



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 18-01582
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Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

01/13/2020

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by his personal ties to Poland. He did not mitigate the security concerns raised by his financial problems. Accordingly, his request for continued eligibility for access to classified information is denied.

Statement of the Case

On May 3, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant to have a security clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On October 4, 2018, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines for foreign influence (Guideline B) and financial considerations (Guideline F). The adjudicative guidelines cited in the SOR were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). The case was assigned to an administrative judge on May 2, 2019. The case was then transferred to me on October 8, 2019, and I convened the requested hearing by video teleconference on November 7, 2019. The parties appeared as scheduled, and DOHA received a transcript of the hearing (Tr.) on November 24, 2019. Department Counsel proffered Government Exhibits (GX) 1 – 5. Applicant testified and proffered Applicant Exhibits (AX) A – C. (Tr. 11 – 16) All exhibits were admitted without objection, and the record closed on November 20, 2019.

In addition to GX 1 – 5 and AX A – C, I included in the record three documents identified as Hearing Exhibit (HX) 1 (Department Counsel's Discovery Letter, dated February 14, 2019; 3 pages); HX 2 (Department Counsel's Request for Administrative Notice re: Poland, with supporting documents, dated February 14, 2019; 5 pages); HX 3 (Correspondence and Emails re Exchange of Documents and Submission of AX A – C, and Department Counsel's Waiver of Objection to AX A – C, three pages. See *also* Tr. 17 - 29); and HX 4 (Department Counsel's List of Exhibits, one page).

As to HX 2, that exhibit consists of the Government's request, supported by a fact paper from the U.S. Department of State webpage, that I take administrative notice of certain facts about the government of Poland and its relationship to the United States. I have included HX 2 in the record and have considered its contents as requested by Department Counsel.

Findings of Fact

Under Guideline B, the Government alleged that Applicant's wife is a citizen and resident of Poland, and that she is a major in the Polish army (SOR 1.a). Under Guideline F, the Government alleged that Applicant owes \$13,930 for three delinquent or past-due debts (SOR 2.a – 2.c). Applicant has admitted all of the SOR allegations. (Answer) In addition to the facts established by Applicant's admissions, and based on all of the information before me, I make the following additional findings of fact.

Applicant is 57 years old, and was born and raised in Poland. He immigrated with his family to the United States at age 13 and became a U.S. citizen in 1979. Applicant enlisted in the U.S. Air Force in 1980 and served for four years as a radar technician. He first received a security clearance while in the military, and he was honorably discharged in 1984. Thereafter, Applicant worked for several different defense contractors in positions that required a security clearance. He embarked on other employment

opportunities in the information technology (IT) field until 2010. Between 2010 and 2014, Applicant worked as a federally-contracted Polish-English linguist in support of coalition forces at a forward operating base (FOB) in Afghanistan. Between March 2014 and April 2017, Applicant was a self-employed computer repair technician before being hired as an IT technician by a health care organization. Applicant then was re-hired as a Polish linguist by the defense contractor for whom he previously worked in Afghanistan, this time for work in Poland. His assignment to an overseas job location is contingent on a favorable outcome of this adjudication. (GX 1; GX 5; AX A; Tr. 36, 56)

While working in Afghanistan in 2010, he met and began a relationship with a Polish army officer assigned to the same FOB. She was a divorced mother of one child and her home of record has always been in Poland. She was then, and continues to be, a citizen of Poland residing therein. In September 2011, she and Applicant were married in the United States while he was home for two weeks of leave. Thereafter, both Applicant and his new wife returned to Afghanistan. On his return to the FOB, Applicant reported his marriage to his supervisors and his company security manager, and he continued his work at the FOB until the end of his rotation in November 2011. Before he could return to Afghanistan after that rotation, Applicant was interviewed on multiple occasions about his marriage to a foreign national to determine if he was still eligible for classified work at the FOB. Applicant's mother and the rest of his immediate family have long been either naturalized citizens or permanent resident aliens living in the United States. (GX 1; GX 5; AX A; AX C; Tr. 33 – 36, 71 – 73)

In April 2012, Applicant again deployed to Afghanistan, where he would continue to work with a security clearance on a rotational basis until February 2014; however, his wife completed her military deployment and returned to Poland in October 2013. Applicant traveled to Poland with his wife between November 2011 and February 2012. He also traveled there to see her in March and November 2014, and for about three weeks in December 2014 and January 2015. Applicant's wife also traveled to the United States over the Christmas holidays in 2013. They have not seen each other since January 2015, and the only time they have communicated by phone or email since December 2016 was in May 2019. Additionally, a few days before his hearing, Applicant's mother received a phone call from his wife, who conveyed that she was retired from the Polish military. Applicant does not know what his wife does for a living now or how long she has been retired. On November 13, 2019, Applicant filed for divorce in a state court in the United States. (GX 1; GX 5; AX A; AX C; Tr. 44, 47, 53)

After he returned from Afghanistan in 2014, Applicant had difficulty finding work that would enable him to provide him, his wife, and her child a good life in the United States. They have been estranged since early 2015 because they had agreed she and her child would only immigrate to the United States if Applicant found employment sufficient to support them all comfortably in a house they could own. Applicant and his wife have never lived together in an established marital residence. (GX 1; GX 5; AX A; Tr. 50 – 52, 54 – 59, 66 – 70)

Poland and the United States are close allies in all respects. Our State Department characterizes that alliance as “stalwart.” Applicant’s wife’s presence in Afghanistan with the Polish army was due to Poland’s cooperation with, and support of, United States geopolitical efforts in Afghanistan and other parts of the world. Poland successfully transitioned from being a Warsaw Pact nation within the ambit of the Soviet Union to a member in good standing of NATO in 2000. Since then, it has been actively engaged with the United States and the European Union in all facets of military and economic efforts in Europe. Poland is a leading trade partner in Eastern and Central Europe. Available information does not reflect any significant human rights or other issues, such as military or economic espionage directed at the United States by Poland. (HX 2)

Since leaving his employment as a linguist in 2014, Applicant has experienced uneven employment and income-earning circumstances. As previously noted, his inability to find work that would support his wife and her child in the United States has been at the heart of the failure of his marriage. Additionally, available information shows that Applicant incurred numerous delinquent and past-due debts since about 2015. The debts alleged SOR 2.a and 2.b have been delinquent since the middle of 2015; the debt at SOR 2.c has been delinquent since 2018. Applicant acknowledged in his testimony that he has not taken any action to resolve any of his debts. He also described other financial challenges, such as the need for him to provide financial assistance with family medical expenses over the years, and other recent unplanned expenses that have impaired his ability to pay his debts and meet his current expenses. Applicant did not present any information that shows his current finances would be sufficient to both address his outstanding delinquencies and avoid similar problems in the future. He has not sought any credit counseling or other professional assistance in resolving his financial problems. (GX 2 – 5; AX A; Tr. 37 – 40, 59 - 66)

Applicant’s work in support of coalition forces in Afghanistan put him at great personal risk. Several times, the FOB where he worked came under hostile fire and on one occasion he was injured during an attack. His work earned him praise from Polish and U.S. commanders, whose confidence he earned through his professionalism and dedication to the missions he supported. (Answer; AX A; AX B; Tr. 44 – 45)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those 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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531)

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See Egan; AG ¶ 2(b))

Analysis

Foreign Influence

Available information regarding Applicant's marriage to a Polish army officer reasonably raised the security concern articulated at 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.

More specifically, that information requires consideration of the following AG ¶ 7 disqualifying conditions:

(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;

(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 marriage to a foreign military officer potentially created a conflict of interest between his duties in support of the U.S. mission in Afghanistan. Even though part of that mission involved working with coalition partners such as Poland (thus the need for a Polish linguist), Applicant's primary obligation was to protect U.S. interests. Although no information in this record showing that Poland poses a heightened risk to U.S. interests, the closeness of Applicant's relationship with his foreign-citizen wife until at least 2015 requires consideration of that possibility, especially because she is or was a field grade officer in the Polish military.

Nonetheless, available information also requires consideration of the following AG ¶ 8 mitigating conditions:

(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;

(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; and

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

In November 2011, Applicant complied with requirements that he notify his superiors of his marriage to a foreign national. Before he could return to Afghanistan later in 2012 to continue his work at the FOB, it appears that Applicant was vetted to ensure he was still suitable for access to classified information and sensitive work overseas. He continued to work in that capacity without incident until early 2015 after several rotations, and after being subject to hostile fire by which he was injured on one occasion. Applicant's wife had returned to Poland in October 2013. She traveled to the United States to visit Applicant in December 2013. Between then and January 2015, Applicant and his wife saw each other only when Applicant traveled to Poland in March 2014 and in November 2014, and for about three consecutive weeks in December 2014 and January 2015. Applicant has not seen his wife since January 2015, and has only communicated directly with her in December 2016 and in May 2019. Available information shows they are estranged. With the recent filing of a divorce petition, it is unlikely they will have any continued relationship that would present a conflict of interests for Applicant.

Additionally, Applicant has longstanding ties in the United States. His Polish-born family members all reside in the United States and are either naturalized citizens or permanent resident aliens of long standing. Applicant served honorably in the U.S. Air Force, and he continued to support U.S. interests as a civilian while holding a security clearance first granted more than 30 years ago. Applicant's most recent work in the defense industry placed him at great personal risk while forward deployed to Afghanistan, and he was well regarded for his work there. All of the foregoing supports application of AG ¶¶ 8(a) – 8(c) and 8(e), and is sufficient to mitigate the security concerns raised under this guideline.

Financial Considerations

The allegations at SOR 2.a – 2.c were based on information showing Applicant incurred delinquent or past-due debts, totaling \$13,930, and that, as of the date of the SOR, those debts had not been paid or otherwise resolved. That information reasonably raises a security concern about Applicant's finances that is articulated, in relevant part, at 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. . . .

More specifically, available information shows that Applicant incurred two of those debts as early as 2015 and the other debt in 2017. He has not made any payments or taken any action to resolve his debts. These facts and circumstances requires application of the following AG ¶ 19 disqualifying conditions:

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

The following mitigating conditions under AG ¶ 20 pertain to these facts and circumstances:

- (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.

In view of all of the available information, I conclude none of these mitigations can be applied. Applicant's debts are still outstanding and must be considered as recent.

Although his debts may have resulted from periods of unemployment, family medical issues, or other uncontrollable events, Applicant did not establish any good-faith effort to pay his debts or that he acted reasonably in response to those challenges. There is also no basis for a legitimate dispute of any of his debts. Further, Applicant provided little information about his current finances that would suggest his financial problems are under control, and he has not engaged in any financial counseling or other structured effort to improve his financial health. The foregoing precludes mitigation of the security concerns raised under this guideline.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). The record evidence as a whole shows that Applicant is a loyal, naturalized citizen committed to protecting U.S. interests over any others. He served honorably in the U.S. military and as a civilian contractor. All indications are that he has tried to be a responsible and productive citizen for his entire adult life. Nonetheless, because his financial problems of the past five years remain unaddressed and largely unchanged, *at this time* doubts remain about his suitability for renewed access to classified information. Applicant is encouraged to take tangible steps to improve his finances and resolve his debts, so that these issues might no longer raise security concerns in the future. Until and unless that happens, and because protection of the interests of national security is the principal focus of these adjudications, the remaining doubts about Applicant's suitability are resolved against the granting of a security clearance.

Formal Findings

Formal findings 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 B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge