the company reached out to Applicant about a job opportunity, which she declined.<sup>9</sup>

Applicant began working for her current employer in October 2016 in a similar role as her former employment. She disclosed the events at her prior employer to her current employer.<sup>10</sup>

### **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 AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an Applicant's eligibility for access to classified information.

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." 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 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

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<sup>8</sup> Tr. 53-55, 62-63, 87; GE 2.

<sup>9</sup> Tr. 23-24, 47, 64-67; GE 2.

<sup>10</sup> Tr. 43-48, 68,

the possible risk the applicant may deliberately or inadvertently fail to protect 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 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**

The SOR alleges that Applicant resigned from her position in August 2016 while under investigation by her former employer for time card fraud and fraudulent expense reports. She became the object of investigation because of her daughter’s misconduct, not any misconduct of her own.<sup>11</sup> Given the extent of her daughter’s fraud, the daughter’s use of Applicant’s signature to perpetuate the fraud, and the large number of travel reimbursement claims Applicant filed in the execution of her duties, the internal audit of her travel claims and time cards was appropriate. Ultimately, the investigation revealed that between 2015 and 2016, Applicant submitted three duplicate travel claims and that she received \$7,000 to which she was not entitled. The investigation did not reveal any time card fraud. Applicant admits to knowing about the 2015 duplicate claim and that she did not alert her employer to the mistake.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. Applicant’s relationship with her daughter, who was involved in criminal activity, raised concerns about her own possible misconduct.<sup>12</sup> Applicant’s failure to report and remedy the 2015 duplicate travel reimbursement is evidence of misuse of her former employer’s resources and may support a whole-person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that Applicant may not properly safeguard classified or sensitive information.<sup>13</sup> However, the record contains sufficient evidence to mitigate these concerns.

The circumstances prompting the investigation occurred under such unique circumstances that it is unlikely to recur and does not cast doubt on her ongoing security worthiness.<sup>14</sup> Applicant’s daughter engaged in fraudulent activity facilitated by the unauthorized use of Applicant’s signature. Applicant acted appropriately and responsibly in light of these circumstances. She prevented payment of the daughter’s

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<sup>11</sup> The allegation on its face does not allege any disqualifying conduct, but was enough to put Applicant on notice that the adverse information prompting the investigation raised potential security concerns.

<sup>12</sup> AG ¶ 16(g).

<sup>13</sup> AG ¶ 16(d).

<sup>14</sup> AG ¶ 17(g).

June 2016 travel claim upon receiving a notification from accounts payable. She immediately sought guidance from her company's ethics committee, reported the incident to her immediate supervisor, and participated fully in the company's investigation. It does not appear that Applicant's employer took any issue with her handling or reporting of her daughter's fraudulent activity.

The investigation into Applicant's daughter's misconduct, revealed three duplicate travel vouchers belonging to Applicant. However, she provided a reasonable explanation for the three duplicate travel claims – miscommunication between herself and her assistant. Though the time period covered by the investigation is unclear, the audit resulted in three duplicate reports in a population of hundreds of claims filed by Applicant. It does not appear that the company viewed the three duplicate claims as a serious offense on its own, as the company attempted to re-hire Applicant a month after she tendered her resignation. While Applicant's actions may have been negligent, they are not indicative of a pattern of misconduct. The offense is minor and does not reflect negatively on Applicant's current security worthiness.<sup>15</sup>

Applicant promptly repaid her daughter's fraudulent claims and her three duplicate claims. She reported the incident to her current employer. While Applicant is embarrassed by her daughter's misconduct and her own acts of negligence, it is not an ongoing source of vulnerability for her.

### **Whole-Person Concept**

Based on the record, I have no doubts about Applicant's ongoing security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). In the course of less than 60 days, Applicant resolved a difficult set of circumstances caused by her daughter's misconduct. She successfully balanced her fiduciary duties to her employer while ensuring her daughter received proper medical care, and protecting her daughter from criminal liability. She candidly provided adverse information as required and took responsibility for her own negligence in the handling of her duplicate travel claims. The purpose of a security clearance adjudication is not to punish an applicant for past misconduct, but rather to determine if an appellant's past actions are indicative of a current inability to properly handle and protect classified. Here, Applicant demonstrated that she will seek guidance when confronted a problematic situation and that she will report adverse information as required, without regard for her self-interest.

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<sup>15</sup> AG ¶ 17(a).

## **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, Personal Conduct: FOR APPLICANT

Subparagraphs 1.a: For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is denied.

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Nichole L. Noel  
Administrative Judge