



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



In the matter of: )  
)  
) ISCR Case No. 17-04100  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: Kenneth M. Roberts, Esq.

07/12/2019

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guidelines B and E, foreign influence and personal contact. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On March 29, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence and Guideline E, personal conduct. DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the DOD on June 8, 2017.

Applicant answered the SOR on April 19, 2018. He requested a hearing before an administrative judge. The case was assigned to another administrative judge on June 18, 2018. The case was reassigned to me on January 9, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 28, 2019, with a hearing date of March 19, 2019. The hearing was postponed at the request of Applicant's counsel. DOHA issued another notice of hearing on May 15, 2019, with a hearing date of June 3, 2019. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE) I. Applicant testified, called one witness, and offered exhibits (AE) A-E, which were admitted without objection. Applicant's exhibit list was marked as HE III. DOHA received the hearing transcript (Tr.) on June 13, 2019.

### **Procedural Ruling**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Lebanon. Applicant did not object and the request was granted. The request was not admitted into evidence but was included in the record as HE II. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted some of the SOR allegations and denied others. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 56 years old. He was born in the United States. He graduated from high school and enlisted in the U. S. Air Force in 1982. He served over 23 years and was honorably discharged as a senior master sergeant (pay grade E-8). He deployed numerous times while in the Air Force. He has worked as a government contractor since 2007. He also deployed numerous times as a contractor to such places as Iraq, Kuwait, and Afghanistan. Applicant married his wife in 1985. They met in Korea when he was stationed there. She was a Korean citizen when they met and later became a naturalized U.S. citizen. They have two adult children. He has held a security clearance for over 30 years. (45-46, 48; GE 1: AE A)

Under Guideline B, the SOR alleged that Applicant engaged in a personal and online relationship with a citizen and resident of Lebanon (LC) from approximately 1989 until at least March 2017. (§ 1.a) Under Guideline E, the SOR cross-alleged the same conduct as listed above. (§ 2.a) It also alleged that Applicant failed to fully disclose or report his relationship to LC to his wife or to appropriate security officials; that Applicant failed to fully disclose or report that while deployed to Afghanistan he traveled to Lebanon to visit LC; that Applicant failed to disclose his close and continuing contact with LC on his December 2011 and May 2016 security clearance

applications (SCA); and that he failed to list his personal foreign travel in his May 2016 SCA. (¶¶ 2.b-2.g)

Applicant first contacted LC in approximately 1989. They met over the Internet using a social media chat site. From 1989 through approximately 2000, Applicant maintained contact with LC on a weekly basis using Internet chat rooms. In January 2008, Applicant traveled to Lebanon and met LC. Applicant traveled to Lebanon when he was given leave while on deployments. He usually stayed about five days. He made additional trips to Lebanon in September 2008, July 2010, November 2010, and September into October 2011. He was in contact with LC on each visit. He took the initiative to contact her when he arrived. In his March 2017 background interview with a defense investigator (PSI), Applicant initially denied having any foreign travel except for trips to Mexico and the Philippines. He only admitted his trips to Lebanon when confronted by the investigator. The investigator had to confront Applicant three times with information about his trips to Lebanon before Applicant admitted all of his trips there. (Tr. 50-51, 91, 99; GE 3 (PSI, pp. 9-10))

Applicant gave conflicting accounts about what he and LC did when they were together. In his 2017 PSI, he stated that in July 2010 he and LC enjoyed sightseeing and going to the beach together. He said they did the same thing when he was there in November 2010. When Applicant described the activities he did with LC during his September to October (five-day) trip to Lebanon, he stated they went sightseeing, visited the beach, and he met LC's mother at LC's parents' residence. During his hearing testimony, Applicant claimed he never went sightseeing with LC, nor did he ever go to her home. He claimed the only thing they ever did together was go to the beach. He also claimed that he always stayed at a hotel and that LC never visited the hotel. He denied having any sexual or romantic relationship with LC. He maintained that they were just friends. Applicant did not disclose this friendship to his wife or to anyone at work. When asked by the investigator if he disclosed this information to his wife, he replied, "[if] you are a wife would you want to know about another woman?" Applicant elaborated during his testimony about why he did not disclose this relationship to his wife. He stated that because of her Korean background and culture she would not understand the relationship. He claims that he told his wife about the relationship in 2016. His wife took the news hard, but has forgiven him. (Tr. 49, 81, 101-103; GE 3 (PSI, pp. 9-10))

Applicant also gave conflicting accounts as to when he stopped the relationship with LC. In his March 2017 PSI to the investigator, he stated that he had at least twice yearly internet contact with LC from October 2011 to December 2016. In March 2018, Applicant responded to interrogatories and stated under oath that his PSI was accurate as written and he made no corrections. During his hearing testimony, Applicant claimed that his previous statement about when the relationship ended was inaccurate. He testified that his Internet contact with LC ceased in 2012. He said he did not review his statement in detail before he swore under oath that it was accurate. I do not find Applicant credible. (Tr. 70, 74, 91, 104-105; AE 3)

In December 2011, Applicant completed and certified as accurate an SCA. In Section 19 of this SCA, Applicant was asked if he had close and/or continuing contact with a foreign national, including associates, within the last seven years, with whom he was bound by "affection, influence, common interests, and/or obligations." Applicant answered "no" to this question failing to list his contact with LC. In Section 20C of this SCA he answered "no" when asked if all of his foreign travel, within the last seven years, was for U.S. Government business. He then listed his foreign travel which included six trips to Lebanon (1. December 2003 to January 2004 (6-10 days); 2. January 2008 (1-5 days); 3. September 2008 (1-5 days); 4. July 2010 (1-5 days); 5. November 2010 (1-5 days); 6. September to October 2011 (1-5 days)). (GE 2)

In May 2016, Applicant completed and certified as accurate an SCA. In Section 19 of this SCA, Applicant was asked if he had close and/or continuing contact with a foreign national, including associates, within the last seven years with whom he was bound by "affection, influence, common interests, and/or obligations." Applicant answered "no" to this question failing to list his contact with LC. In Section 20C of this SCA he answered "yes" when asked if all of his foreign travel, within the last seven years, was for U.S. Government business. He failed to list his foreign trips to Lebanon during the relevant time. He also failed to list 13 trips to the Philippines within the previous seven years. (Tr. 88-89; GE 1, 3)

During his PSI, Applicant stated that he failed to list LC as a foreign contact on his 2011 and 2016 SCAs "due to oversight." He gave the same explanation for why he failed to list his trips to Lebanon on his 2016 SCA. In his March 2018 answers to interrogatories, Applicant changed his explanation. Concerning failing to list LC as a foreign contact, he stated he did so because he was "not bound to her by affection, influence, common interests, and/or obligation to her." He further explained that his reason for not listing his foreign travel on his 2016 SCA was because he was overworked and procrastinated completing the SCA and therefore relied solely on his memory without having access to his previous SCA to retrieve the information. (GE 3)

Applicant testified somewhat consistent with his answers to the interrogatories. He did not list LC on either SCAs because he felt the question did not apply to him since he was not bound to LC by any of the descriptors. Regarding his failure to list his foreign personal travel on his 2016 SCA, Applicant testified that in 2011 when he completed the form he was not under stress from work and had access to his passport to accurately complete the 2011 SCA. He claimed that was not the case when he completed his 2016 SCA. He was under stress from work, did not have access to the information from his 2011 SCA, and did not have access to his passport. He claims that he made a mistake by not checking the correct box concerning his foreign personal travel, but that he had no intent to deceive with his incorrect answers. On cross-examination, he stated that he was not thinking straight when he completed his 2016 SCA. (Tr. 52-53, 55, 57-65, 91-92, 95, 98-99)

Applicant's former supervisor (W) testified for him and provided a written statement. W testified about the stressful conditions at work during 2016 when

Applicant was completing his SCA. W stated that he was informed by the security manager that Applicant was not timely completing the SCA and W put pressure on him to do so. W recommended that Applicant retain his security clearance. (Tr. 27-32, 38; AE C)

Applicant also provided statements from another supervisor and two coworkers. They described Applicant as truthful, honest, and forthright. A coworker recommended that he retain his clearance. (AE B, D-E)

Aside from Applicant's duty to accurately and truthfully complete any SCA and provide truthful information to defense investigators during his background investigation, the Government did not produce any evidence that Applicant had a duty to disclose his relationship with LC to security officials. The Government also failed to produce evidence that Applicant had a duty to report that he traveled to Lebanon to visit LC while deployed to Afghanistan. The Government also failed to produce evidence that Applicant was made aware of such duties, if they existed.

## **Lebanon**

Lebanon is a parliamentary democracy in which people have the constitutional right to change their government. Due to civil war the exercise of political rights were precluded until 1992. Lebanon has a free-market economy and a strong laissez-faire commercial tradition. The economy is service-oriented. The United States enjoys a strong exporter position with Lebanon and is its fifth largest source of imported goods. More than 160 offices representing U.S. businesses operate in Lebanon. Since the lifting of passport restrictions in 1997, a number of large U.S. companies have opened branch or regional offices in Lebanon.

The foreign policy of Lebanon reflects its geographic location, the composition of its population, and its reliance on commerce and trade. Its foreign policy is heavily influenced by neighboring Syria, which has also long influenced Lebanon's internal policies as well. Lebanon, like most Arab states, does not recognize Israel, with which it has been technically at war since Israel's establishment.

Lebanon has had some human-rights problems including the arbitrary arrest and detainment of individuals and instances of arbitrary and unlawful deprivation of life, torture, and other abuses.

The terrorist group Hezbollah is a Lebanese-based radical Shi'a group and is designated by the United States as a "Foreign Terrorist Organization." The Lebanese government recognizes Hezbollah as a "legitimate resistance group" and political party and until recently was represented by elected officials in the Lebanese parliament. Hezbollah also provides support to several Palestinian terrorist organizations and is known to be involved in numerous anti-United States and anti-Israeli terrorist attacks. Americans have been the targets of numerous terrorist attacks in Lebanon.

The United States seeks to maintain its traditionally close ties with Lebanon and to help preserve its independence, sovereignty, national unity, and territorial integrity. Other terrorist organizations operating in Lebanon include: Al-Nusrah Front (ANF), Hamas, and Abdullah Azzam Brigades (AAB). The United States provides more than \$400 million in aid to Lebanon and pledged \$1 billion in additional aid. The aid reflects the importance the United States attaches to Lebanon's development as a unified, independent and sovereign country.

U.S. citizens who also possess Lebanese nationality may be subject to laws that impose special obligations on them as Lebanese citizens. The U.S. State Department issued a travel advisory, updated January 2018, urging U.S. citizens to reconsider or avoid travel to particular areas in Lebanon due to crime, terrorism, kidnapping, and armed conflict especially near Lebanon's borders with Syria and Israel.

### **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 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, 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(a), the entire process is a careful weighing 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an 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 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 B, Foreign Influence**

The security concern relating to the guideline for foreign influence is set out in AG ¶ 7:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

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

LC is a citizen and resident of Lebanon. Applicant maintained a secret relationship with her starting in 1989, which he claims ended in either 2012 or 2016. Applicant visited LC in Lebanon on at least five occasions while he was deployed. He kept this relationship from his wife and coworkers. Lebanon is a country with a significant terrorist presence, including the group Hezbollah, which has been designated as a foreign terrorist organization. Lebanon has human-rights issues. Because of Lebanon's posture in these areas, and Applicant's connection to LC, there exists a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The same situation also creates a potential conflict of interest for Applicant. AG ¶¶ 7(a) and 7(b) 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 United States; and

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

Based upon Lebanon's allowing Hezbollah to operate freely in the country, its human rights problems, and Applicant's deception concerning his relationship with LC, a situation exists where Applicant could be placed in a position to choose between the interests LC in Lebanon and those of the United States. Additionally, LC's presence in Lebanon places Applicant in a susceptible position. Applicant claimed he ended the relationship with LC, but I do not find this assertion credible or corroborated. Although Applicant has significant ties to the United States, he also engaged in a hidden relationship with a foreign national while deployed to foreign locations. As stated above, the protection of the national security is the paramount consideration and any doubt must be resolved in favor of national security. I am unable to find either of the mitigating conditions to be fully applicable. Despite the presence of some mitigation, it is insufficient to overcome the significant security concerns that exist.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:



Conduct 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

(2) while in another country, engaging in any activity that is illegal in that country; and

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

Applicant's secret relationship with LC, as described above demonstrated poor judgment, unreliability, untrustworthiness. This conduct created a vulnerability to exploitation and manipulation by an individual of a group. AG ¶ 16(c) and ¶ 16(e) apply to SOR ¶ 2.a, and ¶ 16(e) applies to SOR ¶ 2.b.

The Government failed to establish the necessary duty to report and knowledge of any such duty by Applicant. SOR ¶¶ 2.c-2.d are concluded for the Applicant.

Applicant deliberately failed to list LC as a foreign contact on his 2011 and 2016 SCAs. Applicant's claim that he was not bound to LC by any obligation or common interest is not supported by the evidence. The evidence, on the contrary, establishes that Applicant had a long-term relationship with LC. Examples of their common interests included communicating over the Internet for at least 20 years and Applicant making at least five trips to Lebanon for the express purpose of being with LC each time he went. Additionally, Applicant was not credible concerning the nature of his relationship with LC because his testimony conflicted with his earlier statements about their association in Lebanon. He hid this relationship from his wife and coworkers and he also hid it from the Government when he failed to disclose it on his SCAs. AG ¶ 16(a) applies to SOR ¶¶ 2.e and 2.g.

Applicant deliberately failed to list his personal foreign travel on his 2016 SCA. Applicant's explanation about being under stress from work and not having access to his passport and previous SCAs is not credible given his previous experience with security clearances, the sheer number of trips he took (12 to the Philippines and 5 to Lebanon), and the evidence supporting his deceitfulness. AG ¶ 16(a) applies to SOR ¶ 2.f.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the 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. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant failed to disclose to the defense investigator his trips to Lebanon and his contact with LC until he was confronted with those facts. There is no evidence that he received erroneous advice about his duty to truthfully disclose information on his SCA. Additionally, Applicant's pattern of deceitfulness to his wife, his coworkers, in completing his SCAs, and in providing information to defense investigators is not behavior that is minor or infrequent. He demonstrated a pattern of behavior of untruthfulness and deceit that casts doubt on his reliability, trustworthiness, and good judgment. Even though he claimed to have ended the relationship (without corroboration), his secretive pattern of behavior does not support the notion that such behavior is unlikely to recur. If he ended the relationship with LC that action would support that he reduced or eliminated his vulnerability to exploitation. However, that evidence is insufficient. None of the mitigating conditions fully 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 the 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.

Lebanon allows a designated terrorist organization to operate with its borders and has human-rights problems. The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's associates are vulnerable to government coercion. Applicant has not overcome the vulnerability to pressure, coercion, exploitation, and duress created by his relationship to LC.

I have considered Applicant's honorable military service, his numerous deployments to hostile areas, both while in the military and as a contractor, and his character evidence. On the other hand, I have also considered Applicant's deceitfulness and multiple false statements on his SCAs and to investigators.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the foreign influence or the personal conduct 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 B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant
Subparagraphs 2.c – 2.d:	For Applicant
Subparagraphs 2.e – 2.g:	Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge