



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



In the matter of:)
)
) ISCR Case No. 19-02792
)
Applicant for Security Clearance)

Appearances

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

09/07/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On November 12, 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 February 6, 2020, and requested a hearing before an administrative judge. The case was delayed because of the COVID-19 pandemic. The case was assigned to me on May 24, 2021. The hearing was convened as scheduled on June 11, 2021.

Evidence

Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit

additional documentary evidence. He submitted documents that I have marked AE D and E, and admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about Iraq. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of terrorism and ongoing human rights problems in Iraq.

Findings of Fact

Applicant is a 34-year-old prospective employee of a defense contractor. He will be hired if he receives a security clearance. He served in the U.S. Army Reserve from 2006 until he was honorably discharged in 2007. He is a high school graduate, and he has college credits, but he has not earned a degree. He has never married, and he has no children. (Transcript (Tr.) at 25, 31-32; GE 1-3)

Applicant was born in Iran. His father moved most of the family to Iraq in about 1995 for better job opportunities. Applicant's oldest sister was an adult and chose to remain in Iran. His father was outspoken about the Saddam Hussein regime and was fearful for his life. He fled with his wife and his children to Syria in about 1996. The family was granted refugee status, and his parents immigrated with Applicant and five of his siblings to the United States in 1999. Applicant became a U.S. citizen in 2008. (Tr. at 25-28; Applicant's response to SOR; GE 1-4)

Applicant's mother and siblings became U.S. citizens. His father returned to Iraq in 2003 after the U.S. invasion. He thought he could help rebuild the country. Applicant's mother went to Iraq later to be with her husband. They both returned to the United States in 2019. His father is a permanent resident. (Tr. at 20-21, 27-30, 49; Applicant's response to SOR; GE 1-4)

One of Applicant's sisters returned to Iraq with her husband, who is an Iraqi citizen. She is a dual citizen of the United States and Iraq. Applicant's oldest sister is a resident of Iran. Applicant is the youngest sibling, and his oldest sister is much older than him. They were never close, and he has not seen her since the rest of the family left Iran in 1995. He credibly testified that his family in Iraq and Iran could not be used to coerce or intimidate him into revealing classified information. (Tr. at 30-31, 54-56, 64-65; Applicant's response to SOR; GE 1-4)

Applicant worked under dangerous conditions in Iraq as a linguist in support of the U.S. mission from 2008 to 2009. A U.S. military officer praised his performance, commitment to the mission, and honesty. (Tr. at 16-17; GE 1, 2; AE C)

Applicant used some of the money he earned working overseas to start a business in 2009. The business was successful for a period, and then was undercut by a larger competitor. He incurred debts that he was unable to pay in an unsuccessful

attempt to keep the business afloat, until he finally sold it in 2012. (Tr. at 16-20, 32-33; GE 1, 2, 4)

Applicant had periods of unemployment and underemployment until about 2019, when he started working with a company that would contract with individuals for work, but the individuals needed a van. Applicant bought a van, and then added more until he had nine vans. The COVID-19 pandemic adversely affected the business, and he lost all but one van. (Tr. at 21-24, 33-36; GE 1, 2, 4)

The SOR alleges six delinquent debts with balances totaling about \$26,700. Applicant admitted that he owed all of the debts. All of the debts are listed on a September 2018 combined credit report. Three of the debts became delinquent in 2013 or earlier. The telecommunications debts alleged in SOR ¶¶ 1.b (\$129), 1.e (\$2,209), and 1.f (\$1,284) were reported by TransUnion and Experian as becoming delinquent in 2015, 2016, and 2018. (Applicant's response to SOR; GE 5, 6)

Applicant retained the services of a credit repair company. He has not made any payments toward any of the SOR debts. He asserted that the debt for the balance on an auto loan after the car was repossessed was paid through the sale of the car and insurance (commonly referred to as gap insurance). He stated that two of the telecommunications companies "basically stole [his] money." He was told by other creditors that the debts could not be located, and there is nothing else to be done. None of the debts are listed on the 2020 Equifax credit report or the 2021 combined credit report. Those reports show no accounts with balances. (Tr. at 36-45; GE 5-7; AE A)

Applicant stated that his finances could be better, but they are currently in good condition. He testified that he had about \$14,500 in his bank account. He did not pay all the federal incomes taxes due for tax years 2012 and 2014.¹ He stated that he received letters from the IRS about six months before the hearing. IRS tax transcripts indicate that as of June 14, 2021, he owed \$1,104 for tax year 2012 and \$4,973 for 2014. Applicant stated that he planned to pay his taxes, but it was difficult to get anyone from the IRS on the phone. He paid the taxes owed for both years on June 23, 2021. (Tr. at 48-54; AE D)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in August 2018. He did not report any financial or tax problems. He discussed his finances and several of the delinquent debts alleged in the SOR, but there is no indication that he ever told the investigator about his delinquent taxes. He admitted he owed back taxes at his hearing when specifically asked by Department Counsel. (Tr. at 51; GE 1, 2)

¹ The SOR did not allege that Applicant owed back taxes. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It can be used to assess Applicant's credibility, in determining the applicability of mitigating conditions, and during the whole-person analysis.

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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant's sister and her husband are residents of Iraq. His oldest sister is a resident of Iran. The potential for terrorist violence against U.S. interests and citizens remains high in Iraq, and it continues to have human rights problems. The concerns about Iran are well known, and are even greater than Iraq. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following is potentially applicable:

- (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.

I considered the totality of Applicant's ties to Iraq and Iran. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who served honorably in the U.S. military and worked overseas under dangerous conditions in support of the national defense. He credibly testified that his family in Iraq and Iran could not be used to coerce or intimidate him into revealing classified information. The Appeal Board has stated that such a statement, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security. *See, e.g.*, ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008). In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. *See, e.g.*, ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. *See, e.g.*, ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is 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 has a history of financial problems and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (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.

Applicant used some of the money he earned working overseas to start a business in 2009. The business was successful for a period, and then was undercut by a larger competitor. He incurred debts that he was unable to pay in an unsuccessful attempt to keep the business afloat until he sold it in 2012. That was followed by periods of unemployment and underemployment. Those events were beyond his control.

Applicant's current finances are apparently better, as reflected by his recent credit reports. The Appeal Board has noted that the fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. See, e.g., ISCR Case No. 14-04802 at 3 (App. Bd. Mar. 21, 2016). He testified that he had about \$14,500 in his bank account, but he never paid any of the SOR debts. Moreover, the first time he mentioned any unpaid taxes was when he was specifically asked about them at the hearing. He paid the 2012 and 2014 federal taxes after the hearing. The timing of resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who takes action to resolve financial problems only after being placed on notice his or her clearance is in jeopardy may lack the judgment, and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. See, e.g., ISCR Case No. 17-03229 at 4 (App. Bd. Jun. 7, 2019).

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶¶ 20(b), 20(c), and 20(e) are partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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 honorable military service and his work overseas in support of the U.S. military.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns, but he did not mitigate the financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a-2.e:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge