



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



In the matter of:)
)
) ISCR Case No. 14-00865
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: Ryan Nerney, Esq.

11/21/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations and foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 26, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline B, foreign influence. The DOD acted under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 19, 2014, and requested a hearing. The case was assigned to me on September 25, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2014, setting the hearing for October 7, 2014. The Government offered exhibits (GE) 1 through 14, which were

admitted into evidence without objection. Administrative notice-related documents offered by the Government were marked as hearing exhibit (HE) I. Department Counsel's exhibit index was marked as HE II. Applicant testified and offered exhibits (AE) A through L. The exhibits were admitted into evidence without objection with the exception of AE I, which was not admitted and made moot by my ruling on the motion to amend the SOR (see below). Applicant's two exhibit lists were marked as HE III and IV. The record was held open and Applicant submitted additional evidence. Applicant offered one exhibit, which was marked as AE M, and administrative notice documents, which were marked as HE VI (Applicant's post-hearing exhibit list (HE V) listed the administrative notice documents as an Applicant exhibit, but I remarked it as HE VI). Department Counsel posed no objection, so the exhibit was admitted and I took administrative notice of the Applicant-submitted documents. DOHA received the hearing transcript (Tr.) on October 17, 2014.

Procedural Rulings

Department Counsel moved to amend the SOR to re-letter SOR ¶ 1.n as SOR ¶ 1.j to correct an obvious mis-lettering of the allegations. Applicant had no objection and the motion was granted. Additionally, both sides requested that I take administrative notice of certain facts concerning the country of the Ukraine. I have taken administrative notice of facts about the Ukraine as were stated in HE I and HE VI. Those specific facts are detailed later in this decision.¹

Findings of Fact

Applicant is 33 years old and has worked as an information assurance manager for a defense contractor since July 2013. No formal education information for him is available in the record. He is married and his wife is a citizen of the Ukraine, where they were married in 2008. He has a child from an earlier relationship and he and his wife are expecting a child. He served in the Air Force for three years and was discharged with a general discharge under honorable conditions. He deployed as a civilian contractor to Iraq in support of Operation Iraqi Freedom at various times in 2003, 2004, and 2006-2008. He performed duties in combat areas. He has held a security clearance since 1999.²

The SOR alleges Applicant filed a Chapter 13 bankruptcy petition in August 2013, and was indebted on nine accounts. The debts were listed in his bankruptcy schedules and on credit reports from June 2013, March 2014, and April 2014. Applicant admitted all the debts, except for SOR ¶ 1.f. His admissions are incorporated as findings of fact.³

¹ Tr. at 11-12; HE I, VI.

² Tr. at 34-37, 69; GE 1.

³ GE 6, 11-13; Answer.

The SOR also alleges that Applicant's wife is a citizen of the Ukraine and that his mother-in-law and two sisters-in-law are all citizens and residents of the Ukraine. Applicant admitted these allegations.⁴

Applicant was making a good salary from his contractor work and deployed status. He used the extra money to invest in real estate holdings with a childhood friend (SC). They formed a company and began acquiring run-down residential properties, which they rehabilitated and then rented. They began the business in 2008 and purchased six properties. At some point, another investor (CG) became part of the company. Later, both SC and CG wanted to divest themselves of the company and demanded that Applicant buy out their interests. In 2011, Applicant reached a settlement with both SC and CG. Before he could make payments under the settlement, he was laid off from his contractor position in December 2012. The layoff came because of the government furlough that impacted his contractor-employer. He was unable to pay the settlement amounts to SC and CG and became delinquent on his other financial obligations, including his residential mortgage. He remained unemployed until July 2013 when he was hired for his current position.⁵

Applicant sought the advice of a bankruptcy attorney who advised him that once he became employed and received a regular paycheck, he could file a Chapter 13 bankruptcy petition. This type of bankruptcy is commonly referred to as a wage earner plan. It enables individuals with regular income to develop a plan to repay all or part of their debts.⁶ Applicant filed the Chapter 13 bankruptcy petition in August 2013. The bankruptcy plan included provisions that Applicant was to pay \$1,850 per month starting in July 2014 and continuing until August 2016. Additionally, the properties that Applicant, SC, and CG owned would be sold by the trustee to satisfy the interests and judgments held by SC and CG (the SOR debts listed in ¶¶ 1.b – 1.e). All the remaining SOR debts were incorporated into the plan (SOR ¶¶ 1.f – 1.j). The plan was approved in August 2014. Applicant has paid over \$11,000 into the plan and is current on his monthly payments. He is also current on his pending obligations and his current gross income is approximately \$130,000. He received financial counselling as part of the bankruptcy process.⁷

Applicant's wife was born in the Ukraine and she is currently a citizen of that country. She moved to the United States in 2009 following her marriage to Applicant. She has not returned to the Ukraine since coming to this country. She has applied for U.S. citizenship and is awaiting the completion of her application request. Her mother and two sisters are citizens and residents of the Ukraine. Applicant has not had contact with these in-laws since his wedding. They do not speak English. Applicant's wife had weekly contact with her mother and sometimes her sisters, but that contact has ceased

⁴ Answer.

⁵ Tr. at 37-39; Answer.

⁶ See: <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter13.aspx>

⁷ Tr. at 40-41, 44-48, 51-52; GE 6, 9, 10; AE M.

due to Applicant telling his wife that she should restrict her contact with her relatives. Applicant does not provide any financial assistance to his in-laws. Neither his mother-in-law nor the sisters-in-law have any government affiliation.⁸

Applicant presented character letters from coworkers and friends who indicated that he was trustworthy and loyal. He also presented job performance appraisals which showed that he was meeting performance expectations.⁹

Ukraine

The Ukraine has existed as an independent state for just over 20 years. During that time, it has moved to transition to a democratic society. It is ruled by a presidential-parliamentary form of government. In 2008, the United States signed the U.S.-Ukraine Charter on Strategic Partnership, which highlights the importance of the bilateral relationship and outlines enhanced cooperation in the areas of defense, security, economics and trade, energy, security, democracy, and cultural exchanges. In 2009, the U.S. Vice President spoke highly of the relationship between the United States and the Ukraine.

A cornerstone for the continuing partnership between the United States and the Ukraine has been the Freedom Support Act, under which the Ukraine has received from the United States more than \$4.1 billion since its independence. Ukraine has contributed troops and military personnel to the missions in Iraq and Afghanistan. Despite these facts, there has been some criticism of the Ukraine's 2010 electoral process. In addition, the Director of National Intelligence recently expressed concern that the Ukraine could drift toward authoritarianism. At present, however, there is no evidence the Ukraine's government targets U.S. citizens for classified or protected information, or is associated with any risk of terrorism.

In March 2014, Russian forces moved into the Crimean peninsula in western Ukraine, and annexed the region. Ukraine and the United States do not recognize the annexation. The U.S. General Assembly affirmed Ukraine's territorial integrity in March 2014 and deemed the March 16 referendum on Crimean annexation illegitimate. Russia has positioned military forces on the border of eastern Ukraine and requires non-Russian citizens to obtain a Russian visa to enter Crimea. Armed militants have threatened, detained, or kidnapped some journalists and international observers in eastern Ukraine for hours or days. In May 2014, the State Department issued a warning to U.S. citizens to defer all non-essential travel to Ukraine, and to avoid all travel—essential or non-essential—to the Crimean peninsula.

⁸ Tr. at 58-62.

⁹ AE A, F-G.

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 that 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.

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 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 about 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹⁰

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had multiple delinquent debts. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

¹⁰ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The delinquent debts attributed to Applicant were recent. He filed for Chapter 13 bankruptcy and has been making payments under the approved bankruptcy plan. These efforts to repair his financial position make it reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant's finances suffered an upheaval when his business associates demanded divestiture from their real estate enterprise and shortly thereafter Applicant was laid off from his job due to the government furlough. He sought the advice of a bankruptcy attorney and once he obtained full-time employment in his career field in 2013, he was able to file for bankruptcy protection under Chapter 13 and propose a repayment plan that was ultimately accepted by the court. His business relationship breakup and unemployment were conditions beyond his control and once he was able to do so, he acted responsibly by filing for Chapter 13 bankruptcy and making payments under the court-approved plan. AG ¶ 20(b) applies.

There are clear indications that all the debts are being resolved through the Chapter 13 plan. He received financial counselling and made good-faith efforts to resolve all the debts listed on the SOR. He supplied documentary evidence showing the payments made under the approved bankruptcy plan. AG ¶ 20(c) and ¶ 20(d) apply.

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that creates a potential conflict of interest between the individual's obligation to protect classified sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's wife is a citizen of the Ukraine, but is in the process of gaining U.S. citizenship. Applicant's mother-in-law and two sisters-in-law are citizens and residents of the Ukraine. AG ¶¶ 7(a), 7(b), and 7(d) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant married his Ukrainian wife in 2008. Since that time she has relocated to the United States and has not returned to the Ukraine. She is in the process of gaining U.S. citizenship. He has virtually no contact with his Ukrainian in-laws. His wife also has distanced herself from her Ukrainian relatives at her husband's request. They do not provide financial support to these relatives. The in-laws do not have any affiliations with the Ukrainian government. There was no evidence to suggest that any of his Ukrainian in-laws are influenced by the politics of the Ukraine. I find that Applicant has deep and longstanding relationships and loyalties in the United States having served alongside our military in combat at various times. It is unlikely that Applicant would be placed in a position of having to choose between the interest of a relative and the United States. It is clear that even in the unlikely event such a situation would arise he would choose in favor of the interests of the United States. Therefore, I find AG ¶¶ 8(a), 8(b), and 8(c) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 a security clearance 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I found Applicant to be honest and candid about the circumstances that led to his debts. He has served his country in harm's way. His character references described him as a man of honesty and loyalty. He has honored his bankruptcy payment plan. I found

nothing to indicate a likelihood that similar circumstances would recur. I am convinced that he will not be placed into a position to choose between the interests of his foreign relatives and the United States.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations and the foreign influence security concerns.

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: Subparagraphs 1.a – 1.j:	FOR APPLICANT For Applicant
Paragraph 2, Guideline B: Subparagraphs 2.a – 2.c:	FOR APPLICANT For Applicant

Conclusion

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

Robert E. Coacher
Administrative Judge