



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00137
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel O'Reilley, Esq., Department Counsel  
For Applicant: *Pro se*

09/12/2024

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**Decision**

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Curry, Marc E., Administrative Judge:

Between 2012 and 2020, Applicant's wife embezzled more than \$500,000 from her employer and deposited the money in an account that was in both her name and Applicant's name, generating an unexplained affluence security concern for Applicant. His explanation that he was unaware of this theft and that this money was in their account was credible. His wife is now in prison, and he has settled a civil suit her employer filed against his wife and him for \$275,000, an amount he raised by selling land inherited from his grandmother. Under these circumstances, I conclude Applicant has mitigated the security concerns. Clearance is granted.

**Statement of the Case**

On February 22, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline E, personal conduct, and Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial*

*Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On March 3, 2023, Applicant answered the SOR, admitting the allegations, and requested a hearing, whereupon the case was assigned to me on January 4, 2024. On April 12, 2024, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling the hearing for May 16, 2024. The hearing was held as scheduled. At the hearing, I received five Government exhibits (GE 1 – GE 5), six exhibits of Applicant (Applicant's exhibits (AE) A through AE F), and Applicant's testimony. At the close of the hearing, I left the record open at Applicant's request for him to submit additional exhibits. Within the time allotted, he submitted a signed copy of AE C, a copy of a release and settlement agreement, dated April 21, 2021. I incorporated this exhibit into the file, replacing the copy of AE C originally submitted, which was an unsigned document. The transcript (Tr.) was received on May 28, 2024.

### **Findings of Fact**

Applicant is a 58-year-old married man with two adult children. He has a high school education and is an electrician. (Tr. 19) He has been working for his current employer, a defense contractor, since 2021. (Tr. 31)

Between 2012 and 2020, Applicant's wife, a bookkeeper at a real estate law firm, embezzled between \$499,000 and \$575,000<sup>2</sup> from her employer, a four-partner law firm. (Tr. 21; GE B) Her employer discovered this criminal activity in January 2020 and fired her. In August 2020 she was arrested and charged criminally with embezzlement, unlawful conversion, and fraud. (GE B at 64) Applicant's wife conducted a scheme whereupon she would open credit cards, either jointly with Applicant or solely in his name, and use them to take cash advances. Then, she would transfer money from her employer to her personal accounts and use this stolen money to pay back the credit cards. (Answer at 4; Tr. 22) Initially, she would deposit money back into her employer's account after embezzling it, but her credit card spending gradually eclipsed the amount that she was re-depositing into the employer's account. (Tr. 21)

According to one of the partners at the firm where Applicant's wife worked, her criminal scheme at evading scrutiny was very complex because she disguised the transactions to make them appear to be legitimate. (GE B at 30) The first forensic accounting firm who the employer hired to ascertain how much money was stolen was unable to do so because it did not have "the level of expertise for the complication of how the money was being stolen." (Tr 25) Moreover, per one of the law firm partners, they did not recognize that she was stealing from them "because they were so busy within the firm," and had "no reason to believe that she had done anything inappropriate previously." (Tr. 26)

Applicant contends that he did not know that his wife was engaged in this conduct because she managed all their financial affairs, and he never looked at his bank accounts

because he was pre-occupied with his job, typically working ten to twelve hours per day. (Tr. 41, 49, 51) Moreover, there were no indicators of any lavish spending in their home such as new furniture, new cars, or flashy jewelry. (Tr. 46, 63) In addition, other than plane tickets to a resort for a vacation paid for by Applicant's brother-in-law, they did not spend much money on traveling. (Tr. 39, 43) They lived what Applicant characterized as a typical working-class lifestyle in a 2,400 square foot home shared with their two adult children and their son-in-law, and driving three economy cars that Applicant owned, all of which were models nine or more years old. (AE B at 67; Tr. 21) Moreover, Applicant sometimes performed some catering events on the side, preparing barbecue for customers hosting special events. (AE F at 6)

Applicant was aware that his family's finances were sometimes "tight," particularly between August 2014 and May 2015 when he was unemployed. (Tr. 31, 40; AE B at 64) However, when he periodically asked his wife about their finances, she would reassure him that they were making ends meet. (Tr. 40) When Applicant discovered his wife's embezzlement, they were earning a combined salary of approximately \$80,000. (Tr. 33, 36)

In August 2020, Applicant's wife was indicted. (Tr. 37) In January 2021, Applicant's wife pleaded guilty, and after a sentencing hearing eight months later, sentenced to 20 years of incarceration with 12 years suspended. (AE B at 37; Tr. 37) Applicant was not charged criminally with any crime of complicity. Applicant's wife is currently incarcerated. After Applicant's wife's conviction, he began going through her old email and text messages to discover where she was spending the money stolen from her ex-employer. His efforts were unsuccessful. (Tr. 50)

Applicant was not charged criminally. However, his wife's ex-employer included him in a civil claim filed against his wife for embezzlement, unlawful conversion, fraud, and conspiracy. The claim alleged that "[Applicant] was an active participant in the scheme to defraud [plaintiff] and benefitted from the unlawful theft and conversion . . ." (GE 3 at 7) Applicant's wife's former employer requested a judgment for \$606,813. (GE 3 at 11) Applicant denied the allegations. In April 2021, he settled the claim and agreed to pay his wife's ex-employer \$275,000 in restitution in exchange for a release from any further liability. (AE C) Applicant generated the money to settle the claim by selling land he had inherited that had been owned by his family for 100 years. (Tr. 67)

Unable to satisfy the credit card debts that Applicant's wife incurred in his name, Applicant in December 2021, filed a petition for Chapter 7 bankruptcy protection. (Answer at 1) Approximately \$200,000 was discharged through the bankruptcy.

Currently, Applicant manages his finances. He keeps a tight budget. (Tr. 66) His children help with making ends meet by paying \$400 to \$600 per month for household expenses. (Tr. 64)

Applicant is meticulous about his job responsibilities. According to a coworker, he has observed him reminding other electricians to adhere to policy, and reporting violations to superiors. (AE D)

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 deciding.

The protection of the national security is the paramount consideration. AG ¶ 1(d) 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

## Analysis

### Guideline F: Financial Considerations

Under this concern, “failure 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 or sensitive information.” (AG ¶ 18) Between 2012 and 2020, Applicant’s wife embezzled approximately \$500,000 from her employer by transferring it from her employer’s account to accounts that she owned jointly with Applicant. This raises the question of whether AG ¶ 19(g), “unexplained affluence, as shown by . . . [an] increase in net worth, or money transfers that are inconsistent with known legal sources of income.”

Applicant contends that he was unaware that so much money was moving into and out of his bank accounts because his wife was responsible for managing the family finances, and he did not monitor his accounts. Moreover, there was no evidence reflecting a wealthy lifestyle, nor anything to raise suspicion that his wife was bringing home any more money than the working-class wages to which they were accustomed, as they were living in a modest home shared with their two adult children and a son-in-law, and driving old-model, used cars. Under these circumstances, I conclude Applicant’s explanation was credible.

Applicant certainly could have been more diligent in monitoring his bank accounts. However, given his wife’s expertise as a bookkeeper and the lack of any indicia of unexplained affluence, his failure to check their accounts does not rise to the level of a security risk.

Applicant’s credibility is also bolstered by the fact that Applicant took good-faith efforts at restitution by paying his wife’s employer \$275,000 through selling land that he had inherited and resolving the credit card debt, incurred by his wife, through the Chapter 7 bankruptcy process. (AG ¶ 20(d))

In sum, I conclude that because Applicant credibly explained the source of the affluence and why he was not aware of it, AG ¶ 19(g) does not apply. Applicant has mitigated the financial consideration security concerns.

### Guideline E: Personal Conduct

Under this guideline, “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 or sensitive information.” (AG ¶ 15) When Applicant failed to check his bank accounts, he unwittingly enabled his wife to use them as a conduit for embezzlement from her employer. Under these circumstances, AG ¶ 16(e), “personal conduct, or concealment of information about

one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group," applies.

Applicant settled a civil suit filed against him and his wife by selling land and using the proceeds from the sale to pay his wife's ex-employer. Although the amount of the settlement was less than the amount that his wife had stolen over the years, it was not insignificant, given his limited means. I conclude that this good-faith effort at restitution triggers the application of AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." Applicant has mitigated the personal conduct security concerns.

### **Whole-Person Concept**

In addition to the mitigating conditions, I considered the character reference of Applicant's coworker. Upon considering all of the mitigating and disqualifying conditions in the context of the whole-person concept, I conclude Applicant has mitigated the security concerns.

### **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
Subparagraphs 1.a – 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2:a	For Applicant

### **Conclusion**

Considering the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Marc E. Curry  
Administrative Judge