



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-00592
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

08/22/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On March 18, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and F (financial considerations). Applicant responded to the SOR on June 5, 2019, and requested a hearing before an administrative judge. The case was assigned to me on July 16, 2019. The hearing was convened as scheduled on August 6, 2019.

Evidence

Government Exhibits (GE) 1 and 3 through 7 were admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified and submitted Applicant's Exhibit (AE) A through D, which were admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about the Philippines. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of terrorism and ongoing human rights problems in the Philippines.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer in two states since February 2018. He is married for the second time with a stepchild. (Tr. at 27, 30, 48; GE 1)

Applicant earned a bachelor's degree in 2009 and a master's degree from the same university in the same field of study in 2010. That field had still not recovered from the recession, and he was unable to obtain a job. He returned to the university and earned a second master's degree in a different field of study in 2013. Applicant paid for his education with student loans. (Tr. at 22-23, 29; Applicant's response to SOR; GE 1; AE A)

Applicant worked in several foreign countries teaching English, but he did not earn a large income. He defaulted on his student loans, and several other debts went unpaid. The SOR alleges defaulted student loans of \$162,371 and \$70,002 owed to the Department of Education; a \$25,229 defaulted private student loan; four delinquent medical debts totaling \$1,955; and two miscellaneous delinquent debts totaling \$372. The allegations are established through credit reports and Applicant's admissions. (Tr. at 30; Applicant's response to SOR; GE 1, 3-7; AE A)

Applicant paid \$4,418 in April 2018 to pay the \$292 debt alleged in SOR ¶ 1.h (\$392 with interest) as well as a \$4,024 debt to the same creditor that was not alleged in the SOR. He paid the \$90 debt alleged in SOR ¶ 1.c in April 2019. He paid in full or settled and paid the four medical debts alleged in SOR ¶¶ 1.d-1.g between December 2018 and May 2019. (Applicant's response to SOR; GE 4-7; AE A)

Applicant was accepted into a loan rehabilitation program in March 2018 for the student loans alleged in SOR ¶¶ 1.a and 1.b. He was required to pay at least nine monthly payments of \$5, after which the loans would come out of default and be returned to the student loan servicing company. Applicant completed the \$5 payments in March 2019. In December 2018, \$232,598 (\$189,599 in principal and \$42,946 in interest) was transferred to a student loan servicing company. Applicant made \$449 payments in April and May 2019. He was accepted into an income-based repayment plan. If he remains in the plan, any balance owed on his student loans will be forgiven after 25 years. The July 2019 credit report lists that Applicant is current with his \$449 monthly payments. (Tr. at 27-28, 32-33, 36-41; Applicant's response to SOR; GE 3, 5-7; AE A)

Applicant has not paid the \$25,229 defaulted private student loan. He stated that he went to the bank for information about the debt, but the bank had sold its student

loan business to a student loan servicing company. He spoke with a vice president at the bank, who advised him that there was no means to rehabilitate the loan, and he should dispute it through the credit reporting agencies. Applicant spent about 11 hours on the phone unsuccessfully attempting to locate who if anyone currently owns the loan, but the student loan servicing company informed him that they had no record of him or his loan. The loan is reported by all three credit reporting agencies on the May 2018 combined credit report and on the January 2019 Equifax credit report as charged off with an amount of \$25,229 and a \$0 balance. It is reported on the June 2019 Experian credit report as "Paid, was a charge off," with a \$0 balance. It is not listed on the July 2019 Equifax credit report. (Tr. at 33-36; Applicant's response to SOR; GE 5-7; AE A)

Applicant stated that his finances are currently in good condition. He has about \$7,000 in a savings account. He earns a good salary, and he recently transferred from an expensive area of the country to an area where the cost of living is much less. He purchased a home with a favorable mortgage rate. He is current on his auto loan. He stated that he will be able to maintain his student loan payments and provide for his family. (Tr. at 22, 25, 27, 43-46, 66; Applicant's response to SOR; GE 5-7; AE A, C)

Applicant's wife and her family are citizens and residents of the Philippines. He was introduced to his wife online by a mutual friend while he was working overseas. He visited her in the Philippines several times, and they knew each other about two years before they married in 2017. She has remained in the Philippines while her immigration visa is being processed. He stated that they are in the late stages of the application. Applicant's in-laws in the Philippines fish and farm for a living. (Tr. at 23-25, 31, 48-50; Applicant's response to SOR; GE 1; AE A, D)

Applicant provides his wife about \$250 to \$350 per month in support. His family has a history of military service. A childhood illness prevented Applicant from serving, but he feels that he is helping through his job. He credibly testified that that his family in the Philippines could not be used to coerce or intimidate him into revealing classified information. (Tr. at 23-25, 41, 56, 66; Applicant's response to SOR)

Applicant submitted letters attesting to his strong moral character and excellent job performance. He is praised for his trustworthiness, reliability, honesty, dedication, work ethic, and integrity. (AE B)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

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

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

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

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

Applicant has a history of financial problems, including delinquent debts and defaulted student loans. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant is a well-educated man who was unable to find a job in his chosen profession. He was able to find work in several foreign countries teaching English, but he did not earn a large income. He finally found a good job with a defense contractor in February 2018. He was able to transfer within the company from an expensive area of the country to an area where the cost of living is much less. He bought a house in anticipation of the immigration of his wife and stepson. He paid or settled all of the debts that were not student loans. He rehabilitated his Department of Education student loans,

and he is current on his \$449 per month income-based repayment plan. His student loan debt is huge, but if he remains in the plan, any balance owed on his student loans will be forgiven after 25 years. He has incentive to remain in the plan, as default could mean that he would have to pay the full amount, and could lead to the loss of his security clearance and job. I am satisfied that he has made every effort to resolve the remaining private student loan, and that he would make payments if a creditor would acknowledge the loan and accept payments.

I believe Applicant is honest and sincere in his intentions to address all his debts. There are clear indications that the problem is being resolved and is under control. I find that he has a plan to resolve his financial problems, and he took significant action to implement that plan. His financial difficulties were the result of conditions that were beyond his control, and he acted responsibly under the circumstances. They do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(d) are applicable. AG ¶¶ 20(a) and 20(c) are partially applicable. Financial considerations security concerns are mitigated.

Guideline B, Foreign Influence

The security concern 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 notes 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.

There is a significant threat of terrorism and ongoing human rights problems in the Philippines. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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.

I considered the totality of Applicant's ties to the Philippines. 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.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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 family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen from a patriotic family with a history of military service. His wife's family in the Philippines fish and farm for a living. I find that Applicant's ties to the Philippines are outweighed by his deep and long-standing relationships and loyalties in the United States. I find that it is unlikely Applicant will be

placed in a position of having to choose between the interests of the United States and the interests of the Philippines. There is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines B and F in my whole-person analysis. I also considered Applicant's favorable character evidence.

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

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a-1.i:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a-2.d:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge