



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



In the matter of:)
)
) ISCR Case No. 18-02003
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

08/20/2019

Decision

BENSON, Pamela C., Administrative Judge:

Although Applicant mitigated the foreign influence security concerns, he failed to provide sufficient evidence to explain why he was unable to make payments or otherwise resolve the debts in the statement of reasons (SOR). Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 12, 2016, Applicant signed a security clearance application (SCA). (Government Exhibit (GE) 1) On October 12, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, detailing security concerns under Guidelines F and B. The action was taken 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.

On January 24, 2019, Applicant provided a response to the SOR, and he requested a hearing. On June 5, 2019, the case was assigned to me, and on the same day, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 25, 2019. Applicant’s hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. At Department Counsel's request, I took judicial notice of relevant facts about Thailand. (Tr. 65-67) I held the record open for 30 days in the event either party wanted to submit additional documentation. (Tr. 9-11, 13-14; GE 1-4) On July 8, 2019, DOHA received the hearing transcript. After the hearing, the Government timely provided one exhibit, a current credit report, which was admitted without objection. (Tr. 12; GE 5) The record closed on July 25, 2019.

Findings of Fact

In Applicant's SOR response, he admitted the debts in SOR ¶¶ 1.d and 1.e, but he listed these debts had been charged off and he was no longer responsible. He denied the debts in ¶¶ 1.a-1.c, and 1.f-1.h. He admitted the single SOR allegation under Guideline B (¶ 2.a). He did not provide any supporting documentation at the hearing, or during the 30-day period the record was held open. His admissions are accepted as findings of fact.

Applicant is 61 years old and he is seeking employment as a truck driver for a government contractor. He obtained his high school diploma in 1975. Between 1978 and 2005, Applicant was married on five separate occasions, and one woman he married twice. He does not have any children, and he is currently married to a U.S. naturalized citizen from Thailand. His wife is a truck driver for a government contractor and she currently possess a DOD security clearance. Applicant has been her partner on unclassified cargo assignments. They operate as owner operators of their personally owned truck. They are leased through a limited liability company, where his wife is the owner. He is not currently employed and has no source of income. His wife makes about \$25,000 annually and she financially supports Applicant. (Tr. 8, 39-40, 43-47, 49; GE 1, GE 2)

Financial Considerations

The amount of debt alleged in the SOR is approximately \$38,000. Applicant listed in his SOR response and testified at the hearing that after his accounts were charged off, he may be morally responsible for the charged-off debt, but he is no longer legally responsible for resolving the debt. Applicant claimed he received this legal advice from his attorney. (Tr. 15-16)

The SOR alleges eight delinquent debts, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a charged-off debt for \$16,910. Applicant opened the account to pay for his back and neck surgeries in 2014. He made payments totaling approximately \$1,000 in 2014. He claimed that he obtained a letter from his medical insurance, Medicaid, informing him that his medical account had been paid in full. The creditor disagreed that his medical insurance fully paid the cost of his medical procedures. Applicant has not made any payments on this account since 2014, and since it has been charged off as a bad debt, he stated he is no longer legally responsible for this account. The July 2019

credit report showed this account as charged off. This debt is unresolved. (Tr. 16-22, 54-55, 61; GE 5)

SOR ¶¶ 1.b, 1.d, and 1.e allege three credit card accounts charged off as bad debts in the total amount of \$10,779. Applicant testified that he recognized these accounts as his, but since they have been charged off, he is no longer legally responsible for these outstanding credit card accounts. The July 2019 credit report verified that these accounts were charged off. These debts are unresolved. (Tr. 22-25, 27-29; GE 5)

SOR ¶ 1.c alleges a credit card debt referred for collection in the total amount of \$5,580. Applicant testified that he is uncertain if this is his debt. He received letters from the collection agency, but he has never made any inquiries with the creditor to determine whether this is his account. All of the letters he received from the collection agency were placed in the trash. During his November 2017 background interview, Applicant admitted this credit card account. The July 2019 credit report showed this outstanding account as disputed by the consumer. Applicant does not intend to pay or resolve this debt. (Tr. 25-27, 64; GE 2, GE 5)

SOR ¶ 1.f alleges a medical debt referred for collection in the total amount of \$3,000. Applicant denied this allegation in his SOR response. At the hearing, he stated that he does not know what this account pertains to, so he has not paid it or made any inquiries with the creditor. He was asked about this debt and the other SOR delinquent obligations during his November 2017 background interview. Again, he knew they were a concern to the government in January 2019 when the delinquent accounts were included in the SOR. Yet by June 2019, he has still not investigated them. Obviously, he does not care about his finances and is a poor security risk. The October 2016 credit report in evidence documented the debt, and this debt is unresolved. (Tr. 29-30, 55; GE 3)

SOR ¶¶ 1.g, and 1.h allege medical debts referred for collection in the total amount of \$725. Applicant denied these allegations in his SOR response because he believed these debts were paid in full for \$1,100. The October 2016 credit report documented the delinquent debts. He testified that he had a cancelled check showing his payment in full. Applicant failed to provide supporting documentation during the 30-day period the record was held open. These debts are unresolved. (Tr. 30-31, 55, 57-58; GE 3)

During his November 2017 background interview, Applicant had about \$50,000 in savings. At the hearing he stated that he currently had about \$16,000 in savings. He will not use this money to pay off delinquent debts. He is saving this money for the time when he begins to draw Social Security benefits, and he will use the money to supplement his income. He and his wife are current on their monthly expenses, and they have not developed any new delinquent debt. Applicant has not participated in any financial counseling. (Tr. 8, 31-32, 63; GE 2)

Foreign Influence

SOR ¶ 2.a alleges that Applicant's parents-in-law are citizens and residents of Thailand, and he provides them with monthly financial support. Applicant admitted this allegation in the SOR response. His spouse speaks with her parents on the telephone three to four times a week. Appellant and his wife provide them with approximately \$100-\$200 monthly financial support. Appellant does not communicate with his in-laws due to their language barrier. His mother-in-law is a homemaker, and his father-in-law is a retired bus driver. Applicant's in-laws do not have any affiliation with the Government of Thailand. (Tr. 35-38, 65-67; GE 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; “(b) unwillingness to

satisfy debts regardless of the ability to do so”; and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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;

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

(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.

Applicant suffered a serious medical condition that required two surgeries in 2014, which is a circumstance beyond his control. The medical expense contributed to his financial issues. However, to receive full credit for this mitigating condition, Applicant must show that he acted responsibly under the circumstances, which he failed to do. Applicant simply chose not to pay these debts after they were charged-off accounts. At the time of his background interview, he had sufficient funds in savings to satisfy all of his outstanding accounts, but he did not to take any responsible action to resolve his debts. There is no evidence that he received financial counseling, or that he initiated a good-faith effort to

repay his financial obligations. Applicant failed to provide documentation that he has a legitimate basis to dispute any of his outstanding accounts, and he failed to provide a copy of a cancelled check to show that he has paid or resolved a debt alleged in the SOR. Applicant has known about the Government's concern over his delinquent accounts since his November 2017 interview, and the debts remain unpaid and unaddressed. Under all of these circumstances, Applicant failed to establish that financial considerations security concerns are mitigated.

Guideline B: Foreign Influence

The security concern relating to the guideline for foreign influence 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 guideline includes several conditions that could raise security concerns under AG ¶ 7. The following 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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Although the United States and Thailand have had disagreements after the 2014 military coup which deposed an elected civilian government, the U.S.-Thai alliance remains in place and Washington and Bangkok are mending relations after a period of tension. Thailand is generally regarded in the United States as a friendly country. However, Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

AG ¶ 7(a) requires evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a close relationship with an individual living under a foreign government. The mere possession of a close relationship with an individual in a foreign country is not, as a matter of law, disqualifying under Guideline B. If an applicant has such a relationship, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

As noted in the Government's Administrative Notice documents, a heightened risk is associated with Thailand with its persistent violence and human-rights problems. The evidence and Applicant's admission that his wife maintains frequent and regular contact with family members in Thailand, coupled with continuing financial support for his parents-in-law, are sufficient to raise the disqualifying conditions. AG ¶¶ 7(a) and 7(b) are established.

The following mitigating conditions are potentially applicable:

AG ¶ 8(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; and

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.

Applicant has lived in the United States all of his life. Based on his deep and longstanding relationships and loyalties in the United States, I am confident that Applicant would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) is established.

AG ¶ 8(c) is established since Applicant's contacts with his parents-in-law are infrequent and extremely limited due to their inability to communicate. His mother-in-law is a homemaker, and his father-in-law is a retired bus driver, with no affiliation with the

Thai Government. There is little likelihood that his parents-in-law could create a risk for foreign influence or exploitation.

Applicant's honesty in self-reporting his foreign connections, and the candor he exhibited at hearing are sufficient to fully mitigate the security concerns raised by Applicant's familial connections to Thailand. Applicant can be expected to resolve any conflict of interest with respect to Thailand in favor of the United States.

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(d):

- (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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines F and B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 61 years old, and he is seeking employment as a truck driver for a government contractor. He mitigated the security concerns raised by his foreign family members in Thailand.

Applicant did not provide any evidence of payments, payment plans, or other actions to resolve the delinquent debts alleged in the SOR. He has taken the position that he is no longer legally responsible for any charged-off accounts. His actions show a lack of financial responsibility and raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. I conclude that Applicant's financial considerations security concerns are not mitigated.

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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.h:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge