



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01165
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

12/12/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the foreign influence and financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 20, 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 3, 2019, and requested a decision on the written record in lieu of a hearing.

The Government's written case was submitted on an indeterminate date. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 29, 2019. As of October 15, 2019, he had not responded. The case was assigned to me on November 21, 2019.

The Government exhibits included in the FORM are admitted in evidence. Department Counsel requested that I take administrative notice of certain facts about Iraq. 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 Iraq.

Findings of Fact

Applicant is a 54-year-old prospective employee of a defense contractor. He apparently will be hired as a linguist if he obtains a security clearance. He married in 2003 and divorced in 2018. He has four minor children. (Items 4-6, 12, 13)

Applicant was born in Iraq to Iraqi parents. He performed mandatory service in the Iraqi military from 1985 to 1990. He came to the United States in 2000 or 2001, and was granted asylum. He became a U.S. citizen in 2014. (Items 4-6, 12, 13)

Applicant's children were all born in the United States. His parents are deceased. He had seven siblings, but one sibling is deceased. One of his siblings is a U.S. citizen and resident. Another sibling lives in the United States. Four of his siblings are citizens and residents of Iraq. His male siblings performed mandatory military service, but it does not appear that any of his siblings have a current direct connection to the Iraqi government. (Items 4-6, 12, 13)

Applicant worked as a linguist for defense contractors in Iraq from about 2006 to 2009. He indicated that he was terminated from the job after he had a fight with his friend, a Pakistani linguist, over religion. His friend was also terminated. (Items 5, 6, 13)

Applicant was unable to secure stable employment after he returned from Iraq. He also indicated that his ex-wife overspent and had costly elective surgery. He was unable to pay all his bills, and a number of debts became delinquent. The SOR alleges nine delinquent debts totaling about \$15,000 and three unpaid judgments totaling about \$26,900. Applicant admitted owing all the debts and judgments. The debts and judgments are also corroborated through credit reports and court records. (Items 3, 5-11, 13)

Applicant stated that the \$3,543 judgment was for unpaid rent. He indicated that his state income tax refunds were garnished to pay the judgment. Court records indicate that garnishment orders were in effect for all three judgments, but the records are unclear as to how much was garnished. (Items 6-11, 13)

Applicant did not submit any additional documentation about the judgments and the delinquent debts. He has not paid any of the delinquent debts, even though six of the debts are between \$104 and \$300. He did not state how, when, or if he plans to pay his debts. There is no evidence of financial counseling.

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
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including delinquent debts and unpaid judgments. 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 attributed his financial problems to his inability to secure stable employment after he returned from Iraq. He also indicated that his ex-wife overspent and had costly elective surgery. His ex-wife's actions may have been beyond his control, but his employment issues resulted after he was terminated because he had a fight with a Pakistani linguist over religion.

Applicant has done virtually nothing to voluntarily pay any of his debts, even though six of the debts are between \$104 and \$300. He did not state how, when, or if he plans to pay his debts. There is no evidence of financial counseling.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the above mitigating conditions are sufficiently applicable to dispel security concerns about Applicant's finances.

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.

Applicant's four siblings are citizens and residents of Iraq. The potential for terrorist violence against U.S. interests and citizens remains high in Iraq, and it continues to have human rights problems. 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;

(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

(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.

I considered the totality of Applicant's ties to Iraq. 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 has some relationships and loyalties in the United States. He has lived in the United States since 2000 or 2001, and he became a U.S. citizen in 2014. His children were all born in the United States, and two of his siblings live in the United States. He worked as a linguist for defense contractors in Iraq from about 2006 to 2009.

Applicant also has four siblings who are citizens and residents of Iraq. Having determined that his Iraqi siblings raised security concerns, the burden is squarely on Applicant to mitigate those security concerns. See, e.g., ISCR Case No. 19-01151 at 5-6 (App. Bd. Dec. 10, 2019). There is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). The limited information in the FORM has not convinced me that Applicant has met his burden. Security concerns raised by Applicant's family members in Iraq are not mitigated.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis. I also considered Applicant's work overseas for defense contractors.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	Against Applicant
Subparagraphs 1.a-1.l:	Against Applicant
Paragraph 2, Guideline B:	Against Applicant
Subparagraph 2.a:	Against Applicant

Conclusion

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.

Edward W. Loughran
Administrative Judge