



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



In the matter of: )  
)  
) ISCR Case No. 11-14823  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Department Counsel  
For Applicant: *Pro se*

11/08/2013

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns under Guideline J for criminal conduct and under Guideline F for financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 20, 2010, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for her employment with a defense contractor. (Item 5) She had not previously held eligibility for access to classified information. On February 16, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for criminal conduct under Guideline J and financial considerations under Guideline F. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on March 11, 2013, admitting all allegations. Applicant elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on May 2, 2013. Applicant received a complete file of relevant material (FORM) on May 8, 2013, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not provide any additional information in response to the FORM. The case was assigned to me on October 23, 2013.

### **Findings of Fact**

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 47-year-old high school graduate. She worked for the same defense contractor for over ten years. She started as a warehouse lead in 1994, and became the purchasing manager at a corporate facility in 2010. There is no indication in the file of Applicant's present employment status. (Item 5)

Applicant was in a position of trust when employed by the defense contractor as a senior accountant and supply administrator. Her duties included forwarding receipts for items purchased at her location to the home office for payment. Applicant could request that the payments be sent directly to the supplier. She could also have the request expedited so that the payment check, made out to the supplier, went to her and then she would deliver the payment. From November 2002 until December 2009, Applicant prepared and signed at least 44 fictitious requests for payment to a national appliance, tool, and furniture retailer. Applicant also had a personal account with the same retailer. Applicant used the checks received from the home office for payment of the fictitious accounts to pay her personal bills and not pay a company debt. There were at least 44 fraudulent transactions in the amount of \$104,926.58. (Item 6)

A criminal complaint was filed against Applicant in federal court in July 2010 for mail fraud. (Items 7, 8, and 9) Applicant pled guilty to mail fraud on June 3, 2011. She was sentenced to six months confinement, three years of supervised release, and to pay restitution of \$104,926.58, the amount embezzled from her employer. Applicant served her sentence and was released from confinement on January 13, 2012. (Item 12) The United States Attorney noted that her restitution judgment had been paid, settled and satisfied. (Item 11) There is no report on her credit bureau reports that the restitution is still outstanding. (Item 13) Department Counsel in the Form concludes that Applicant made full restitution. Applicant is still on supervised release until June 2014.

### **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 adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which must 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 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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.

## **Analysis**

### **Criminal Conduct**

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature it calls into question a person's ability or willingness to comply with laws, rules, and regulations (AG ¶ 30). Applicant developed a scheme to embezzle funds from her employer. Over eight years she used the scheme at least 44 times to embezzle a total of \$104,926. This information raises Criminal Conduct Disqualifying Conditions AG ¶ 31(a) (a single serious crime or multiple lesser offenses), and AG ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the

person was formally charged, formally prosecuted or convicted). Applicant's criminal actions of embezzlement raise questions about her ability and willingness to comply with laws, rules, and regulations.

I considered the criminal conduct mitigating conditions, especially Mitigating Conditions AG ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); and AG ¶ 32(d) (there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement).

No criminal conduct mitigating condition applies. The admitted criminal actions did not happen under any unusual circumstances since Applicant admits she knowingly and freely developed the embezzlement scheme against her employer. There is ample evidence in the file to support the allegations, and Applicant entered a plea of guilty to the offense. It has been only three years since Applicant was caught in the embezzlement scheme that she used for over eight years. Even though she completed her prison sentence and paid the restitution in full, she did not present evidence of any other actions taken to show she has remorse for her conduct or has been successful rehabilitated. In fact, she is still under supervised release. Applicant's actions show a repeated course of conduct for not following rules and regulations that is likely to recur. There does not appear to be any evidence of rehabilitation or an understanding by Applicant of her criminal conduct. Accordingly, her conduct continues to cast doubt on her reliability, trustworthiness, and good judgment.

### **Financial Consideration**

Failure or inability to live within one's means, satisfy debt, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, thereby raising questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially irresponsible may be careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. An applicant with a history of serious financial issues is in a situation of risk inconsistent with the holding of a security clearance.

Applicant over eight years at least 44 times submitted false invoices to her employer and used the funds to pay her personal bills. She was also ordered by the court to repay the funds she embezzled, which amounts of \$104,926. These circumstances raise Financial Consideration Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and 19(d) (deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion,

expense account fraud, filing deceptive loan statements, and other intentional breaches of trust).

I considered Financial Mitigating Conditions AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment); and AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

For the same reasons noted under the mitigating conditions for criminal conduct, the mitigating conditions for financial consideration under AG ¶ 20(a) are not applicable. However, Applicant paid the restitution in full and no delinquent debt is listed on her credit report. She has mitigated the financial consideration security concern for unsatisfied debt. I find against Applicant on Paragraph 2, Guideline F based on the embezzlement. Applicant's embezzlement from her employer casts substantial doubt on her reliability, trustworthiness, and good judgment.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant worked for her employer for over eight years. During that time, she used a scheme to embezzle funds from the employer. Other than eight years of service to the same contractor and Applicant's service of her sentence, there is little to show that Applicant is reliable, trustworthy, and exercises good judgment. She has not demonstrated any responsible or trustworthy conduct. Her lack of trustworthy and responsible conduct and her criminal actions of embezzling over a period of time indicates she may not be concerned or act responsibly

in regard to classified information. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her criminal conduct and financial considerations. Eligibility for access to classified information is denied.

### **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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge