



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



In the matter of: )  
)  
) ISCR Case No. 19-01692  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel Esq., Department Counsel  
For Applicant: *Pro se*

07/26/2021

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**Decision**

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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 August 9, 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 August 29, 2019, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 10, 2020. The case was delayed because of COVID-19 and Applicant working overseas. The case was reassigned to me on May 24, 2021. The hearing was convened as scheduled on June 17, 2021.

**Evidence**

Government Exhibits (GE) 1 and 3 through 5 were admitted in evidence over Applicant's objection. Applicant's objection to GE 2 was partially sustained and partially overruled. Applicant testified and submitted Applicant's Exhibits (AE) A through D,

which were admitted without objection. Post-hearing, Applicant submitted documents that I have marked AE E through H, and admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about Egypt. Over Applicant's 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. I have also taken administrative notice of facts about Egypt from the U.S. Department of State website. Of note is that Egypt is a republic governed by an elected president and unicameral legislature. The United States and Egypt share a strong partnership based on mutual interest in Middle East peace and stability, economic opportunity, and regional security. Promoting a stable, prosperous Egypt, where the government protects the basic rights of its citizens and fulfills the aspirations of the Egyptian people, will continue to be a core objective of U.S. policy. I also note the significant threat of terrorism and ongoing human rights problems in Egypt.

### **Findings of Fact**

Applicant is a 51-year-old prospective employee of a defense contractor. He worked for the company overseas, but because of the COVID-19 pandemic, he was unable to return after a visit home. He will be rehired if he receives a security clearance. He is applying for a security clearance for the first time. He has a master's degree. He is married with two children. (Transcript (Tr.) at 34; GE 1)

Applicant was born in Egypt. He immigrated to the United States in 1992, and he became a U.S. citizen in 2008. Most of his Egyptian family moved to the United States, including his brother who retired from the U.S. military and his widowed mother who lives with him. He has a half-brother who is a citizen and resident of Egypt. Applicant is not close to his half-brother, and has not seen him in years. His mother used to own an apartment in Egypt, valued at about \$33,200, which she used when she visited Egypt, but she sold the property. Applicant proclaimed his undivided allegiance to the United States: "America is my country." (Tr. at 20-21; Applicant's response to SOR; GE 1)

Applicant invested in a permit (medallion) for a taxicab in a major U.S. city in about 2007. The cost of the medallion was paid through a down payment of about \$32,000, and a secured loan, with monthly payments of more than \$2,000. There are a limited amount of medallions authorized for the city, and the costs of the medallions increased dramatically until it became a "bubble." The city changed the way it regulated taxicabs; Applicant's business was unsuccessful; and the "bubble" burst; leaving Applicant with a medallion valued at a fraction of what he paid for it, and numerous debts that he incurred attempting to keep his taxi business afloat. The predatory lending practices associated with the loans for the medallions became the subject of a federal investigation. Applicant moved to another state in 2013 for a fresh start. (Tr. at 22, 35-36; Applicant's response to SOR; GE 1, 2; AE A)

The SOR alleges 23 delinquent debts with balances totaling about \$39,000, and a \$3,849 judgment that was awarded in 2011. Almost all of the debts became delinquent before 2013. Applicant admitted that he owed all of the debts at one point.

He paid in full the debts in SOR ¶¶ 1.a (\$1,136) and 1.b (\$500), with a final payment of \$232 in October 2020. He also settled and paid the \$439 debt in SOR ¶ 1.d, with a final payment in July 2019. He stated that he paid the \$709 debt in SOR ¶ 1.i. He did not provide documentation of the payment, but the March 2020 credit report lists an account with the original creditor as paid and closed, with a \$0 balance. (Tr. at 29, 32; Applicant's response to SOR; GE 1-5; AE B, D)

Applicant attempted to contact a number of the creditors for the debts alleged in the SOR, but they were nonresponsive. The debts were reported on a June 2017 credit report, but none of the debts are listed on any credit report after that. Applicant's current credit reports show no delinquent debts. Several of the creditors have issued him new credit. Applicant's current finances are stable, with no new delinquent debts accrued in years. (Tr. at 22-23, 29-33, 36, 41; Applicant's response to SOR; GE 4, 5; AE B, C)

Applicant worked overseas as a linguist in support of the U.S. military. He was unable to return after a visit home because of the COVID-19 pandemic. He submitted documents and letters attesting to his outstanding service and remarkable professionalism. He was described by a U.S. military officer as "an exceptional team player and extremely reliable." (Tr. at 22, 35; AE E-H)

### **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 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;

(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

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's half-brother is a citizen and resident of Egypt. The United States and Egypt share a strong partnership based on mutual interest in Middle East peace and stability, economic opportunity, and regional security. Egypt also has ongoing human rights problems, and there is a significant threat of terrorism. Applicant's connection to his half-brother creates a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Any security concerns raised by the apartment in Egypt ended when Applicant's mother sold the apartment. SOR ¶ 2.b is concluded for Applicant.

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.

Applicant is a loyal U.S. citizen. He has been in the United States for decades. His mother lives with him; his brother served in the U.S. military; and Applicant served overseas in support of the U.S. military. He is not close to his half-brother, and he has not seen him in years.

I find that Applicant's ties to Egypt are outweighed by his deep and long-standing relationships and loyalties in the United States. It is unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of Egypt. 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. AG ¶ 8(c) is partially applicable.

#### **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 had financial problems, including delinquent debts and an unpaid judgment. 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; and
- (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.

Applicant bought a taxicab medallion in about 2007, in what essentially became a “bubble.” The city changed the way it regulated taxicabs; Applicant’s business was unsuccessful; and the “bubble” burst; leaving Applicant with a medallion at a fraction of what he paid for it and numerous debts that he incurred attempting to keep his taxi business afloat. Almost all of the debts alleged in the SOR became delinquent before Applicant moved on from the taxi business in 2013.

Applicant paid or settled at least three debts. He attempted to contact a number of the creditors for the debts, but they were nonresponsive. None of the debts are listed on any credit report after 2017. Applicant’s current finances are stable, with no new delinquent debt accrued in years.

Applicant does not present a perfect case in mitigation. Delinquent debts are a continuing concern until they are resolved. However, at some point, debts become old, unenforceable, charged off, fall off credit reports, and are no longer of interest even to the creditors. I find that Applicant finances do not cast doubt about his current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about his finances are 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 have incorporated my comments under Guidelines B and F in my whole-person analysis. I also considered Applicant’s work overseas in support of the U.S. military.

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.x:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a-2.b:	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.

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Edward W. Loughran  
Administrative Judge