



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



In the matter of: )  
)  
) ISCR Case No. 14-00281  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

09/26/2014

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the concerns raised by a May 2012 incident of workplace misconduct. 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 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

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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 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.

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 case was initially assigned to another administrative judge on July 15, 2014, who scheduled the hearing for August 14, 2014. At the hearing, which proceeded as scheduled, Applicant elected to represent herself.<sup>2</sup> I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through E, without objection. Applicant also presented the testimony of two witnesses. After the hearing, Applicant timely submitted AE F, which was also admitted without objection. I received the transcript (Tr.) on August 26, 2014.

### **Findings of Fact**

Applicant, 46, has worked as a logistics analyst for a federal contractor since July 2013. From June 2008 to July 2012, Appellant worked for a different federal contractor. Although Applicant's former position as a data manager required a security clearance, she did not access or use classified information in the performance of her duties. She resigned that position in lieu of termination after violating her employer's corporate integrity policy.<sup>3</sup>

In November 2011, Applicant, a single mother, obtained a \$250 payday loan to cover expenses related to her daughter's college tuition. Under the terms of the loan, the creditor began deducting \$75 interest payments bi-weekly from Applicant's pay. Between November 2011 and May 2012, the creditor collected approximately \$875 in interest payments. The interest payments strained her finances and prevented her from making any payments toward the \$250 principle. She also felt that the company was taking advantage of her. Applicant called the creditor in an unsuccessful attempt to re-negotiate the terms of the loan. In May 2012, Applicant attempted to convince the creditor that she had lost her job in order to stop the garnishment.<sup>4</sup>

Using clip art copied from her employer's website, Applicant created letterhead and forged a letter from the employer's human resources department. The letter, which was addressed to Applicant, said that her position was being due to budgetary constraints. Although Applicant created the forged letter on her work computer, she faxed it to the creditor from a friend's office. Upon receiving the letter, which bore the signature of a purported human resources employee, the creditor contacted the employer to verify Applicant's termination. The employer confronted Applicant, who admitted to her misconduct. The employer determined that Applicant should be terminated, but allowed her to resign instead. Two of Applicant's higher level

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<sup>2</sup> Applicant initially expressed her desire for her supervisor to act as a personal representative as well as a character witness during the hearing. Although Department Counsel did not object to the request, she did ask that the supervisor's testimony be taken first to ensure that his testimony was not influenced by the testimony of Applicant or the other identified character witnesses. After a brief recess, Applicant decided to proceed *pro se*. (Tr. 7-13).

<sup>3</sup> Tr. 34, 44-46; GE 1, 4; AE D.

<sup>4</sup> Tr. 47-48, 64-62, 98-99, 102-103; GE 4.

supervisors, one of whom testified at the hearing, did not believe that Applicant's conduct warranted her termination. They viewed Applicant as a stellar employee with no previous disciplinary issues. However, their hands were tied as the employer's policies did not allow for alternate forms of punishment, such as leave without pay. The employer filed an incident report in the Joint Personnel Adjudication System (JPAS), which resulted in the suspension of Applicant's security clearance.<sup>5</sup>

At hearing, Applicant described her actions and tearfully took responsibility for her wrongdoing. She testified that her actions showed poor judgment and were not worth the consequences she suffered. However, on cross-examination, Applicant became evasive when asked about the details of the forgery. She testified that neither the fax cover sheet nor the signature on the forged letter was done in her handwriting. Initially, Applicant would not provide direct answers to the question posed by Department Counsel as to whether she directed a friend to sign and send the forged letter to the creditor on her behalf. After offering clarification from the bench, that the purpose of the line of questioning was to ascertain Applicant's conduct and not the identity of the friend that helped her, Applicant finally admitted that she directed her friend to fax the letter to the creditor. However, she continued to deny any knowledge of or take any responsibility for the signature on the letter.<sup>6</sup>

Applicant's current supervisor also testified at hearing. He spoke highly of Applicant's performance and work ethic. He also discussed how he learned of Applicant's past misconduct. When hired, Applicant informed her supervisor that she had a financial issue that may prevent her from being able to obtain a security clearance. JPAS reflected that Applicant had a suspended security clearance, but Applicant's new employer was not able to view the incident report. It was not until Applicant's probation period expired and she had her first interview with a background investigator, that she confessed the nature of her misconduct to her supervisor. At hearing, the supervisor testified that he had gotten past Applicant's omission, in large part because of her stellar work performance. He also admitted that his thoughts about Applicant's conduct and her delayed disclosure would be different if her job required her to access or handle classified information.<sup>7</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.

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<sup>5</sup> Tr. 27-42, 52-54; GE 3-4; AE A, C.

<sup>6</sup> Tr. 48-51, 62-70, 87-89, 93-98.

<sup>7</sup> Tr. 109-126; AE A-B, F.

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

### **Analysis**

An applicant’s personal conduct becomes a security concern when she acts in a way that raises questions about her judgment or her ability to protect classified information.<sup>8</sup> In May 2012, Applicant sent a creditor a forged a letter from her employer in order to stop the collection of a debt. Given the passage of the time since the misconduct, its isolated nature, and the favorable character evidence in the record, the underlying conduct, on its own, is not sufficient for an adverse determination under another guideline.<sup>9</sup> When evaluated in context of the record as a whole, however, the available information supports a negative whole-person assessment, raising issues about Applicant’s current security worthiness.<sup>10</sup>

When considered together, the forgery, Applicant’s willful misrepresentation of her misconduct to her current employer, and her evasive and incredible testimony at hearing, raise insurmountable concerns about her character, trustworthiness, and ability to handle and protect classified information. These concerns must be resolved in favor of national security. None of the personal conduct mitigating conditions apply.

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<sup>8</sup> AG ¶ 15.

<sup>9</sup> Department Counsel declined to amend the SOR to include allegations under the financial considerations guidelines about the May 2012 misconduct or Applicant’s current finances. (Tr. 89-93).

<sup>10</sup> See 16(c).

## 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. It is not the purpose of security clearance adjudications to punish an applicant for past acts of misconduct. 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>11</sup> In these cases, the degree of acceptable risk is less than that acceptable to mere access to employment.<sup>12</sup> Applicant has proved herself an acceptable employee, but her actions, specifically her lack of candor and trustworthiness, make her an unacceptable security risk.

## 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not 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

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<sup>11</sup> AG ¶ 2(a).

<sup>12</sup> See *Gayer v. Schlesinger*, 490 F.2d 740, 750 (D.C. Cir. 1973).