



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-01818
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Taroian, Esq., Department Counsel
For Applicant: *Pro se*

03/20/2019

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 18, 2017. On August 20, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B and F. The DOD CAF acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on October 23, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on December 12, 2018, and a complete copy of the file of relevant material

(FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on January 22, 2019, and submitted a response, which is included in the record as Applicant's Exhibit A. The case was assigned to me on March 12, 2019.

The FORM included summaries of personal subject interviews (PSI) conducted on August 29, 2017, and September 28, 2017. (FORM Item 7.) The summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the summaries; make any corrections, additions, deletions or updates; or object to consideration of them on the ground that they were not authenticated. Applicant submitted a response to the FORM but did not comment on the accuracy or completeness of the PSI summaries, nor did he object to them. I conclude that he waived any objections to the PSI summaries. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). See ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (holding that it was reasonable for the administrative judge to conclude that any objection had been waived by an applicant's failure to object after being notified of the right to object).

Findings of Fact¹

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 60-year-old linguist employed by a defense contractor since June 2017. He worked as a linguist for other defense contractors from July 2003 to July 2011. He received a security clearance in November 2004.

Applicant was born in Lebanon. He enrolled in the Lebanese Army Military Academy in 1980 but resigned in 1981 when its pilot training program was discontinued. He came to the United States in November 1982 on a student visa. He graduated from a U.S. university in June 1984 and returned to Lebanon.² He married a U.S. citizen in November 1985 and came to the United States on a marriage visa in September 1988. He divorced in November 1988 but remained in the United States and became a U.S. citizen in November 1991.

Applicant returned to Lebanon in September 2003 and married a citizen and resident of Lebanon. He returned to the United States in April 2009. He divorced his second wife in November 2015. He has two children from his second marriage, ages 13 and 10, for whom he pays child support of \$530 per month. He calls his children about

¹ Applicant's personal information is extracted from his security clearance application (FORM Item 3) unless otherwise indicated by a parenthetical citation to the record.

² Applicant listed a law degree in his SCA, based on a degree from an unaccredited on-line law school.

three times a week to check on their well-being and school progress. (FORM Item 7 at 6.) His children are U.S. citizens and live with their mother, who is a lawyer in Lebanon.

Applicant returned to Lebanon in June 2011 to care for his ailing mother, a citizen and resident of Lebanon. He was unemployed while in Lebanon. He returned to the United States in December 2016 and was unemployed until February 2017. His mother passed away in August 2018. His father passed away before he submitted his SCA.

Applicant has two sisters, ages 55 and 51, who are citizens and residents of Lebanon. His sisters are married. The older sister owns a shoe store. The younger sister is a housewife who is not employed outside the home. (FORM Item 7 at 6.) The occupations of their husbands are not reflected in the record. During Applicant's unemployment, he borrowed about \$50,000 from his older sister for living expenses. When his mother was alive, he talked to his sisters weekly because they cared for his mother. The record does not reflect the frequency of his contact with his sisters now that his mother has passed away.

At the request of Department Counsel, I have taken administrative notice that Lebanon is a parliamentary republic. It apportions governmental authority among a Maronite Christian president, a Shia speaker of the parliaments, and a Sunni prime minister. A president was elected in October 2016. Parliamentary elections in 2009 were considered by observers to be peaceful, fair, and free from regional influences, but subsequent elections have been postponed repeatedly since 2013.

I have taken notice that the U.S. Department of State discourages U.S. nationals from traveling to Lebanon due to crime, terrorism, and armed conflict. Kidnapping for ransom, political motives or as a result of family disputes is a serious problem. Several terrorist groups operate in Lebanon and control areas in the Bekaa Valley, southern Lebanon, and south Beirut. Palestinian refugee camps remain outside the jurisdiction of local security forces and pose a security threat due to potential militant recruitment and terrorist infiltration.

I have also taken administrative notice of significant human rights issues in Lebanon, including arbitrary or unlawful killings by government forces and non-state actors and torture by security forces. I have taken notice of the Lebanese government's violation of citizens' privacy rights; restrictions of freedom of speech, press, and assembly; lack of governmental action to investigate abuse of refugees; and limits on political participation through repeatedly postponed elections and official corruption.

The SOR alleges three delinquent debts reflected in credit reports from July 2017 (FORM Item 4) and June 2018 (FORM Item 5), a personal debt disclosed during the background investigation (FORM Item 4), and a federal income tax debt disclosed in Applicant's SCA (FORM Item 3) and in his answer to the SOR (FORM Item 4). The evidence concerning these debts is summarized below.

SOR ¶¶ 2.a and 2.b: credit-card accounts charged off in May 2013 and June 2017 and placed for collection of \$7,976 and \$5,278. In Applicant's answer to the SOR, he attributed these debts to overspending by his second ex-wife. He stated that he has a lawyer who is was negotiating with the creditors. He submitted no documentary evidence of negotiations, payment agreements, payments, or other resolution of these debts.

SOR ¶ 2.c: cellphone bill placed for collection of \$57 in July 2017. In Applicant's answer to the SOR, he attributed this debt to miscommunication with the provider during an overseas deployment. He stated that the issue is resolved and he continues to receive service from the same provider. He provided no documentary evidence of the status of this debt.

SOR ¶ 2.d: debts totaling \$50,000 to sister, accumulated between 2011 and 2016. Applicant's sister has not imposed a due date for repayment. Applicant asserts that he will eventually repay it. (FORM Item 6 at 3.)

SOR ¶ 2.e: federal income tax debt for \$39,000. When Applicant submitted his SCA, he disclosed that he had failed to file his federal and state income tax returns for 2012 or pay the taxes due, that he had failed to file his federal and state income tax returns for 2014, and that he failed to file his return or pay the federal income taxes due for 2015. He estimated that he owed \$15,000 for 2012, nothing for 2014, and \$12,000 for 2015. In his answer to the SOR, he submitted documentation that he had a payment agreement with the IRS in 2012 for monthly \$250 payments, but he submitted no evidence that he had made any payments. He attached tax notices to his answer, reflecting that he owed federal income taxes of \$645 for 2008; \$8,814 for 2009; \$5,687 for 2010; and \$5,913 for 2011. He attached a copy of a federal income tax return for 2017, prepared by a professional tax preparer, reflecting that he was entitled to a refund of \$6,019, but he submitted no evidence showing that the return was filed. He stated that he had a lawyer who was negotiating with the IRS, but he submitted no evidence of payment agreements, payments, or other resolution of his tax debts.

Applicant earned about \$160,000 per year as a linguist in 2007 through 2010. (FORM Item 7 at 8.) He submitted no evidence of his current income and expenses. Although he stated that he was working with a lawyer and an accountant to resolve his financial problems, he provided no evidence of financial counseling.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr.20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The SOR alleges that Applicant's mother (who is now deceased) and two sisters are citizens and residents of Lebanon (SOR ¶¶ 1.a and 1.b), and his two children reside in Lebanon (SOR ¶ 1.c). The security concern under this guideline is set out in AG ¶ 6:

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 following disqualifying conditions under this guideline are relevant:

AG ¶ 7(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

AG ¶ 7(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.

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The risks posed by crime, terrorism and armed conflict in Lebanon, coupled with the fact that Applicant's children are in the custody of a citizen and resident of Lebanon, are sufficient to establish the "heightened risk" in AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b).

The following mitigating conditions are potentially relevant;

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.;

AG ¶ 8(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;

AG ¶ 8(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;

AG ¶¶ 8(a) and 8(b) are not established for the reasons set out in the above discussion of AG ¶ 7(a). AG ¶ 7(c) is not established, because Applicant's contact with his daughters is frequent and presumptively not casual. See ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

Guideline F, Financial Considerations

The SOR alleges two delinquent credit card-debts (SOR ¶¶ 2.a and 2.b), a delinquent cellphone bill (SOR ¶ 2.c), a personal debt of about \$50,000 incurred by Applicant to his sister (SOR ¶ 2.d), and past-due federal income taxes totaling about \$39,000 (SOR ¶ 2.e). The security concern under this guideline is set out in AG ¶ 18:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence in the record establish the following disqualifying conditions under this guideline:

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

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

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

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating conditions are relevant:

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;

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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. His debt to his sister is not delinquent, because she has not established a repayment date, but it is a substantial

obligation that reflects his overall financial situation, and he has no specific plan to repay it.

AG ¶ 20(b) is not fully established. Applicant's mother's illness, his unemployment, and his two divorces were circumstances largely beyond his control, but he has not acted responsibly. He states that he is working on his financial problems, but he submitted no evidence of contact with creditors, except for the evidence of a payment agreement with the IRS in 2012, and no evidence of payments, payment agreements, disputes, or other resolution of his delinquent debts.

AG ¶ 20(c) is not established. Applicant claims to be working with an attorney and an accountant, but he submitted no evidence of the type of financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is not established. Applicant submitted no evidence of payments or recent payment agreements. He has promised to pay his debts, but promises to pay debts in the future are not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

AG ¶ 20(e) is not established. Applicant admitted all the debts in his answer to the SOR and submitted no evidence that any debts were disputed.

AG ¶ 20(g) is not established. Applicant submitted evidence of a payment agreement with the IRS in 2012, and he submitted a copy of a 2017 federal income tax return, but he submitted no evidence of any payments or current payment agreements.³

Whole-Person Concept

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d).⁴

³ Failure to file tax returns was not alleged in the SOR, but I have noted that Applicant submitted no evidence that his past-due returns have been filed.

⁴ The factors are: (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.

I have incorporated my comments under Guidelines B and F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines B and F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his foreign family connections and his delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b and 1.c:	Against Applicant
Paragraph 2, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge