



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 19-00302
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)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

March 20, 2020

Decision

ROSS, Wilford H., Administrative Judge:

Based on a review of the pleadings and exhibits, I find that Applicant has not mitigated the concerns related to his past-due indebtedness. He did mitigate the foreign influence concerns raised by his connections to the Philippines. His request for national security eligibility for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 27, 2016. (Item 3.) On March 12, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to*

Classified Information or Eligibility to Hold a Sensitive Position, effective within the Department of Defense on June 8, 2017.

Applicant notarized his Answer to the SOR (Answer) on May 10, 2019, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) On June 5, 2019, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 8, was provided to Applicant, who received the file on July 2, 2019.

Department Counsel submitted eight Items in support of the SOR allegations. Item 5 is inadmissible. It is the summary of unsworn interviews of Applicant conducted by an interviewer from the Office of Personnel Management on April 3, and April 25, 2018. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation (ROI) summary is inadmissible in the Government's case in chief in the absence of an authenticating witness. (See Executive Order 10865 § 5.) In light of Applicant's admissions, Item 5 is also cumulative. Applicant is not legally trained and might not have understood Department Counsel's FORM commentary, which described the potential admissibility of Item 5. I therefor reviewed it for any potentially mitigating information that Applicant might have thought would be considered. Any such mitigating information will be discussed later in this decision.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted additional information. Department Counsel had no objection, and the additional information is admitted into evidence as Applicant Exhibit A. The case was assigned to me on August 20, 2019. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Procedural Rulings

The Government requested in writing that I take administrative notice of certain facts relating to the Republic of the Philippines (the Philippines). Department Counsel provided a six-page summary of the facts, supported by five Government documents pertaining to the Philippines, identified as Item 8. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted SOR allegations 1.a through 1.e, and 2.b through 2.d, with explanations. He denied allegation 2.a, since his wife is now an American citizen. A copy of her American passport is attached to his Answer. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 32-year-old native-born American citizen. He is married, with one child and one stepchild. He is applying for national security eligibility for a security clearance in connection with his employment at an overseas location with a defense contractor as a computer operator. Applicant served on active duty with the US Army from 2006 to 2013, when he received an Honorable Discharge. (Item 3 at Sections 13A, 15, 17, and 18.)

Paragraph 1 – Guideline F (Financial Considerations)

The Government alleged in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

Applicant admitted owing the debts set forth in SOR subparagraphs 1.a through 1.e, with qualifications and explanations. The total amount of past-due indebtedness Applicant is alleged to owe is approximately \$32,000. The existence and amount of the debts are documented by credit reports dated July 21, 2016; June 13, 2018; and January 24, 2019. (Items 4, 6, and 7.)

Applicant stated in his Answer that he had financial issues due to a death in his family that required travel for him and his family from his overseas work location back to the United States. In addition, until she obtained American citizenship a short while ago, Applicant's wife was a lawful U.S. permanent resident. Accordingly, she had to return to United States territory for a period of time every year to retain her residency. Because of Applicant's work requirements, his child and stepchild had to go with her. In addition, Applicant stated that he did not properly prepare for life after he left the Army in 2013, and found himself in financial difficulties. (Item 5 at 4-5.)

The current status of the debts is as follows:

1.a. Applicant admitted owing \$13,171 to a credit union on a charged-off debt. This debt has been delinquent since approximately 2013. Applicant stated in Applicant Exhibit A that he has made a payment arrangement with the credit union to pay this debt, and the one in allegation 1.c. He submitted bank records that appear to indicate he has been making small payments on this debt since approximately May 2019. However, he provided no information as to how much of the debt has been paid, or how long his payment plan will last. This debt is not resolved. (Item 7; Applicant Exhibit A at 1, 8-10.)

1.b. Applicant admitted owing \$10,019 to a bank on a charged-off debt. This debt has been delinquent since approximately 2015. Applicant stated in his Answer that he had problems getting payments he made to a collection agency properly credited to this account. He further stated that he was attempting to contact the new collection agency to arrange payment. No further information was submitted. This debt is not resolved. (Item 7.)

1.c. Applicant admitted owing \$7,954 to a credit union on a charged-off debt. This debt has been delinquent since approximately 2015. Applicant stated in Applicant Exhibit A that he has made a payment arrangement with the credit union to pay this debt, and the one in allegation 1.a. He submitted bank records that appear to indicate he has been making small payments on this debt since approximately May 2019. However, he provided no information as to how much of the debt has been paid, or how long his payment plan will last. This debt is not resolved. (Item 7; Applicant Exhibit A at 1, 8-10.)

1.d. Applicant admitted owing \$693 to the US Government for an educational stipend that requires repayment. This debt has been delinquent since approximately 2015. He submitted documentation indicating that he had made a payment arrangement with this creditor to pay \$100 a month towards this debt, and the one in allegation 1.e. He also supplied bank records showing payments of \$100 for May, June, and July 2019. This debt is being resolved. (Item 7; Applicant Exhibit A at 1-6-10.)

1.e. Applicant admitted owing \$120 to the US Government for another educational stipend that requires repayment. This debt has been delinquent since approximately 2016. He submitted documentation indicating that he had made a payment arrangement with this creditor to pay \$100 a month towards this debt, and the one in allegation 1.d. He also supplied bank records showing payments of \$100 for May, June, and July 2019. This debt is being resolved. (Item 7; Applicant Exhibit A at 1-6-10.)

Paragraph 2 – Guideline B (Foreign Influence)

The Government alleged in Paragraph 2 of the SOR that Applicant is ineligible for clearance because he has foreign contacts or interests that may result in divided allegiance.

Applicant is a native-born American citizen. He and his wife have been together since 2007, were married in 2012, and have one child together. This child is also an American citizen. As stated, Applicant's wife is now an American citizen, as shown by her passport. (Applicant Exhibit A at 1.)

Applicant's mother-in-law is a citizen of the Philippines. She currently lives with Applicant and his wife, helping take care of their child. Applicant's step-child, an adult, is an American citizen and currently serving in the US military. His mother-in-law speaks little English, and Applicant's discussions with her are necessarily brief. He stated in his Answer, "As for my father-in-law and siblings-in-law, I have almost never had any personal communications with any of my wife's family that are residents of the Philippines." Applicant goes on to state that his wife's relatives live in Manila, and have never left the island of Luzon.

The Philippines

I take administrative notice of the following facts. The Philippines is a multi-party constitutional republic. There are terroristic threats in several parts of the Philippines, primarily limited to the southern islands of the country, and not including Luzon. In addition, there are allegations of human rights abuses by members of the security forces.

The State Department's "U.S. Relations With the Philippines: Bilateral Relations Fact Sheet" states:

U.S.-Philippine relations are based on strong historical and cultural linkages and a shared commitment to democracy and human rights. The 1951 U.S.-Philippines Mutual Defense Treaty provides a strong foundation for our robust security partnership, which began during World War II. Strong people-to-people ties and economic cooperation provide additional avenues to engage on a range of bilateral, regional, and global issues. The U.S.-Philippine Bilateral Strategic Dialogue is the annual forum for forward planning across the spectrum of our relationship. There are more than four million U.S. citizens of Philippine ancestry in the United States, and more than 350,000 U.S. citizens in the Philippines, including a large number of United States veterans. An estimated 650,000 U.S. citizens visit the Philippines each year. . . . Manila is home to the only Veterans Administration regional office outside the United States. (United States Department of State, *U.S. Relations With the Philippines: Bilateral Relations Fact Sheet*, <https://www.state.gov/u-s-relations-with-the-philippines/> (last updated January 21, 2020).)

Policies

When evaluating an applicant's suitability for national security eligibility and a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing 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 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.” 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, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks national security eligibility 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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

Paragraph 1 – Guideline F (Financial Considerations)

The security concern relating to the guideline 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant, based on the evidence, had five delinquent accounts that he could not or chose not to resolve. These debts have been in existence for a considerable period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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, or 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.

The evidence does not establish that any of the above mitigating conditions apply to Applicant's financial situation, except in regard to allegations 1.d and 1.e, which are found for him due to his making substantial payments in relation to the amounts of the debts. AG ¶ 20(d) applies to these debts only.

Turning to the rest of the debts: AG ¶ 20(a) does not apply because the debts continue to be due and owing. AG ¶ 20(b) does not apply in full force. Applicant did have financial issues due to his wife having to travel to United States territory every year

for several years, and his other family circumstances. However, Applicant did not supply sufficient information for me to conclude that he had “acted responsibly under the circumstances.” AG ¶¶ 20(c) and (d) also do not apply. Applicant did not provide proof of payment to the creditor in 1.b, and the payments to the creditor in allegations 1.a and 1.c. are minimal. Applicant has not mitigated the security concerns created by his financial situation. Paragraph 1 is found against Applicant.

Paragraph 2 - 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 notes several conditions that could raise security concerns under AG ¶ 7. Three 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; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's wife is now an American citizen. However, her parents are both Philippine citizens, as are her siblings. Applicant's mother-in-law lives with Applicant. The others live in the Philippines. The evidence is sufficient to raise these disqualifying conditions.

The Philippines has significant internal terrorism threats that operate contrary to U.S. interests. Accordingly, Applicant's family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). 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, this 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).)

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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.

Applicant is a proud American citizen and Army veteran. His wife is an American citizen, and his contact with her family members outside of his mother-in-law is minimal. Given the nature of his family connections to the Philippines, there is little to no possibility of Applicant being subject to influence or pressure. AG ¶¶ 8(a), (b), and (c) apply.

I have carefully considered the fact that Applicant's wife's family lives in the Philippines. In this particular case, I find that Applicant has mitigated the security significance arising from their presence for the following reasons. The Philippines is a long-time ally of the United States, with a large American veteran population. In addition, Applicant's wife's family lives on Luzon, far away from the south of the country, which is the main base for terrorist activities. Applicant has completely mitigated the security significance of the presence of his wife's relations in the Philippines. Paragraph 2 is found for Applicant.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but warrant additional comment.

Applicant is a patriotic American citizen, Army veteran, and member of the defense industry. He can be expected to resolve any conflict of interest in favor of the United States due to his overwhelming sense of loyalty to the United States; and has minimized the potential for pressure, coercion, exploitation, or duress under the Foreign Influence guideline.

However, he has not mitigated the concerns raised by his financial issues. He has begun resolving several of his debts, but the payments are minimal and the evidence sparse about his ability to maintain such payments into the future. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraphs 1.d through 1.e:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a through 2.d:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Wilford H. Ross
Administrative Judge