



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-04045  
 )  
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Applicant for Security Clearance )

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

07/20/2018

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**Decision**

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KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to revoke her eligibility for access to classified information. She did not present sufficient evidence to explain, extenuate, or mitigate the security concern stemming from her problematic financial history. The Government did not establish the personal conduct allegations. Accordingly, this case is decided against Applicant.

**Statement of the Case**

On February 17, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised security concerns under the financial considerations guideline and the personal conduct guideline.<sup>1</sup> Applicant answered the SOR on March 9, 2017, and

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<sup>1</sup>This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (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 June 8, 2017, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2016). In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. My decision and

requested a hearing to establish her eligibility for continued access to classified information.

On June 13, 2018, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing and submitted one exhibit, which was marked Applicant's Exhibit (AE) A and admitted into the record without objection. Exhibits offered by the Government were admitted into the record without objection. (Government Exhibits (GE) 1 – 4.) The transcript of the hearing (Tr.) was received on June 18, 2018.

### **Findings of Fact**

Applicant is 52 years old, has never married and has no children. Since November 2000, she has worked as a telecommunications technician for a defense contractor.<sup>2</sup>

Under Guideline F, the SOR alleges 21 delinquent debts totaling \$26,845.<sup>3</sup> Applicant admitted all of those allegations. As to each debt, she stated that she was working with a credit advisor to "remove these items from my report."<sup>4</sup>

Under Guideline E, the SOR alleges that Applicant deliberately failed to disclose the SOR debts on her security clearance application.<sup>5</sup> Applicant denied that allegation.<sup>6</sup>

Applicant testified about the origins of her delinquent debts. She is the godmother of a goddaughter, age 21, and a godson, age 25. The goddaughter has a daughter, age 4. Because the mother of the godchildren has been on and off drugs ever since the godchildren were born, Applicant has provided for them financially. She bought food, clothes, diapers, strollers, "anything they needed." Applicant stepped in to care for the godchildren not only because of the mother's drug use (when "she wasn't right – ill"), but because their appointed foster mother mistreated them.<sup>7</sup> When the godchildren were in their mid-teens, they came to live with Applicant. They used her home "on and off as a safe haven depending on the circumstances in their home . . . a year here and six months there . . . ." She did not want "them hanging out in the street."<sup>8</sup>

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formal findings under the revised Guideline F and under the revised Guideline E would not be different under the 2006 Guidelines.

<sup>2</sup> GE 1; Tr. 36.

<sup>3</sup> SOR ¶¶ 1.a-1.u.

<sup>4</sup> Answer ¶¶ 1.a-1.u.

<sup>5</sup> SOR ¶ 2.a.

<sup>6</sup> Answer ¶ 2.a.

<sup>7</sup> Tr. 23, 29-30, 33, 38.

<sup>8</sup> Tr. 56.

The godson testified that he has known Applicant all his life and that she took care of him. She put him through college to earn his Associate's Degree. Applicant provided financial assistance to him and his sister. He is currently employed in a security position. Applicant is a "great person, caring [and] loving." The goddaughter, who is currently unemployed, testified that Applicant has financially supported her ever since she was born. The mother of the godchildren testified that Applicant has provided for her children since their birth.<sup>9</sup> Applicant still provides financial assistance for the four year-old.<sup>10</sup>

Applicant testified that before the godchildren moved in with her, she was able to meet all her expenses. Once they moved in she became financially over-extended. She was unable to quantify exactly how much she spent over the years providing for the godchildren. She estimated, however, that the college costs for the godson alone were between \$30,000 to \$40,000 for two years. They no longer live with Applicant. She lives alone and receives no financial support from anyone.<sup>11</sup>

Applicant testified about what she has done to address her delinquencies. Her only attempt so far has been to enroll them with a credit advisor or a credit repair agency about a year ago. All of the SOR debts are enrolled. She initially paid the agency an up-front fee of \$249 and for the last year has made monthly payments of \$100. Applicant has not received anything in writing to show what the agency has done. She has not done anything else to get her finances under control.<sup>12</sup>

Applicant's monthly take-home pay is about \$5,000. She has no retirement account and no savings account to speak of (a \$5 balance). Her monthly expenses come to about \$2,600. Applicant's checking account has an approximate balance now of \$1,049, because she recently got paid. She has made no large purchases, except for a new car because the old one broke down. Applicant took a vacation in 2016, but that was paid for by a friend. She has no household budget.<sup>13</sup>

Applicant testified about her income tax filings and liabilities. She has not filed or paid income taxes since 2008. She had "no idea" what she might owe. Applicant estimated that she might owe \$30,000 just to the IRS. She did not have taxes withheld, so she could use the extra money for the godchildren. Applicant "just was overwhelmed . . . [she never had to] care for anybody."<sup>14</sup>

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<sup>9</sup> Tr. 22-25, 29-34.

<sup>10</sup> Tr. 39-40.

<sup>11</sup> Tr. 39-40, 49.

<sup>12</sup> Tr. 42-44, 52-53.

<sup>13</sup> Tr. 48-53.

<sup>14</sup> Tr. 45-46.

Applicant testified about the Guideline E allegation. She was asked why she did not list any of her debts that were in the SOR. Applicant admitted that she knew she was delinquent on some debts, but she “didn’t know how much money [she owed] this person, that person, that person.” She also said that she was “rushing through” the security clearance application “to finish it.” Applicant was not intentionally trying to mislead the government.<sup>15</sup> On her security clearance application under “Financial Record,” Applicant answered that she was planning to file a bankruptcy petition. She also disclosed that she was behind in her taxes, estimated that she owed \$15,000, and was “working on [her] taxes with a lawyer.”<sup>16</sup>

Applicant is described by a longtime co-worker as “a great citizen . . . [who helps] those in need [in her community.]” That same co-worker observed Applicant “support a mother [who] has battled with drugs . . . making sure her [godchildren] never were in foster care . . . [Applicant] is a good trustworthy person.”<sup>17</sup>

### **Law and Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2; SEAD-4, ¶ E.4.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. SEAD-4, Appendix A, ¶¶ 2(c), 2(d).

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in

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<sup>15</sup> Tr. 47, 53-54.

<sup>16</sup> GE 1.

<sup>17</sup> AE A.

favor of the national security.” SEAD-4, Appendix A, ¶ 2(b). See also SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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.

## **Discussion**

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

The SOR alleges that Applicant has a number of delinquent debts, which purportedly raise a security concern under Guideline F. The financial considerations security concern is explained at AG ¶ 18, which in pertinent part, states:

Failure to live within one's means, satisfy debts, and 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence.

Guideline F is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt and other security-significant financial issues cast doubt upon a person's self-control, judgment, and other qualities essential to protecting classified information.<sup>18</sup>

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

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<sup>18</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control.

A security clearance adjudication is not a debt-collection process. Rather, an administrative judge examines the way an applicant handles his or her personal financial obligations to assess how they may handle their security obligations.<sup>19</sup> Here, Applicant's security clearance eligibility was called into question by her past and continuing financial problems. I conclude that disqualifying conditions AG ¶¶ 19(a) and (c) apply. The next inquiry is whether any mitigating conditions apply.

Applicant's financial straits are current as well as historical. Therefore, AG ¶ 20(a) does not apply.

Applicant finds herself in financial troubles, because she acted selflessly and stepped in to care for her two godchildren when their mother was incapacitated by a drug problem on and off since their birth. I find that to be a condition largely beyond, if not wholly beyond, Applicant's control under AG ¶ 20(b). The next question is whether Applicant acted responsibly under those circumstances.

Applicant has enrolled her SOR debts in a credit repair program and has been making monthly payments of \$100 for about one year. She did not, however, know how those payments were being distributed among her many creditors. AG ¶ 20(c) only partially applies, because there is no evidence that Applicant's financial problems are being resolved or are under control. Merely enrolling her delinquencies in such a program, without more, is not acting responsibly under AG ¶ 20(b).

### **Guideline E - Personal Conduct**

In assessing an allegation of deliberate falsification, I consider not only the allegation and applicant's answer but all relevant circumstances.<sup>20</sup> Under Guideline E for

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<sup>19</sup> See *generally* ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

<sup>20</sup> AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors).

personal conduct, the concern is that “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.”<sup>21</sup> A statement is false or dishonest when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, reasonably did not know the information, or genuinely thought the information did not need to be reported.

Applicant stated on her security clearance application that she was contemplating filing a bankruptcy petition. She also disclosed that she was behind in both filing and paying her taxes and estimated that she owed \$15,000. At the hearing, Applicant vehemently and credibly denied that she intended to mislead the Government. I find that Applicant did not deliberately falsify her security clearance application.

The record raises doubts about Applicant’s reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.<sup>22</sup> Accordingly, I conclude that Applicant has not met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to 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, Guideline F (Financial Considerations):	Against Applicant
Subparagraphs 1.a – 1.u:	Against Applicant
Paragraph 2 (Personal Conduct)	For Applicant
Subparagraph 2.a:	For Applicant

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<sup>21</sup> AG ¶ 15.

<sup>22</sup> See note 23, *supra*.

## **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas  
Administrative Judge