



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



In the matter of: )  
)  
) ISCR Case No. 12-04456  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

01/29/2015

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the security concerns raised by his violation of his employer’s standards of conduct rules and non-fraternization policies. In the aftermath of his termination, Applicant has experienced financial problems that have resulted in the accumulation of \$13,700 in unresolved delinquent debt. Clearance is denied.

**Statement of the Case**

On April 11, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly

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<sup>1</sup> This case is adjudicated 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). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this

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 or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. The hearing commenced on November 5, 2014, by video teleconference (VTC), but was continued to allow the parties to cure discovery-related issues.<sup>2</sup> When the hearing reconvened, in person, on November 17, 2014, I admitted Government's Exhibits (GE) 1 through 8, and the Government's discovery letter, dated September 15, 2014, as Hearing Exhibit (HE) I, without objection. Applicant did not submit any documents. I received the transcript (Tr.) on November 25, 2014.

### **Findings of Fact**

Since 2000, Applicant, 59, has worked for at least two different federal contractors as a security guard, protecting various U.S. embassies abroad. Applicant obtained his first security clearance in approximately 1997 and held it until April 2011 when his former employer filed an incident report against him in the Joint Personnel Adjudication System (JPAS).<sup>3</sup>

Applicant began working his last position at an embassy in an Eastern European country in April 2010. According to the standards of conduct rules in his employment agreement, an employee's failure to report foreign contacts could result in termination. In addition to the standards of conduct, the company required its employees to follow a non-fraternization policy, which prohibited romantic or intimate relationships between its employees and any person, regardless of nationality, working, conducting, or doing business at the embassy where the employee is assigned. The policy explicitly identified the embassy's cleaning staff as an example of persons working at the embassy. Applicant's supervisor reviewed the non-fraternization with Applicant when he began his assignment at the embassy. At that time, Applicant signed and dated a copy of the policy indicating that he understood that his primary responsibility was to protect the embassy and not to the personal relationships that could result in conflict of interests, security violations, or compromise national security interest. Applicant denies ever having read the standards of conduct rules or the non-fraternization policy.<sup>4</sup>

In January 2011, Applicant's employer investigated Applicant's relationship with a foreign national who worked on the cleaning staff at the embassy as well as his failure to report the foreign contact as required. According to the security violation report

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case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>2</sup> Transcript 1 (TR1.) 20-21. (Department Counsel sent a second copy of the discovery letter and documents to Applicant on November 5, 2014. Applicant confirmed receipt of the documents on November 12, 2014. Hearing Exhibit (HE) II.)

<sup>3</sup> Transcript 2 (TR2.) 16, 64; GE 3.

<sup>4</sup> TR2. 73-74; GE 2.

Applicant's employer filed with the Defense Security Service in April 2011, the investigation not only substantiated the initial security and policy violations, but also made the following findings, that: (1) Applicant and the woman had a sexual relationship; (2) Applicant was responsible for monitoring the woman as she cleaned various areas of the embassy; (3) Applicant manipulated the work assignments so that he would have primary responsibility for escorting and monitoring the woman while she worked; and (4) the relationship resulted in the woman being given unrestricted access to areas in the embassy. The report concluded that Applicant's relationship with the woman resulted in the potential compromise of classified information.<sup>5</sup>

In April 2011, Applicant's employer informed him, in writing that he was being terminated for cause, citing security violations and his violations of the company's standards of conduct and non-fraternization policies. Later that same month, Applicant received a second letter from his employer reiterating the terms and circumstances of his termination. Applicant denies that he was informed that he was terminated for cause. He also denies committing any security violations or violating his employer's policies. He claims that he and the foreign national had a friendly, not intimate relationship. He also claims that he reported the contact to the embassy's security office with the belief that the embassy's security staff would determine if he needed to file a separate foreign contact report with his employer. He did not offer any evidence to corroborate this claim.<sup>6</sup>

Shortly after being terminated in April 2011, Applicant accepted another guard position with a different federal contractor. However, he was unable to work because his security clearance had been suspended. Applicant completed his most recent security clearance application in September 2011. He did not disclose his recent termination or his contact with the foreign national woman that led to the termination in response to the questions regarding his employment record and foreign contacts, respectively. Applicant denies that he intended to falsify his security clearance application. He blames his omissions on his faulty memory, which he received after suffering a traumatic head injury in 2005 during a motorcycle accident. Applicant also testified that he had difficulty understanding some of the questions on the security clearance application.<sup>7</sup>

Unable to begin his new position, Applicant received unemployment benefits for six months. When the benefits expired, Applicant began to experience financial problems. To support himself, Applicant divested himself of at least one of five real estate holdings. He withdrew money from his retirement accounts; however, each withdrawal resulted in a federal income tax penalty that he could not afford to pay. Applicant approached his trade union for employment. He has been on the union's list of tradesmen available for hire since 2011, but has not received any jobs. Since April 2011, Applicant has accumulated 30 delinquent accounts totaling approximately \$13,700. Twenty eight of the alleged debts are for unpaid medical accounts. Applicant

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<sup>5</sup> GE 2.

<sup>6</sup> TR2. 52-55; 68-70; Answer.

<sup>7</sup> TR2. 56-60; 62-64; GE 1.

has not had health insurance since he was fired. The remaining two accounts are for a state tax lien (\$5,000) and a consumer credit account (\$100). Applicant admits each debt. At hearing, Applicant also admitted to having outstanding federal tax and state property tax obligations. He also testified that one of his remaining four properties is facing foreclosure. Although he still owns three pieces of real estate, he is unable to sell them. According to Applicant's August 2014 credit report, he has fallen behind on several other consumer credit obligations. Applicant testified that he does not have the means to address any of his delinquent accounts.<sup>8</sup>

Applicant efforts to secure other employment have been hampered by his declining health. He has applied for disability benefits from the Social Security Administration and is currently awaiting a decision following his July 2014 hearing. Despite his physical limitations, Applicant hopes that his security clearance is reinstated so he can accept an outstanding job offer from another federal contractor to resume his career as a security officer.<sup>9</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 access to classified information will be resolved in favor of 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 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

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<sup>8</sup> TR2. 18-19; 31-37; 38-49; GE 6-8.

<sup>9</sup> TR. 19-21; 37-38.

applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Financial Considerations**

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”<sup>10</sup> Since becoming unemployed in 2011, Applicant has accumulated 30 delinquent accounts totaling approximately \$13,700, all of which remain unresolved. The record establishes that applicant has a history of financial problems and an inability to repay his debts.<sup>11</sup> None of the financial mitigating conditions apply. Applicant’s unmitigated financial issues are ancillary to the security concerns raised by the circumstances of his April 2011 termination and his subsequent failure to disclose adverse information to the government, as discussed below.

### **Personal Conduct**

An applicant’s personal conduct becomes a concern when his actions show questionable judgment, an unwillingness to comply with rules or regulations, or raises questions about an applicant’s ability to protect classified information.<sup>12</sup> The SOR alleges two personal conduct concerns. The first concern arises from Applicant’s 2011 termination from his job as a security guard for violations of his former employer’s standards of conduct and non-fraternization policies (SOR ¶ 2.b). Due to the passage of time and the cessation of the foreign contact in question, Applicant’s conduct is not sufficient for an adverse finding under the foreign influence or security violations guidelines; however, his actions support a whole-person assessment of questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations, which raises serious doubts about his ability to properly handle and safeguard classified information.<sup>13</sup>

None of the personal conduct mitigating conditions apply. Applicant’s conduct reveals gross lapses in judgment and a disregard for security rules and procedures that cannot be considered minor. Applicant’s explanations for his conduct are not credible given his 11-year career as a security guard, seven of which were spent with the same company. It is unlikely that Applicant did not know or understand his employer’s expectations or rules regarding his personal conduct and foreign contact reporting

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<sup>10</sup> AG ¶ 18.

<sup>11</sup> AG ¶¶ 19 (a) and (c).

<sup>12</sup> See AG ¶15.

<sup>13</sup> See AG 16(c).

requirements. Applicant placed his personal relationship above his fiduciary relationship to the government. Also of concern is Applicant's failure to take responsibility for his misconduct, which indicates that Applicant is likely to engage in similar conduct in the future. As such, the circumstances surrounding Applicant's 2011 termination from employment continue to reflect negatively on his current security worthiness.

The second personal conduct concern arises from Applicant's failure to disclose adverse information on his September 2011 security clearance application. Specifically, the SOR alleges that Applicant deliberately omitted material facts by failing to disclose: his foreign contact with a foreign national while working at a U.S embassy abroad (SOR ¶ 2.b); and his April 2011 termination for violating his employer's non-fraternization policy (SOR ¶ 2.c). An applicant's failure to provide truthful and candid answers during the security clearance process raises issues about his reliability and trustworthiness that ultimately calls into question his ability to protect classified information.<sup>14</sup> The record contains sufficient evidence of Applicant's intent to deliberately falsify his September 2011 security clearance application.

Applicant has held a security clearance since at least 1997 and has completed multiple security clearance applications. It is not credible that Applicant did not understand the questions on the form, what type of information the questions were designed to elicit, or the importance of full and candid disclosures. Applicant completed his most recent security clearance application less than six months after the termination of his prior employment. It is unlikely that Applicant did not remember the reason for his termination or that it occurred under unfavorable circumstances. Finally, Applicant has demonstrated a pattern of withholding information if it could potentially result in unfavorable personal consequences. An applicant is expected to provide full, frank, and candid answers throughout the investigative process. Anything less provides a rational basis for a finding against an applicant's security worthiness. Applicant failed to produce any evidence to mitigate this concern. Accordingly, none of the personal conduct mitigating conditions apply.

### **Whole-Person Concept**

I have significant reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. The purpose of the security clearance adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."<sup>15</sup> Applicant has committed serious breaches of his fiduciary relationship with the government, which continue to raise serious doubts about his ability to properly safeguard classified information. The risks cannot be ignored and must be resolved in favor of the government. Clearance is denied.

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<sup>14</sup> See AG ¶ 15.

<sup>15</sup> AG ¶ 2(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, Financial Considerations:	AGAINST APPLICANT
Subparagraph 1.a – 1.dd:	Against Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	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