



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



In the matter of: )  
)  
) ISCR Case No. 19-01512  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: Asya Hogue, Esq.

10/05/2021

**Decision**

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 October 3, 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 December 17, 2019, and April 30, 2020, and requested a hearing before an administrative judge. The case was delayed because of the COVID-19 pandemic and Applicant was working overseas. The case was assigned to another administrative judge on January 27, 2021, and reassigned to me on May 25, 2021. The hearing was convened as scheduled on June 11, 2021. Applicant participated from Iraq.

**Evidence**

Government Exhibits (GE) 1 through 9 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through S, which

were admitted without objection. The record was held open for Applicant to submit additional documentary evidence. He submitted documents that were marked AE S through U. Because a document was already admitted as AE S during the hearing. I remarked the post-hearing exhibits as AE T through V and admitted them 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 56-year-old employee of a defense contractor, where he has worked since 2018. He seeks to retain a security clearance. He is a high school graduate. He married in 1990 and divorced in 1993. He married again in 1996 and divorced in 2012. He married for the third time in 2014 and divorced in 2018. He has two adult children and a minor child. (Transcript (Tr.) at 14-17; GE 1; AE K, L, S)

Applicant was born in Iraq. He immigrated to the United States as a refugee in 1987 because he and his family are religious minorities. He became a U.S. citizen in 1993. Most of his family have left Iraq, but his sister is a citizen and resident of Iraq. She remained in Iraq to help care for her husband's elderly parents. (Tr. at 17-22, 41-42; Applicant's response to SOR; GE 1-3; AE K)

Applicant has spent many years since 2003 working under dangerous conditions in Iraq as a linguist in support of the U.S. mission. He submitted documents and letters from U.S. military personnel attesting to his outstanding service and value to the mission. Applicant pledged his undivided allegiance and loyalty to the United States, which he considers his home. He credibly testified that his family in Iraq could not be used to coerce or intimidate him into revealing classified information. (Tr. at 18-20, 39; Applicant's response to SOR; GE 1-3; AE A, H-L)

Applicant has a history of financial problems. He filed a Chapter 7 bankruptcy case in 1997, and his debts were discharged the same year. He filed a Chapter 13 bankruptcy case in 2002. The case was dismissed in 2003. Applicant lost his home to foreclosure in 2007. Applicant stated that the bankruptcies resulted from back injuries and extended time off from work. He asserted that his wife at the time did not make their mortgage payments while he was working overseas as a linguist. (Tr. at 36-38; Applicant's response to SOR; GE 8, 9; AE A)

Applicant's family in Iraq and financial issues were the basis of a 2009 SOR and hearing. He received a favorable decision by the Administrative Judge in February 2010, who concluded that foreign influence and financial considerations security concerns were mitigated.

Applicant had additional financial problems within a few years of the favorable decision. The SOR alleges the two bankruptcy cases and seven delinquent debts totaling about \$17,080. The debts are established by credit reports and Applicant's admissions. The credit reports indicate that the debts became delinquent between 2012 and March 2014. Applicant again attributed his financial problems to his second wife, who did not pay their debts while he was working overseas. (Tr. at 22; Applicant's response to SOR; GE 4-7)

Applicant has settled and paid all of the SOR debts. The \$5,002 and \$2,379 debts to the same credit card company (SOR ¶¶ 1.a and 1.e) were settled through payments in 2018 for one account and payments from 2019 to 2020 for the other account. The creditor issued an IRS Form 1099-C (Cancellation of Debt) in August 2020 cancelling \$3,752, which is the difference between the amount that was owed the creditor and what the creditor received from Applicant in settlement of the debt. (AE D)

Applicant made his final payment of \$1,846 in December 2019 to settle the \$3,075 debt alleged in SOR ¶ 1.b. (AE F) He paid a total of \$2,900, with the last payment in March 2019, to settle the \$3,006 debt alleged in SOR ¶ 1.c. (AE U) He settled the \$2,600 debt alleged in SOR ¶ 1.d for an undisclosed amount in November 2019 (AE E). He settled the \$1,016 debt alleged in SOR ¶ 1.f for \$609, which he completed through payments in September and October 2019. (AE C, T) He paid \$280 in October 2019 to resolve the \$455 debt alleged in SOR ¶ 1.g. (AE V)

Applicant's current finances are sound. He has not accrued any new delinquent debts since 2014. He has not remarried. He handles his own finances now. He stated that online access and payments to accounts are easier than they used to be, and he does not have to rely on a stateside spouse to pay his bills while he is working overseas. (Tr. at 46-47; GE 7; AE P)

### **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 is a citizen and resident of Iraq. The potential for terrorist violence against U.S. interests and citizens remains high in Iraq, and it continues to have human rights problems. Applicant's connection to his sister creates 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. 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 worked overseas under dangerous conditions in support of the national defense. He credibly testified that his family in Iraq 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, including bankruptcy cases 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The most recent bankruptcy case was dismissed more than 18 years ago. The previous Administrative Judge determined in 2010 that Applicant's financial problems, which included the bankruptcy cases, were mitigated. I also find them to be mitigated. They are relevant primarily to show whether Applicant learned from the experiences. He did not learn enough because he had additional financial problems within a few years of the 2010 decision.

Applicant started settling and paying the SOR debts in 2018, before the SOR was issued. All of the SOR debts are resolved, and Applicant's current finances are sound. He has not accrued any new delinquent debts since 2014. He is divorced and handling his own finances.

I find that Applicant made a good-faith effort to pay his delinquent debts. His financial problems are resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are applicable.

### **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 with questions and 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 B:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	For Applicant
Subparagraphs 2.a-2.i:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge