



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 20-01004
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: Amy Leon, Esq.
03/31/2021

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate financial considerations security concerns. Foreign influence security concerns are mitigated. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On June 19, 2020, the Department of Defense (DoD) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations and foreign influence guidelines the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DoD Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on July 16, 2020, and requested a hearing. This case was assigned to me on October 15, 2020. A hearing was scheduled for December 8, 2020, and was heard on the scheduled date. At the hearing, the Government's case consisted of five exhibits (GEs 1-5) and a request for administrative notice of the People's Republic of China (China). Applicant relied on 21 exhibits (A-U) and one witness (himself). The transcript (Tr.) was received on December 30, 2020.

Procedural Issues

Before the close of the proceedings, Applicant asked to leave the record open to afford him the opportunity to supplement the record with explanations of his three cancellations of debt with SOR creditors 1.b-1.d. For good cause shown, Applicant was granted 14 days to supplement the record. The Government was afforded three days to respond. Within the time permitted, Applicant provided statutory authority that the three cancelled debts in issue were barred by Applicant's state's statute of limitations and are no longer enforceable. Applicant's post-hearing submissions were admitted as AEs V-Y without objections for consideration. Respective comments of counsel for both parties on the exhibits will also be considered.

The Government filed a timely response brief claiming that the state statute of limitation authority cited by Applicant only precludes enforcement of the debts in issue and does not address questions of trust associated with Applicant's lack of any documented evidence of his addressing the debts in question with payments and payment plans.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated five delinquent consumer debts exceeding \$55,000. Allegedly, Applicant's debts remain unsatisfied and unresolved.

Under Guideline B, Applicant allegedly has a girlfriend who is a citizen and resident of china. Allegedly, Applicant's relationship with this girlfriend has not been adequately explained and reconciled with U.S. security interests.

In his response to the SOR, Applicant admitted the financial considerations allegations with explanations and clarifications. Addressing the financial allegations, he claimed the debts in in question have been in Applicant's records for many years and were charged off in 2017, 2018, and 2016, respectively. He claimed that the debts were the result of his divorce and that he did not understand that charge-offs of the debts would hurt his credit. He also claimed that the charge-offs and tax payments on the debts settled any question about the payments. Applicant further claimed that he has participated in credit counseling in an effort to resolve his debts.

In Applicant's response to the foreign influence allegations, he admitted the allegations with explanations and clarifications. He claimed he began signing up with dating websites while going through his divorce in 2012. He claimed he has never had

any direct contact with the foreign person other than through email on an Asian website. He further claimed that he has since deleted this website and no longer has access to this account. By his actions, he claimed that he has already resolved this conflict in favor of the U.S. interest. Addressing his whole-person status, applicant cited his military achievements (to include numerous medals and citations recognizing his meritorious contributions to the U.S. defense effort).

Findings of Fact

Applicant is a 44-year-old maintenance mechanic for a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings of fact follow.

Background

Applicant married in 2000 and divorced in 2006. (GE 1; Tr. 22) He has one adult child from this marriage, age 20. (GE 1) Applicant He remarried in 2007 and divorced in 2012. (GE 1; Tr. 22) He has two children from this marriage (ages 11 and 12), one of whom took his life due to quarantine restrictions. (GE 1; Tr. 22) Since his divorce, the children have lived with him. (Tr. 36, 41)

Applicant earned an associate's degree in 2002 and a bachelor's degree in information technology in 2007. (GEs 1 and 5 and AE L) He enlisted in the U.S. Air Force (AF) in 1996 and served 20 years of active duty. (GEs 1 and 5 and AE J). He received an honorable discharge in 2016. (AE J)

During his active military tour of duty, Applicant was awarded numerous medals and citations in recognition of his distinguished contributions to his military service. (AE J). His awarded medals include the following: Air Force Commendation Medal with 1 Oak Leaf Cluster, Air Force AF Achievement Medal, Joint Meritorious Unit Award with 1 Oak Leaf Cluster, Air Force Outstanding Unit Award with 5 Oak Leaf Clusters, Air Force Good Conduct Medal with 5 Oak Leaf Clusters, and a National Defense Service Medal. (AE J)

Since June 2018, Applicant has been employed by his current employer. (GE 1 and AEs H-I and K) He was employed by non-defense employers between May 2017 and June 2018. He reported unemployment between November 2016 and May 2017, following his military discharge. (GE 1 and AEs H-I) Applicant held a security clearance for 20 years during his active duty military career, but has not before held a security clearance for any civilian contractor. (GE 1; Tr. 52, 88)

Applicant's finances

Between 2004 and 2013, Applicant opened three credit card accounts: two with SOR creditor 1.b and 1.c and one with SOR creditor 1.d. Credit reports reveal his opening a fourth account with SOR creditor 1.e in 2019 or earlier. (GE 2)

In Applicant's 2012 divorce decree, the decree cited reasons for the divorce to be irreconcilability and incompatibility. (AE M) The decree affirmed that the parties requested that the terms of their settlement agreement be incorporated and merged into and become a part of their final divorce decree. (AE M) Their agreement provided for joint custody of their three children and mutual visitation rights. (AE M) Neither party became obligated to pay child support. Under the terms of their divorce, the parties were assigned individual responsibilities for the debts designated as his or hers. (AE M) The four credit card accounts covered by SOR ¶¶ 1.b-1.e were assigned to Applicant for his own personal responsibility. (AE M; Tr. 25, 31-39, 47-50) The parties' residence was assigned to Applicant, subject to existing encumbrances. (AE M)

With his limited military income following his divorce, Applicant could no longer afford to maintain the credit card accounts (SOR ¶¶ 1.b-1.e) and defaulted on the accounts. (GEs 2-5; Tr.25-27, 48-52) in early 2013. In 2013 and 2014, Applicant owed the following on these accounts: SOR ¶ 1.b (\$11,571, opened in November 2010); SOR ¶ 1.c (\$8,915, opened in April 2004); SOR ¶ 1.d (\$8,743, opened in July 2010); and SOR ¶ 1.e (\$241, opened sometime prior to 2019. (GEs 2-4) Between 2013 and 2018, Applicant made no voluntary payments on any of these accounts, and they were charged off and no longer pursued by any of the creditors.

Credit reports document that Applicant obtained cancellation of debt notices from SOR creditors ¶¶ 1.b and 1.c in 2017 and 2018, respectively. (AEs D-E) He received a similar cancellation of his SOR creditor ¶ 1.d debt in 2016. (AE F) Applicant documented his payoffs of the two remaining debts (SOR ¶¶ 1.a and 1.e) in May 2018 and June 2020, respectively. (AEs A-B and Q; Tr. 26-27, 50-51) His credit reports reveal no other accounts that are in delinquent status. (GEs 2-4 and AE Q)

Based on available credit reports, Applicant purchased a home in June 2006 for \$227,500. (GE 2) Credit reports also report that in January 2007, he took out a home equity loan, secured by a second mortgage on the property, with SOR ¶ 1.a for \$33,600. (GEs 2, 3 and 5) Credit reports reveal that Applicant made regular payments on both secured loans between 2006 and 2012 before refinancing the first mortgage with another lender in November 2012 for \$212,500 (GEs 2-4) According to Applicant's credit reports, both this refinanced first mortgage and his second mortgage on the property remained in current status until January 2013 (following the finalization of Applicant's divorce decree in August 2012). (GE 5 and AE M)

Beginning in January 2013, Applicant ceased making payments on both of his home mortgages. (GEs 2-5; Tr. 37-39) Deployed abroad between August 2013 and November 2016, he made no payments on either mortgage, either before or after his return from deployment and his ensuing cancellation of his SOR ¶¶ 1.b-1.d debts. (GE 5; Tr. 25-27, 37-39, 47-50, 65-66) Although he apparently did not receive billing notices from his SOR ¶ 1.a-1.d creditors while he was deployed abroad, he acknowledged his awareness of his payment responsibilities for the debts. (Tr. 63, 68) The evidentiary record contains no documentation of his paying federal and state income taxes on any of the canceled debts. (Tr. 26)

With the assistance of a local real estate agent in 2019, Applicant was able to arrange a short sale of his residence with the approval of the lender holding the first mortgage on the property. (AE U; Tr. 39-40) Whether the creditor (SOR ¶ 1.a) holding the second mortgage on the property approved the short sale is unclear. From all of information supplied in the escrow statement and credit reports, SOR creditor ¶ 1.a was never asked to approve the short sale and never gave its approval.

Under the terms of the May 2020 escrow set up by the title company administering the parties' combined settlement statement (AE U; Tr. 73-74), the first mortgagee received the first \$203,925 of the recorded \$226,000 sale proceeds. (AE U) SOR creditor ¶ 1.a, in turn, was credited with receipt of the remaining \$6,000 of the sale proceeds, leaving this creditor with a \$20,000 delinquency balance on its mortgage debt. (AE U) The closing escrow statement confirmed that that Applicant's property was sold for \$212,000. Because SOR creditor ¶ 1.a was left with an unsecured shortfall of over \$20,000 from the sale, it may still have an enforceable deficiency claim against Applicant (AE U) However, SOR creditor ¶ 1.a is of record in crediting Applicant with payment in full of the mortgage balance on Applicant's home equity loan. (AE A) As a result, this SOR debt is resolved favorably to Applicant.

As a condition to filing for Chapter 11 bankruptcy relief in July 2020, Applicant completed a credit course with an accredited financial counseling service. (AE O) No repayment plan was prepared for Applicant by credit counseling service, and Applicant apparently never proceeded with filing for Chapter 11 relief. (AE O)

Applicant's online relationship with a Chinese national

Years after finalizing his 2012 divorce, Applicant established a series of online relationships with Chinese nationals. His first two online relationships were brief, lasting no more than a month before he broke them off. (Tr. 59-60) In 2018, he established a more substantial online relationship with a Chinese national who was a citizen and resident of China. (GEs 1 and 5) He met this female Chinese national online through a paid online dating site. This girlfriend was identified by Applicant as a manager of a private jewelry store in China. (GE 5) No biographical profile of this Chinese national was provided by Applicant, and very little is known about her in this evidentiary record.

Between August 2018 and June 2020, Applicant and this girlfriend maintained a close and virtually daily online contact (through computer chat features) and exchanged photographs of each other. (GE 5; Tr.57-61) Without transcripts or other documented evidence of their communications, little can be gleaned from their daily contacts. Whether Applicant and his Chinese girlfriend ever became bound by affection, influence, common interests, or obligation over the course of their two-year plus relationship is difficult to gauge. While Applicant has consistently denied any romantic relationship with the Chinese national (GE 1), his reported history of romantic relationships with other Asian women, his use of Asian dating websites to establish online relationships with two other Chinese nationals before using an Asian dating website in 2018 to gain introduction to the Chinese national at issue in the SOR, and the

daily contacts he maintained with this Chinese individual for over two years warrant drawn inferences of a much closer pen pal relationship between Applicant and this Chinese girlfriend than Applicant was willing to profess to, even if their relationship did not reach the level of affection for each other. How involved and personal the relationship grew to be cannot be fully evaluated without tapes or other probative accounts of their online text exchanges.

Applicant and his online Chinese girlfriend have never met or spoken to each other. (Tr. 58) He assured that he broke off his online relationship with this Chinese national in June 2020 after receiving the SOR in June 2020. (GE 5; Tr. 63) Since he broke off all contact with this Chinese national, he has never communicated with her or tried to make contact with her in any way since his last contact with her in June 2020. (Tr. 63-64) The allegations specifically address the status of his online girlfriend, and not Applicant's personal conduct associated with his online contacts with his Chinese girlfriend. And, because his online contacts with this girlfriend have ceased with no demonstrated likelihood of recurrence, SOR coverage of his relationship with this Chinese national are very limited.

Endorsements, performance evaluations, and awards

Applicant is highly regarded by colleagues and friends who have known and worked with him. (AE G) Each of his references are familiar with the allegations in the SOR and found Applicant to be reliable, trustworthy, and dependable. (AEs G and R) Their expressed interaction with Applicant covered both work and social situations. (AEs G and R) None of Applicant's character references offered any doubt that Applicant would be susceptible to foreign interests and influence. (AEs G and R) All of his character sources praised his contributions.

Applicant's performance evaluations for 2018 and 2019 credited Applicant with meeting program requirements for organization and execution of his assigned responsibilities. His evaluations reflect excellent credits for work contributions to his employer. (AEs H-I)

Country status of China

While not a country acclaimed to be hostile to U.S. persons and interests, China maintains a relationship with the United States that is more competitive than cooperative. China is known to use its intelligence services to collect information about the United States and to obtain advanced technologies. China actively monitors international communications satellites from operated intercept facilities, in addition to collecting information on U.S. military operations and exercise. *See Worldwide Threat Assessment of the U.S. Intelligence Community* (Jan. 2019); Request for Administrative Notice, at 22-3, 8.

Established in 1949, China with over 1.3 billion people is the world's most populous country. *See the World Fact Book: China*, Central Intelligence Agency (July 2018). Today, China continues to undergo rapid economic and social change. Political

power, however, remains centralized in the Chinese Communist Party (CCP) with little indication of any change in the foreseeable future. As a corollary of its authoritarian roots, China has never been known for a positive human rights record among Western nations and international human rights groups. Part of this can be explained in terms of China's lack of transparency and any cognizable tradition of respect for developing countries and the rule of law in general.

U.S.-China disputes over Taiwan, Hong Kong, Tibet, and contiguous countries in the South China Sea region can be expected to continue to undermine improvements in U.S.-China military relations for the foreseeable future. And, China-sponsored espionage aimed at U.S. military and economic interests promise to continue the need for heavy security monitoring over sensitive U.S. industries.

Still, the United States has sought to build positive, cooperative, and comprehensive relationships with China by expanding areas of cooperation while addressing areas of disagreement in the areas of tariff policies, as well as in the fields of human rights and cybersecurity. See *U.S. Relations with China, Fact Sheet*, U.S. Department of State, Bureau East Asian and Pacific Affairs at 1-2 (Dec. 2016).

Historically, the United States has emphasized the need to enhance trust in its bilateral relations with China through increased high-level exchanges, formal dialogues, and expanded people-to-people ties. (id.) The U.S. approach to its economic relations with China has been to integrate China into the global, rules-based economic and trading system and expanding U.S. exporters' and investors' access to the China market. (id., at 1-2)

How the recent reciprocal rounds of tariffs imposed by the United States under the Trump Administration (primarily in steel and aluminum) and China through counter sanctions (especially in agricultural products) will impact short and long-term trade relations between the two countries is still unclear. Negotiations can hopefully lead to improved trade relations that hold promise for sparing trade wars between China and the United States.

China's collection practices

China's actors are the world's most active and persistent perpetrators of economic espionage. China's attempts to collect U.S. technological and economic information is expected to continue at a high level and pose a growing and persistent threat to U.S. economic security. See *Military and Security Developments Involving the People's Republic of China*, U.S. Dep't of Defense, Annual Report to Congress, 2009-2011 at 4 (Oct. 2011. and updated in September 2020) China's leaders remain focused on developing their capabilities to deter or defeat adversary power projection and counter third-party intervention, including interceding initiatives by the United States during a crisis or conflict. (id)

China uses various methods and strategies to acquire foreign military and dual-use technologies, including cyber activity and exploitation of the access of Chinese

nationals, such as agents or researchers acting as procurement agents or intermediaries. See *Military and Security Developments Involving the People's Republic of China*, *supra*. China very likely uses its intelligence services and employs other illicit approaches that violate U.S. laws and export controls to obtain key national security and export-restricted technologies, controlled equipment, and other materials unobtainable through other means. See *Report to Congress on Foreign Economic Collection and Industrial Espionage*, Office of National Collection and Industrial Espionage (Oct. 2011); Request for Administrative Notice, *supra*, at 3

Computer systems around the world, including those owned by the U.S. government, continued to be targeted by China-based intrusions through 2016. These and past intrusions focused on accessing networks and extracting information. See *Military and Security Developments Involving the People's Republic of China*, *supra*, and Request for Administrative Notice, *supra*, at 4. China uses its cyber capabilities to support intelligence collection against U.S. diplomatic, economic, and defense industrial base sectors. See *2019 Worldwide Threat Assessment*, *supra*. The information targeted can be used to benefit China's defense high-technology sectors, support China's military modernization, or provide the CCP insights into U.S. leadership perspectives. (*id.*)

China uses state-sponsored industrial and technical espionage to increase the level of technologies and expertise available to support military research, development, and acquisition. See *Military and Security Developments Involving the People's Republic of China*, *supra*, and Request for Administrative Notice, *supra*. The organizational network of China's military-industrial complex is such that the People's Liberation Army (PLA) is able "to access sensitive and dual-use technologies or knowledgeable experts under the guise of civilian research and development." See *Military and Security developments Involving the People's Republic of China*, U.S. Dept. of Defense, Annual Report to Congress (2013 and updates in 2020); Request for Administrative Notice, *supra*.

Numerous examples exist of individuals who have been charged and convicted of conspiring to violate federal export control laws by illegally exporting defense equipment to China. Examples include a Chinese national's pleading guilty in July 2020 to economic espionage, theft of trade secrets, and conspiracy involving a plot to take trade secrets from two U.S. companies, including his own employer, to China for the benefit of the Chinese government. *Press Release, Chinese Citizen Convicted of Economic Espionage, Theft of Trade Secrets, and Conspiracy*, U.S. Dept. of Justice, Office of Public Affairs (March 2020); *Military and Security Developments Involving the People's Republic of China*, *supra*; Request for Administrative Notice, *supra*, at 6.

In another example, a former Central Intelligence Agency (CIA) officer was arrested on a charge that he conspired with a relative of his who was also a former CIA officer to communicate classified information up to the top secret level to intelligence officials of China. *Press Release, Former CIA Officer Arrested and Charged with Espionage*, U.S. Dep't of Justice (August 2020) an employee of the U.S. Dept. of State was charged with failing to report repeated contacts with Chinese foreign intelligence

agents who provided her and her family with “thousands of dollars of gifts and benefits over five years.” *Press Release, State Department Employee Arrested and Charged with concealing extensive Contacts with Foreign Agents*, U.S. Dept. of Justice, Office of Public affairs (March 29, 2017)

Other examples of individuals who have been convicted of conspiring to violate federal export laws by illegally exporting defense materials include recent federal convictions covering the illegal exporting of fighter jet engines and a long-term program involving the development of special nuclear material outside the United States without the required authorization from the U.S. Department of Energy (DoE). See Request for Administrative Notice, *supra*.

Of additional security concern to the United States is the large and growing threat to its national security from Chinese intelligence collection operations. Particularly serious are China’s efforts at cyber and human infiltration of U.S. national security organizations. Reports of Chinese intelligence services are not of recent vintage but extend back over the past 15 years. See Report to Congress of the U.S.-China economic and Security Commission at 289 (Nov. 2016).

According to the Department of Justice, between 2011 and 2018, more than 90 percent of its state-backed economic espionage cases and two-thirds of its theft of trade secrets cases involved Congress. See *Report to Congress of the U.S.-China Economic and Security Review Commission* (Nov. 2019) For more recent examples of espionage and stealing of trade secrets by Chinese agents posing as researchers, see Administrative Notice, *supra*, 6-8.

Threats from Chinese intelligence operations extend overseas and include China’s growing technical intelligence collection capabilities to monitor deployed U.S. military forces. Chinese intelligence services have demonstrated broad capabilities to infiltrate U.S. national security actors with cyber operations. See *Report to Congress of the U.S.-China Economic and Security Commission, supra*; Request for Administrative Notice, *supra*,

China’s human rights record

China is an authoritarian state in which the CCP is still the paramount authority. CCP members hold all top government and security apparatus positions. See 2019 *Human rights Report: China*, U.S. Department of State, Bureau of Democracy at 1 (March 2020). Human rights concerns observed in 2016 included “illegal detention [in] unofficial holding facilities known as “black jails,” torture and coerced confessions of prisoners, and detention and harassment of journalists, lawyers, writers, bloggers, dissidents, petitioners, and others whose actions the authorities deemed unacceptable. See 2019 *Human rights Report: China, supra* and Request for Administrative Notice, *supra*, at 7.

Of note, China passed a new law, effective January 1, 2017, that confirmed that non-government organizations (NGOs) are considered a “national security threat.” To

enforce the law, authorities used extralegal measures, such as enforced disappearances and strict house arrest to prevent public expression of critical opinions. Authorities continued to censor and tightly control public discourse exchanged on the internet and through the print and other media. See *2019 Human rights Report: China, supra*.

Visitors continue to be warned by the U.S. State Department that they can be placed under surveillance without knowledge or consent. See *Country Information: China: Local Laws and Special Circumstances, Surveillance and Monitoring*, U.S. Dep't of State at 10 (Sept. 2016) and Request for Administrative Notice, *supra*, at 8. Hotel rooms and personal computing devices for these categories are sometimes searched by security personnel.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs,

which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Financial Considerations

The Concern: Failure or inability 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 or 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Foreign Influence

The Concern: 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 protected classified or sensitive information or is associated with a risk of terrorism. See AG ¶ 6.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s accumulation of delinquent debts between 2013 and 2019. Additional security concerns are raised over his online contacts with a girlfriend who is a citizen and resident of China.

Financial concerns

Applicant’s accumulation of delinquent debts between 2013 and 2019 warrant the application of three of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; 19(b), unwillingness to satisfy debts regardless of the ability to do so”; and 19(c), “a history of not meeting financial obligations.” Each of these DCs apply to Applicant’s situation.

Applicant admitted the allegations covering his delinquent debts with clarifications. Qualified admissions (whether made under oath or not) to pleading allegations in an SOR can be considered as admitted facts that can be weighed along with other evidence developed during the hearing and in post-hearing proceedings. Pleadings in ISCR proceedings and in federal and state courts in general serve a very important purpose of narrowing the issues open to evidentiary proof. Applicant's debts in issue are fully documented and create some judgment issues as well. See ISCR Case No. 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a security clearance holder's demonstrated difficulties is vulnerability to coercion and influence, judgment, and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing of addressing and resolving debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's history of financial difficulties associated with his long-delinquent home equity and credit card debts over a period of years (2013-2019) preclude his taking full advantage of any of the potentially available extenuating and mitigating benefits. While some extenuating benefit to Applicant is warranted here based on his 2012 divorce and ensuing military deployments, application is limited based on all of the circumstances surrounding his managing of his debts in issue.

Application of MC 20(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," has partial application. Applicant's failure to satisfy the second prong ("acted responsibly under the circumstances") of MC 20(b) is conjunctive and is the key prong that prevents him from gaining any more than limited application of MC 20(b). And, because of the lack of any documented value achieved by Applicant from his post-SOR financial counseling, MC ¶ 20(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 solved or is under control," has only minimal application to applicant's situation.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through the voluntary payment of accrued debts. ISCR case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) While he is credited with paying off the debts covered by SOR ¶¶ 1.a and

1.e, he has failed to take meaningful voluntary steps to address his accumulated delinquent debts covered by SOR ¶¶ 1.b-1.d.

Debts reduced through involuntary initiatives, such as relying on state statutes of limitation to obtain debt cancellations before taking advantage of payment plan suggestions offered by financial counselors do not meet the mitigation requirements of MC ¶ 20(d), “the individual initiated and is adhering to a good-faith to repay overdue creditors or otherwise resolve debts.” In Applicant’s case, his reliance on his state’s statute of limitations as a predicate for obtaining debt cancellations from SOR creditors 1.b-1.d cannot be equated with good-faith efforts to repay overdue creditors. See, e.g., ISCR Case No. 03-04779 (App. Bd. July 2005); ISCR Case No. 02-3030, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001) While his payoff of his SOR ¶ 1.a home equity loan through his arranged short sale in 2019 left the creditor with a short fall of over \$20,000 and a potential claim for the deficiency balance as a sold-out junior lien holder, SOR creditor ¶ 1.a accepted its payoff from the sale as payment in full. As a result, this debt, along with the \$241 debt owed to SOR creditor ¶ 1.e, are resolved favorably to Applicant.

Foreign influence concerns

Security concerns are raised over risks that the personal online relationship Applicant shared with a girlfriend between 2018 and 2020, a Chinese national he met on an Asian dating website in August 2018, might expose Applicant to undue foreign influence by Chinese government authorities to access classified or sensitive information in Applicant’s possession or control. Applicant’s relationship with this Chinese national is still unclear and lacks any profile of the Chinese girlfriend and transcripts of what she and Applicant discussed in the two plus years they communicated with each other by text exchanges.

With so much still unknown about Applicant’s online relationship with the Chinese national covered by the SOR, his recurrent contacts with this individual present heightened security risks covered by two disqualifying conditions. (DC) ¶ 7(a) of the AGs for foreign influence: “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 DC ¶ 7(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,” apply to Applicant’s situation.

Because Applicant’s conduct associated with his two-year online relationship with his Chinese girlfriend was not alleged in the SOR, DC ¶ 7(i), “conduct, especially while traveling or residing outside the U.S., that make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country” is not directly applicable to the facts of this case. Allegations covered by SOR ¶ 2.a reflect the status

of Applicant's Chinese girlfriend and not Applicant's conduct associated with his online contacts with her.

To be sure, little is known about the background of Applicant's online Chinese girlfriend who is a Chinese national. All that is known about this girlfriend is that Applicant met her on an Asian dating website and she is citizen and resident of China who reportedly operates a jewelry store in China. Nothing material is known about this China individual's background and, in particular, whether she has any associations or ties to Chinese government officials interested in collecting classified, proprietary, or sensitive information in the United States. Past reported collection activities by Chinese government officials historically have been a major source of security concern about a security clearance holder's exposure to pressure, coercion, or influence by Chinese officials interested in acquiring sensitive U.S. technology from applicants through their friends and family members in China. See ISCR Case No. 17-04208 at 4-5 (App. Board August 7, 2019).

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relationships and contacts with persons who are citizens and residents of foreign countries in general. What is considered to be an acceptable risk in one country may not be in another. The geopolitical aims and policies of the particular country (in this case China) do matter.

Put another way, the AGs do take into account the country's demonstrated relations with the United States as an important consideration in gauging whether the particular relative, friend, or contact with citizenship and residency elsewhere create a heightened security risk. China is a country that targets the United States and its companies for economic and proprietary information and has a poor human rights record to contend with.

Were Applicant's personal relationship with his Chinese girlfriend alleged as a personal conduct concern, rather than as a foreign status concern that has since ceased, his China connections could raise continuing security concerns under both the foreign influence and personal conduct guidelines. Allegations covered in SOR ¶ 2.a do not reach Applicant's conduct associated with his online contacts with the identified individual that could take account of his contacts with an a Chinese individual that have since ceased.

Based on Applicant's cessation of all online contacts with the Chinese national in issue, no cognizable recurrence risks can be projected at this time that could place Applicant in a situation with this Chinese contact that could make Applicant vulnerable pressure or coercion by any Chinese authorities. Moreover, Applicant has been forthcoming about his online contacts with his Chinese girlfriend, enough to warrant the application of mitigating condition (MCs) ¶ 8(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," is fully applicable to Applicant's situation.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his finances are fully compatible with minimum standards for holding a clearance. While Applicant is entitled to credit for his distinguished military career and civilian contributions to the defense industry, his efforts are not enough at this time to overcome his failures to resolve his accumulated student loan debt delinquencies with good-faith initiatives following his wife's passing in 2013.

Applicant's past and present failures to sufficiently address and resolve his accumulated credit card debts (SOR ¶¶ 1.b-1.d) weaken his ability to mitigate the Government's financial concerns. After defaulting on his payment obligations with SOR creditors ¶¶ 1.b-1.d following his 2012 divorce, he permitted his debts to languish for many years without addressing them. These accumulated debt delinquencies reflect adversely on his ability to maintain his finances in a sufficiently stable manner to meet the minimum requirements for holding a security clearance. At this time, it is too soon to make safe predictions that Applicant will be able to maintain his finances in a stable manner compatible with minimum security clearance requirements for the foreseeable future.

Security concerns created by Applicant's two-year online relationship with a Chinese national are mitigated by Applicant's cessation of all contacts (online or otherwise) with his Chinese girlfriend with no manifest risks of recurrence. Because the allegations in the SOR cover his girlfriend's status as a Chinese citizen and resident, and no Applicant's personal conduct related to his contacts with the individual, security concerns associated with his girlfriend's status as a Chinese citizen and resident abated when Applicant ended his relationship with her. Overall, security concerns attributable to Applicant's online contacts with his Chinese girlfriend are mitigated and afford safe predictive judgments about applicant's ability to withstand risks of undue influence attributable to his online relationship with the Chinese national in issue.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are not mitigated. Applicant is credited with mitigating foreign influence security concerns. Eligibility for access to classified information is denied.

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:

Guideline F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.b-1.d:
Subparagraphs 1a and 1.e:

Against Applicant
For Applicant

Guideline B (FOREIGN INFLUENCE): FOR APPLICANT

Subparagraph 2.a: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge