



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-05147
	)	
Applicant for Security Clearance	)	

**Appearances**

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

01/28/2013

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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. Appropriately handled as a personnel issue, Applicant’s termination from a job in October 2009 does not impact her current security worthiness. However, the concerns raised by her \$54,000 in unresolved delinquent debt remain. Currently unemployed, Applicant does not have the means to address her delinquent debts. Her promise to repay once she returns to work does not mitigate the financial considerations security concern. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order and Department of Defense (DoD) Directive,<sup>1</sup> on April 17, 2012, DoD issued a Statement of Reasons (SOR) detailing

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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.

security concerns under the financial considerations and personal conduct guidelines. 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 or deny Applicant's security clearance.

Applicant timely answered the SOR in May 2012 and requested a hearing. The case was assigned to me on November 20, 2012. At the hearing convened on December 7, 2012, I admitted Government's Exhibits (GE) 1 through 10<sup>2</sup> and Applicant's Exhibits (AE) A through W, without objection. I have appended to the record as Hearing Exhibit (HE) A, a handwritten timeline prepared by Applicant. After the hearing, I left the record open to allow Applicant to submit additional documentation. She timely submitted AE X through Z, which were admitted without objection. Department Counsel's memorandum regarding Applicant's post-hearing submissions is appended to the record as HE 1. I received the transcript (Tr.) on December 19, 2012.

### **Findings of Fact**

Applicant, 47, is a human resources specialist. In November 2010, she was hired by a federal contractor to work in that capacity overseas. Applicant's employer sent her home after the Government revoked her interim security clearance in April 2011. She has been in a leave without pay status since. Applicant's background investigation revealed that she was terminated from a job in October 2009 and that she owes \$54,000 in delinquent debts.<sup>3</sup>

Applicant began experiencing financial problems after her 2004 divorce. She entered the workforce for the first time in 2005 after spending 18 years as a stay-at-home mother. Between 2005 and 2008, she experienced a series of layoffs and medical issues, making it difficult for her to pay the debts she accumulated related to her divorce and college education. Her financial issues became acute after she was fired from a job in October 2009 for failure to perform her duties in a satisfactory manner. At the time, Applicant worked overseas for another company. The SOR alleges that Applicant was fired for losing control of sensitive personnel files. Documentation from the employer shows that Applicant had, despite repeated counseling from her supervisors, ongoing performance issues during her probationary period. In disputing the termination, Applicant denies any wrongdoing and believes that she was treated unfairly.<sup>4</sup>

After the termination, Applicant remained unemployed for the next six months. In January 2010, Applicant sustained injuries in a car accident. Underinsured, she became personally liable for \$9,000 in medical expenses. She did not have the money to pay the outstanding medical bills and they became delinquent. In June 2010, Applicant

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<sup>2</sup> The documents are correctly identified in the transcript. I inadvertently skipped number 7 when marking the documents for identification on the record.

<sup>3</sup> Tr. 31-33.

<sup>4</sup> Tr. 34, 41-53, 72-74; GE 9; AE E.

accepted a position with an oil company in hopes of repaying her mounting debt. She expected the job to last one year, but was laid off after three months. She was unemployed until November 2010 when she was hired by her current employer for an overseas human resources position. Six months later, Applicant was unemployed again, forced to leave her job after her interim clearance was revoked. Although she managed to save some money, she had not yet begun to repay her outstanding debts.<sup>5</sup>

Applicant lived on her savings while she applied for unemployment compensation. She did not have any medical insurance. Because of an administrative issue, Applicant did not receive any unemployment compensation for 10 months. As her savings dwindled, she began to fall behind on her student loans, credit card accounts, and medical bills and they became delinquent. By the time she began to receive unemployment compensation in February 2012, she had only \$200 in her bank account.<sup>6</sup>

Applicant has been actively seeking employment for almost a year and her unemployment compensation is scheduled to end in February 2013. She lives modestly, but does not have any disposable income to apply toward her delinquent debts. To date, none of the debts alleged in the SOR have been resolved. Applicant has not done any research regarding the SOR accounts. As a result, she was unable to provide any insight into the alleged debts. Although Applicant acknowledges that she probably owes some of the delinquent debts alleged in the SOR, she has not contacted any of her creditors. Nor has she requested forbearance for her student loans. Applicant believes she can repay her debt only if she is granted a security clearance and is able to return to her job overseas.<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(c), 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.

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<sup>5</sup> Tr. 54-55, 94.

<sup>6</sup> Tr. 55-56; GE F.

<sup>7</sup> Tr. 57, 60, 63-65, 89, 94-96.

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.” 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 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**

### **Guideline E, Personal Conduct**

Conduct showing an “unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.”<sup>8</sup> The SOR allegation that Applicant was fired from a job in October 2010 for losing control of sensitive personnel files seems to raise this concern. However, when the allegation is placed in context of the entire record, Applicant was actually terminated for a variety of performance issues during her probation period. As far as Applicant’s employer was concerned, the incident with the personnel files was merely the straw that broke the proverbial camel’s back. These incidents do not raise a security issue, but a personnel issue, that her employer remedied by terminating her.

### **Guideline F, Financial Considerations**

Unresolved delinquent debt is a security concern because “an individual who is financially over extended is at risk of having to engage in illegal acts to generate

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<sup>8</sup> AG ¶ 15.

funds.”<sup>9</sup> Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.<sup>10</sup> The Government does not have to prove that an applicant poses a clear and present danger to national security,<sup>11</sup> or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make her more vulnerable to financial pressures.<sup>12</sup>

Applicant owes \$54,000 in delinquent debt. The allegations are supported by the credit reports in the record.<sup>13</sup> Applicant has a history of not paying her debts and currently has an inability to do so.<sup>14</sup> Applicant’s indebtedness was caused by events beyond her control, and is not the result of irresponsible spending habits. She has acted responsibly by maintaining a modest lifestyle and actively seeking employment.<sup>15</sup> Her debts are not unreasonable given her erratic employment history and lack of medical insurance. Although Applicant receives the benefit of some mitigating evidence, these facts are not sufficient to overcome the Government’s *prima facie* case against her. Applicant may have the desire and intent to repay her delinquent debts; she does not have the means to do so. Although Applicant is in a difficult situation, the security concerns in this case cannot be mitigated by the personal hardships that may be caused by losing her security clearance<sup>16</sup> or by her promise to repay her debts if she is able to return to her job.<sup>17</sup>

An adverse decision in this case is not a finding that Applicant does not possess the good character required of those with access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control.<sup>18</sup> Nor should this decision be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to justify the granting of a security clearance. The award of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to

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<sup>9</sup> AG ¶ 18.

<sup>10</sup> ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

<sup>11</sup> See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

<sup>12</sup> See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

<sup>13</sup> GE 5-6, 8, 10.

<sup>14</sup> AG ¶¶ 19(a) and (c).

<sup>15</sup> See AG ¶ 20(b).

<sup>16</sup> See ISCR Case No. 08-10238 at 3 (App. Bd. Dec. 18, 2009), ISCR Case No. 08-10079 at 3. (App. Bd. Dec. 10, 2009), and ISCR Case No. 08-00899 at n.1 (App. Bd. Jul. 29, 2008).

<sup>17</sup> See, e.g., ADP Case No. 07-13041 at 4 (App. Bd. Sep.19, 2008); ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999).

<sup>18</sup> ISCR Case No.01-26893 at 8 (App. Bd. Oct. 16, 2002); See also *Department of Navy v. Egan*, 484 U.S. 518, 527-28 (1988).

the evidence presented. A clearance is not recommended due to Applicant's current circumstances. However, in the future, she may well present persuasive evidence of her security worthiness.

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