



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



In the matter of: )  
)  
) ISCR Case No. 16-02965  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Michelle Tilford, Esq., Department Counsel  
For Applicant: *Pro se*

06/01/2018

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant's financial problems were caused by four years of underemployment rather than irresponsible or reckless behavior. Now working full time, she is in a position to repay her creditors. Clearance is granted.

**Statement of the Case**

On November 7, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to revoke her security clearance.

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<sup>1</sup> The DOD acted 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), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on January 10, 2018, I admitted Government's Exhibits (GE) 1 through 4, without objection. After the hearing, Applicant timely submitted Applicant's Exhibits (AE) A through C, without objection. DOHA received the transcript (Tr.) on January 19, 2018.

## **Procedural Matters**

### **Implementation of Revised Adjudicative Guidelines**

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

### **Request for a Continuance**

At the hearing, Applicant requested a continuance for additional time to resolve her delinquent accounts because of a change in her employment status. I denied the request, but left the record open for 60 days to allow Applicant to submit additional documentation regarding her finances.<sup>2</sup>

## **Findings of Fact**

Applicant, 25, has worked as a security guard for a federal contractor since 2015. She completed a security clearance application, her first, in June 2015. The ensuing investigation revealed and the SOR alleges that Applicant is indebted to three creditors for approximately \$14,000. The largest debt, \$13,505, is for a vehicle repossession. (SOR ¶ 1.a). The two other debts are related to a cell phone account (\$466, SOR ¶ 1.b), and a medical debt (\$100, SOR ¶ 1.c).<sup>3</sup>

After completing Job Corps in September 2012, Applicant began working two full time jobs as a certified nursing assistant (CNA). She worked at a nursing agency and at a nursing home, earning approximately \$3,900 per month. In 2014, the nursing agency lost the contract on which Applicant worked. Because the agency did not have another position available for Applicant, she lost her job. Her income decreased by more than 50% to \$1,860 per month. Unable to replace the income from the contract job, Applicant became increasingly concerned about being able to pay her bills and decided to voluntarily surrender her car to the creditor in October 2014. She purchased the car new in April 2013 for \$21,000. The creditor sold it at auction for \$800.<sup>4</sup>

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<sup>2</sup> Tr. 9-11.

<sup>3</sup> GE 1, 4.

<sup>4</sup> Tr. 18-20, 33-34, 43-45; GE 1.

In March 2015, Applicant was hired by her current employer, earning \$14 per hour, and her finances improved. After being granted an interim security clearance, Applicant was moved to a secured site and received a pay increase to \$16.50 per hour. Then earning over \$2,600 per month, Applicant was confident she would be able to live within her means, and moved into her own apartment in the summer of 2016. However, when the SOR was issued in November 2016, Applicant was removed from the secured site and placed on unpaid leave from November 2016 to January 2017.<sup>5</sup>

After being placed on unpaid leave, Applicant returned to working as a CNA, but could only find part time employment. She worked 16 hours per week, earning \$12.50 per hour, or \$800 per month. In January 2017, her employer found a one-month, part-time position at an unsecured site. Applicant worked two days per week earning \$15 per hour. In January 2017, Applicant earned approximately \$1,760. When that assignment ended, Applicant continued working the CNA job, picking up extra hours as they became available. In May 2017, her employer found another short-term, part-time assignment for Applicant, working four days per week at \$15 per hour. Between May and November 2017, Applicant earned \$2,720 per month, working both jobs. After scouring her employer's available openings, Applicant secured a permanent, full-time position at an unsecured site, earning \$20 per hour.<sup>6</sup>

When Applicant returned to full-time employment, she contacted the creditor about the deficiency balance from the vehicle repossession. She was informed that the debt had been sold to another creditor. Applicant called that creditor and set up a payment plan in January 2018 for \$100 per month. She provided evidence of the first payment, but could not secure a letter from the creditor memorializing the payment agreement. The delinquent cellphone account alleged in SOR ¶ 1.b occurred when Applicant switched from one carrier to another under a promotion where the new carrier promised to pay the remaining contract fees to the old carrier. Applicant contacted the creditor in 2014 and settled the account, but she no longer has documentation of her payment. Applicant cannot identify the source of the medical debt alleged in SOR ¶ 1.c. At the time the debt was incurred, she had Medicaid, which did not have copayments for medical service. The debt remains unresolved.<sup>7</sup>

Between November 2016, when she was placed on unpaid leave, and January 2018, when she returned to full-time employment, Applicant managed to pay her rent, car payment, and recurring bills on time. Her family provided some financial support to help her stay current with her financial obligations. She did not incur any delinquent debts. When her lease expired in November 2017, she moved in with her mother to reduce her financial obligations. Since the October 2014 voluntary repossession, Applicant has purchased three cars, each less expensive than the previous one. In October 2017, she purchased a used car for \$14,000 with a \$308 monthly payment. Now that she is working full time, she has the means to resolve the deficiency balance

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<sup>5</sup> Tr. 25-29, 20-22, 57-58.

<sup>6</sup> Tr. 22-26.

<sup>7</sup> Tr. 35-41, 45-49; GE 2; AE A-C.

alleged in SOR ¶ 1.a and she intends to do so. She currently has \$800 in disposable income each month.<sup>8</sup>

According to the credit reports in the record, Applicant's credit history is two years and seven months. She has three trade lines reported on the report, only two are active, and both are current. Applicant does not have credit cards. At the hearing, Applicant detailed her efforts to live within her means and to avoid the stress caused by having financial obligations she cannot afford to pay.<sup>9</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(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 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 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 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

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<sup>8</sup> Tr. 26, 19-33, 49-51, 59-63; GE 2.

<sup>9</sup> Tr. 22, 24-35, 41-42; GE 2.

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 F, Financial Considerations**

Failure to meet one’s 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.<sup>10</sup> The record is sufficient to establish the government’s *prima facie* case that Applicant has a history of not meeting financial obligations and that she had an inability to do so. However, she has provided sufficient information to mitigate the alleged concerns.<sup>11</sup>

Applicant financial problems were caused by events beyond her control, a combination of unemployment and underemployment between 2014 and January 2018. Applicant’s income decreased from \$3,900 per month in 2012, to \$800 at its lowest point in November 2016. However, she acted responsibly in light of her circumstances. In 2014, when she first experienced more than a 50% decrease in income and realized she could no longer afford her car, she surrendered her 18-month-old car to the creditor. Although she could not afford to make payments on her delinquent accounts between 2014 and 2018, she proactively reduced her expenses so that she would not incur additional delinquent debt. She moved home with her mother, eliminating her housing expense. She has secured reliable and less expensive transportation. Since returning to full-time employment in January 2018, she has initiated contact with her largest creditor to establish a payment plan and has made a payment under the terms of the agreement. Although the status of the cell phone account and the medical bill are unresolved, the amounts are small and an unlikely source of exploitation or vulnerability.<sup>12</sup>

Based on a consideration of the record, I have no doubts about Applicant’s ability to properly handle and safeguard classified information. In reaching this conclusion, I have also considered the whole-person factors detailed in AG ¶ 2(d). The record shows that Applicant has a favorable, albeit limited financial history. Applicant has a history of paying her creditors and living within her means. Her attitude toward maintaining her

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<sup>10</sup> AG ¶ 18.

<sup>11</sup> AG ¶¶ 19(a) and (c).

<sup>12</sup> AG ¶¶ 20(b) and (d).

personal finances indicates that she is unlikely to engage in fiscally irresponsible behavior. In considering this favorable information, I find Applicant's assurances that she will pay her delinquent debt credible. Ultimately, the record shows that Applicant has not engaged in any conduct that suggests an inability to properly handle and safeguard classified information.

### **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:                      FOR APPLICANT

Subparagraphs 1.a – 1.c:    For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge