Date: August 25, 2022

In the matter of:	)	
-----	)	ISCR Case No. 19-01699
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Luke S. Rose, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 26, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. Prior to hearing, the Government amended the SOR to add an allegation under Guideline J (Criminal Conduct). On May 23, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline B, the SOR alleged that Applicant's parents and two siblings are citizens and residents of Jordan and that another sibling is a citizen of Iraq and resident of the United Arab Emirates. Under Guideline E, the SOR alleged that Applicant had a relationship with a Russian citizen between about July 2016 and January 2017 and that he falsified both his security clearance application (SCA) and his personal subject interview (PSI) by failing to disclose the relationship. Under Guideline J, the SOR alleged that Applicant was convicted of three counts of felony assault in October 2019 and sentenced to 120 days in jail and four years of supervised probation. At the

Government's request, the Judge took administrative notice of facts drawn from official U.S. Government publications regarding Jordan. The Judge found against Applicant on all allegations.

Applicant raised the following issues on appeal: whether the Judge failed to afford Applicant due process; whether she failed to give appropriate weight to his relationship with another federal agency; and whether she failed to consider mitigating evidence regarding the Guideline J allegation. Consistent with the following, we affirm.

The Judge's Findings of Fact: The Judge's findings are summarized in pertinent part.

Applicant is 50 years old. Born in Jordan, Applicant came to the United States in 1990, married in 1992, and became a naturalized citizen in 2000. He has three adult children from his marriage, which ended in divorce in 2002. From 2003 through 2010, Applicant was employed as a linguist for federal contractors and deployed to combat areas in the Middle East. He owned his own business from 2012 through 2017, when he closed it to pursue another opportunity as a linguist with a federal contractor.

Foreign Influence

Applicant's mother is a U.S. permanent resident who lives in Jordan, and he communicates with her with varying frequency. He hasn't seen his mother since November 2017, when he returned to Jordan for his father's funeral. He has two sisters, both of whom now reside in Jordan. He communicates with them occasionally. Applicant has two brothers: one resides in the United States and the other in Germany.

Due to its proximity to Syria and Lebanon, Jordan continues to encounter terrorism. Certain regions of the country hold anti-Western sentiments and protest United States' policies. Significant human rights violations are prevalent in the country.

Personal Conduct

In the course of the security clearance investigation, Applicant asserted that he had been unofficially working with an employee (Mr. N) from another government agency (AGA) since 2015. Applicant claims he initiated that relationship after receiving information about issues in the Middle East that Applicant thought would be of interest to the AGA.

Applicant admits that he had a relationship with a Russian citizen (RC), between July 2016 and January 2017. He met RC in a third country while on a flight layover and saw her a few times over the next several months when he again was transiting through the third country. In January 2017, RC came to the United States and stayed with Applicant at his home. Some months later, she obtained a position with a U.S. university.

Applicant stated that RC has advanced degrees in scientific fields and worked for a U.S. company in Russia. He told Mr. N about RC. Applicant reported that he had an intimate relationship with RC, but that he considered her a "subject" from whom to gather information.

Applicant's last communication with RC was in January 2017 when she stayed with him in the United States. He testified that he searched her property without authorization while she was staying with him and that he forwarded information to Mr. N.

In his Answer to the SOR, Applicant admitted that he had a relationship with RC, as alleged. He denied, however, that he intentionally withheld information about the relationship on his SCA and stated he did not report it because he did not have a "continuing" relationship with RC. Applicant also admitted that he failed to disclose the relationship to his clearance investigator during his first PSI in June 2017. However, Applicant stated that he was precluded from disclosing the relationship because a government official told him not to share that information.

Applicant testified that a friend informed the clearance investigator of his relationship with RC. Subsequently, Applicant was re-interviewed in July 2017 and asked why he did not disclose information about RC in his security forms. Applicant said that he initially disclosed her name to a U.S. Embassy in the Middle East in July 2016. He also said that he met with an unidentified government official and was told not to disclose his relationship with RC to anyone else, including in his security forms.

Applicant submitted copies of emails to and from Mr. N as proof of his relationship with the agency. He did not present evidence from Mr. N or any government agency to corroborate his assertion that he was instructed not to disclose his contacts with RC. He claimed that his briefings and communications with Mr. N were obvious proof of his connections to the AGA. "I find that his intense interest in working with [the AGA] was his motivation for deceiving the government." Decision at 5.

Criminal Conduct

Applicant admitted the allegation regarding his 2019 criminal conviction. In May 2014, Applicant was involved in a violent physical altercation with his daughter and her boyfriend at his daughter's apartment. Applicant stated that his ex-wife told him that the boyfriend was dangerous and was involved in drugs. During the fight, Applicant seriously injured the boyfriend, and a warrant for his arrest was subsequently issued.

Applicant said he did not know about the warrant until January 2019, when he was stopped by the police for a traffic violation. In October 2019, Applicant was convicted by a jury of three felony counts of aggravated assault. In January 2020, he was sentenced to 120 days of incarceration and four years of supervised probation. He remains on probation until 2024. At the hearing, Applicant denied that he was the aggressor in the fight, despite multiple witnesses' statements to the contrary.

The Judge's Analysis: The Judge's analysis is summarized and quoted in pertinent part.

Guideline B: Applicant did not mitigate the security concerns raised by his ongoing contact with family members residing in Jordan.

> Those connections create continuing and significant potential for conflict of interest and risk of coercion, exploitation, or pressure. Although Applicant established connections to the United States since arriving in 1990, including owning a home, attending college, and working as a linguist for American troops in the early 2000's, he frequently returned to Jordan and the UAE between 2002 and 2017 for family visits, demonstrating his ongoing Jordanian attachments. He maintains frequent contact with his mother and sisters who reside in Jordan. On balance, the evidence demonstrates heightened risk of foreign coercive exploitation, and significant potential for a conflict of interest. [Decision at 9.]

Guideline E

Between July 2016 and January 2017, Applicant engaged in an intimate relationship with a foreign national whom he first met in a third country hotel. Applicant claims that he initiated the relationship because he believed that RC could provide him information that may be of interest to Mr. N, an alleged AGA employee with whom he had been interacting since 2015.

In May 2017, Applicant completed his SCA. In Section 19-Foreign Contacts, Applicant did not disclose his contact with RC, with whom he had been involved as recently as January 2017. In his November 2019 Answer to the SOR, Applicant claimed he did not reveal the relationship because he was not in a "continuing" relationship with RC, which he interpreted to mean ongoing and into the present. "Applicant's explanation is not believable, given he had been in contact with an alleged [AGA employee] since 2015, and his specific purpose in establishing the relationship with [RC] in March 2016 was to obtain information and pass it on to Mr. N." Decision at 10.

During his June 2017 clearance interview, Applicant denied having had close or continuing contact with any non-U.S. citizen during his international travel in 2016 and 2017. During his subsequent interview in July 2017, the investigator asked him if he had dated anyone from Russia, and Applicant then disclosed his relationship with RC. He told the investigator that he did not initially disclose the relationship because an agent with a government agency told him not to disclose it. Applicant did not submit credible proof that a legitimate U.S. agency directed him to not disclose his relationship during his security clearance investigation. He intentionally failed to disclose requested information during his June 2017 clearance interview.

Applicant did not voluntarily disclose his relationship with RC prior to being confronted with the information in July 2017 by an investigator who had learned of it through Applicant's friend. Applicant's non-disclosure was not minor but instead was significant and repetitive. Applicant persistently claimed that he was directed by another government agency not to disclose this requested information during the security clearance process. "There is no substantive evidence to verify his highly unlikely assertions. . . . The personal conduct security concerns are not mitigated." Decision at 11.

Guideline J

In October 2019, Applicant was convicted of three felonies. In January 2020, he was sentenced to 120 days of confinement and placed on supervised probation for four years, and he

remained on probation as of his hearing. The evidence establishes both AG ¶ 31(b), evidence of criminal conduct, and AG ¶ 31(c), the individual is currently on parole or probation. Directive, Encl. 2, App. A.

> There is insufficient evidence to establish mitigation . . . . Sufficient time has not passed because Applicant remains on a four-year supervised probation until January 2024. There is minimal evidence that since January 2020, he has been satisfactorily complying with the terms of his probation, or that he has established a good employment record and/or other evidence of rehabilitation. The criminal conduct security concerns are not mitigated. [Decision at 12.]

Whole Person

> I have incorporated my comments under Guidelines B, E, and J under this whole-person analysis. However, one further concern requires mentioning, and that is Applicant's insistence that he did not intentionally withhold information about [RC] when he submitted his May 2017 SCA and during his June 2017 interview. This record does not contain sufficient evidence to find that anyone from a U.S. government agency directed Applicant to deceive the DOD during the security clearance process. Without such verifiable evidence of those assertions and associations, Applicant's credibility and veracity remain a serious concern. [*Id*.]

Discussion

Applicant contends that the Judge erred in three regards: failing to afford him due process, failing to give appropriate weight to his relationship with another federal agency, and failing to consider extenuating circumstances surrounding his convictions for assault.

Applicant alleges that the Judge did not allow him to call witnesses or to present a statement during his case in chief. The record does not support this assignment of error. With regard to witnesses, the Case Management Order issued by the Judge required both parties to submit witness lists the week prior to the hearing. The record contains no indication that Applicant submitted a witness list. At the beginning of the hearing, the Judge asked Applicant if he intended to call any witnesses, and the Applicant responded that he did not. Tr. at 8. Nevertheless, counsel for Applicant now alleges that Applicant "was denied the opportunity to call witnesses he had ready and waiting to testify by phone." Appeal Brief at 6, citing to the following statement by Applicant during his testimony: "My probation officer sent the request recommending the early probation and actually, he said we can call him at Fort Knox before 4:00 pm, he can verify that, he's in his office today, recommending early termination." *Id*. at 7, quoting Tr. at 95.

Counsel presents this as "only one example of the evidence [Applicant] was not given the opportunity to present." *Id*. at 8. This allegation is not an accurate reflection of the record. The record indicates that Applicant did not intend or desire to call the probation officer as a witness, but instead made an offhanded reference to his availability. It is not the Judge's job to call witnesses. *See, e.g.*, DISCR Case No. 90-1931 at 6 (App. Bd. Jan. 17, 1992). Instead, it is an applicant's job to present witnesses and other evidence sufficient to mitigate the concerns raised

in his case. Directive ¶ E3.1.15. The record does not support the assertion that Applicant planned to call this witness or any other.

Applicant also alleges that he was "denied the opportunity to make his own statement as evidence in his case" and was "only given the opportunity to provide documentary evidence." Appeal Brief at 6. Again, this allegation is not supported by the record. Applicant highlights that the Judge cut him off in his opening statement, which is accurate, as it appeared that Applicant was intending to provide substantive testimony rather than an overview of his case. She assured him at the time that he was "going to have ample opportunity to testify to all the facts so just give us a brief overview of what your defense is in this matter." Tr. at 11–12. Applicant then made a brief introductory statement.

After reviewing and admitting Applicant's exhibits, the Judge asked a few preliminary questions about Applicant's security clearance status and then turned to Department Counsel for cross-examination. Following cross-examination, the Judge asked a number of questions to clarify the record on the Guideline J and Guideline E allegations. The Judge then asked Applicant "[D]o you have any other statements or anything else you want to tell me right now before we go into closing arguments?" Applicant responded "Yes," and then testified in detail both about his relationship with Mr. N and the circumstances that led to the fight with his daughter's boyfriend. Tr. at 107–114.

Although this order of events is not necessarily the norm at DOHA hearings, the Judge has leeway in how she conducts a hearing, so long as it is within the parameters set forth in the Directive.[1] *See, e.g.*, ISCR Case No. 18-00857 at 6, n.11 (App.Bd. May 8, 2019). Contrary to Applicant's assertion, he had the opportunity to present his testimony, and he availed himself of that opportunity. Moreover, at the conclusion of Applicant's testimony, the Judge alerted Applicant that he had an additional opportunity to provide a statement: "We're going to take a ten-minute break and you'll have an opportunity to give a final closing statement. If you're feeling like there's something else you want to say that you didn't have an opportunity, you're going to have at least 10 [minute break] and however long it takes Department Counsel." Tr. at 114. Upon their return from the break, Applicant did not request to testify further but made a lengthy, detailed, and wide-ranging closing statement. *Id*. at 120–128. The Judge did not preclude Applicant from testifying. In sum, we are convinced upon our review of the record that Applicant was provided with the procedural rights set forth in Executive Order 10865 and the Directive.

Second, Applicant argues that the Judge failed to give appropriate weight to Applicant's relationship with another federal agency. His argument on appeal reiterates his testimony at hearing. As part of his work for another agency, "he was collecting information through [RC] and was told to not acknowledge the relationship unless specifically asked about this particular individual." Appeal Brief at 8. Consequently, he argues, AG ¶ 17(b) applies: *[T]he refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes.* Directive, Encl. 2, App. A. Applicant argues that, to the extent the Judge appears to believe that he was working for the AGA, she should

[1] The Administrative Judge may rule on questions of procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely and orderly manner. Directive E3.1.10.

have also believed his assertion that the agency directed him not to disclose RC as a foreign contact. Her failure to do so "ignored common sense and the realities of intelligence collection operations that, undoubtedly, require a level of secrecy and non-affiliation that the court should take notice of when evaluating the evidence." Appeal Brief at 9.

The Judge did not make a specific finding as to whether Applicant was working for another federal agency or not, nor was she required to. Applicant's relationship with another federal agency was not the subject of any allegation on the SOR. What was alleged is that Applicant intentionally failed to disclose a relationship with a Russian citizen on his May 2017 SCA and in his June 2017 PSI. He admitted to those omissions and failed to produce any evidence to corroborate his claim that a U.S. Government agency directed him to falsify his DoD security clearance application and interview. Obviously, testimony is evidence and, in an appropriate case, testimony can support findings on its own. However, it is not unreasonable for a Judge to expect an applicant to corroborate his claims that he has mitigated the concerns set forth in an SOR. *See, e.g.*, ISCR Case No. 15-07062 at 2 (App. Bd. Nov. 21, 2017). In a DOHA proceeding, the applicant bears the burden of persuasion that he should have access to classified information, and corroborating evidence can certainly assist an applicant in meeting that burden. In the case before us, the Judge apparently did not find Applicant's uncorroborated assertions to be sufficiently credible so as to satisfy the mitigating conditions set forth in the Directive, and we give deference to a Judge's credibility determinations. *See, e.g.*, ISCR Case No. 17-02588 at 5 (App. Bd. Mar. 5, 2019).

Third, Applicant argues that the Judge failed to consider evidence that mitigated the criminal conduct allegation under AG ¶ 32(b*), the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life.* Directive, Encl. 2, App. A. The Board has long held that the doctrine of collateral estoppel applies in these proceedings and precludes applicants from contending they did not engage in the criminal acts for which they were convicted. *See, e.g.*, DISCR Case No. 88-2271 at 5 (App. Bd. Oct. 16, 1991) ("Applicant's conviction collaterally estops him from challenging, in these proceedings, the validity of his conviction or his guilt of the offenses for which he was convicted."). By advancing theories of coercion and duress that constitute legal defenses to the criminal charges, Applicant is seeking to re-litigate his felony convictions for aggravated assault. The Board applies the doctrine of collateral estoppel and finds no merit in this assignment of error.

Applicant has failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. "The general standard is that a clearance may be granted only when 'clearly consistent with national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also*, Directive, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security."

Order

The decision is **AFFIRMED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board