



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



In the matter of:)
)
) ISCR Case No. 19-01974
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

04/21/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline B, foreign influence. Eligibility for access to classified information is denied.

Statement of the Case

On September 30, 2019, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective on June 8, 2017.

Applicant answered the SOR on October 28, 2019, and requested a hearing before an administrative judge. The case was assigned to me on February 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 14,

2022, scheduling the hearing for April 4, 2022, by Microsoft Teams. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 6. There were no objections to the exhibits, and they were admitted into evidence. Applicant testified and did not offer any exhibits. The record remained open until April 19, 2022, to permit Applicant and the Government to submit documents. Applicant submitted Applicant Exhibits (AE) A through K. There were no objections, and they were admitted into evidence, and the record closed. DOHA received the hearing transcript on April 13, 2022.

Procedural Matters

Based on testimonial evidence by Applicant, the Government moved to amend the SOR to add a security concern under Guideline B, foreign influence. (Tr. 62-65) The Government's allegation is:

“2.a You have a girlfriend who is a resident and citizen of the Republic of the Philippines.”

Applicant was offered an opportunity to continue the hearing and reconvene at a later date so he could prepare to address the new allegation. He waived his right to continue. The Government's motion was granted.

Request for Administrative Notice

The Government provided relevant documents (HE I) and requested administrative notice be taken of certain facts about the Philippines. 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, civil unrest, and ongoing human rights problems in the Philippines.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a and 1.b and denied the allegations in 1.c and 1.d. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 64 years old. He was married once from 2003 to 2006 and has no children. He earned a bachelor's degree in 1990. He was self-employed from 2004 to 2015 and was unemployed from approximately December 2015 to February 2017. He was underemployed until he began working for his present employer in May 2020. His current annual salary is approximately \$90,000. (Transcript (Tr.) 22-27)

Applicant attributed his delinquent debts to his period of unemployment and underemployment. In 2015, he lost a contract with the federal government. He attributed it to a cut in the defense budget at the time. Prior to then, he had met his financial obligations. He worked at different jobs and slowly increased his annual income. In 2019,

he decided to begin collecting Social Security benefits. Applicant provided a copy of his Social Security earning statement, which showed his annual earnings: 2014-\$23,000; 2015-\$20,000; 2016-\$13,600; 2017-\$25,000; 2018-\$32,000; 2019-\$47,000; 2020-\$55,000 and 2021-\$88,000. (Tr. 49-55; AE I)

Applicant inherited a house from his parents that is paid for and has no mortgage. His car is paid. Since he began his current employment he has saved approximately \$6,000 and contributed a combined amount of about \$11,000 in his Individual Retirement Account and his 401K pension plan. He also invested about \$1,400 in stocks. Post-hearing, Applicant provided information that after receiving Social Security benefits he changed his mind and he has repaid the Social Security Administration \$17,000 that he received. He also provided an August 2009 credit report to show at that time his credit score was 745. (Tr. 27- 32, 56-58; AE C, D, E, F, H)

The debts alleged in the SOR are corroborated by Applicant's admissions, statements, and credit reports from March 2018, April 2019, February 2021, and March 2022. (GE 1, 2, 3, 4, 5, 6)

Applicant purchased a boat when he was employed and owned it for a couple of years. In 2016, when he was no longer employed he was unable to make the loan payments. He voluntarily returned the boat to the creditor. (SOR ¶ 1.a-\$22,876) He disclosed this debt on his February 2018 security clearance application (SCA) and stated it was resolved. In December 2018, Applicant was interviewed by a government investigator. He told the investigator that after he returned the boat to the creditor he believed the issue was resolved. He could not explain how he believed it was resolved. He testified that he contacted the bank that gave him the loan for the boat in 2016, 2017 and 2018. The bank also contacted him wanting to collect the debt and offered him a settlement of \$8,000. He could not afford the settlement because he did not have the money at the time. Applicant testified that he is near retirement and does not intend to pay this debt. Post-hearing, he stated that the debt was charged off in 2016 and the account was closed in April 2021. It is unresolved. (Tr. 37-40, 55-56)

The debt in SOR ¶ 1.b (\$15,252) was a signature loan that Applicant obtained. He stopped paying the loan when he was unemployed and could not afford to pay. He disclosed this debt on his SCA and said he could not afford to pay it. He told the government investigator that he reached out to the creditor in December 2017 after he got a job and was told the loan was in collection, and he would be contacted by the creditor's attorneys. He testified that he was waiting to hear from the attorney and never did. At that time, he made no other attempts to resolve the debt. At his hearing, he testified that he did not intend to pay the debt. After his hearing, he contacted the attorney of the creditor and was advised it could not locate the account. The debt is unresolved. (Tr. 34-37, 55-56)

The debt in SOR ¶ 1.c (\$5,704) was for a credit card that became delinquent in 2016. In 2018, Applicant reached a settlement with the creditor and made monthly

payments to resolve the debt. It is listed on his credit report as settled. This debt was resolved in February 2021. (Tr. 32, 40-43, 48-49; Answer to SOR; GE 4, 6)

Applicant testified that he could not identify the medical debt alleged in SOR ¶ 1.d (\$264). He attempted to contact the creditor and was told the company no longer existed. He thought it could possibly be for a laboratory expense. He provided a letter from the laboratory service noting he had a zero balance. He has made a reasonable effort to resolve this debt. I find in his favor for this debt. (Tr. 43-47)

Applicant testified that in June 2020, he met a woman from the Philippines through an Internet site. They text or talk a couple of times a day. They may have a video chat once or twice a day. She told him she had lost her accounting job and was unemployed. In February 2021, Applicant began sending her \$400 a month and continues to do so. Applicant stated she is now employed, but it is not enough to support herself. He does not know who her employer is, but believes it is a private company. He is unaware if she or her family have government contacts, but believes her parents are retired and live in the country. In March 2022, he traveled to the Philippines to visit her for two weeks. He refers to her as his girlfriend and confirmed he has a romantic relationship with her. He told his facility security officer (FSO) about 18 months ago that he intended to travel to the Philippines in the future. He did not tell his FSO about the actual trip until his return. He could not recall if he told the FSO that he was visiting his girlfriend in the Philippines. He estimated that his trip cost about \$3,000 to \$3,500. He provided documents to show he received a foreign travel debrief upon his return from the Philippines in late March 2022. His foreign travel debriefing document asked if during his foreign travel he made any acquaintances with any foreign nationals. He answered “no.” He provided a document to show he enrolled in United States Department of State Smart Traveler Enrollment Program indicating he was traveling to the Philippines. (Tr. 58-81; AE G)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 F: Financial Considerations

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant had delinquent debts incurred in 2016 that he was unable to pay due to unemployment and underemployment. He has had a well-paying job since 2020. He testified that he did not intend to pay the two large delinquent debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 attributes his financial issues to a period of unemployment and underemployment. He resolved one credit-card debt (SOR ¶ 1.c) through a settlement agreement and payment plan. He attempted to determine the creditor for the debt in SOR ¶ 1.d, but was unable. AG ¶ 20(d) applies to the debt in SOR ¶ 1.c and AG ¶ 20(e) applies to the debt in SOR ¶ 1.d. These debts are resolved in his favor.

Applicant has been aware of his obligation to repay the debts in SOR ¶¶ 1.a and 1.b, and has taken minimal affirmative action to contact the creditors and make payment arrangements. He disclosed the debts on his February 2018 SCA and was questioned about them by a government investigator in December 2018, which should have prompted him to take action, but he failed to do so. He failed to explain to the investigator how he believed the issue had been resolved regarding the debt in SOR ¶ 1.a. He testified that he was waiting for a lawyer to call him regarding his delinquent loan payment in SOR ¶ 1.b. He testified he did not intend to pay the debts alleged in SOR ¶¶ 1.a and 1.b. At one point, Applicant was unable to pay these debts because he did not have the money. Some of Applicant's financial issues were beyond his control. However, he failed to provide evidence that he has acted responsibly since he has been gainfully employed. His failure to address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply. AG ¶ 20(b) has minimal application. Applicant did not offer evidence that he has participated in financial counseling. AG ¶ 20(c) does not apply.

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.

There is a significant threat of terrorism and ongoing human rights problems in the Philippines. Applicant's foreign contact creates a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, through his girlfriend. Applicant provided insufficient information about the girlfriend regarding her background or connection to the Philippine government. It is clear Applicant did not hide that he was traveling to the Philippines, but he testified that he could not remember if he told his FSO that he was visiting his girlfriend in the Philippines and that she is a resident and citizen of that country. His foreign travel debriefing document asked if during his foreign travel he made any acquaintances with any foreign nationals. He answered "no." Perhaps he misinterpreted the question because he already had a relationship with his girlfriend, a foreign national, before he traveled. It does not appear he disclosed his relationship with a foreign national before or after his travel. 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 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;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation; and

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

Applicant failed to provide sufficient information about his girlfriend in the Philippines to make a determination that it is unlikely he will be placed in a position of having to choose between the interests of his girlfriend and the interest of the United States. He testified he met her through the Internet and they text and talk often. He began sending her money after eight months, but could not provide detailed information about her employment, her contact with the Philippine government, or that of her family. Applicant made mostly suppositions about her and her family. He testified that he is in a romantic relationship with her. He first met her in person in March 2022. His contact is more than casual. There is no evidence that he has advised the appropriate authorities that he maintains a romantic relationship with a person in the Philippines. Applicant has the burden of persuasion to show that his foreign contact does not create a security concern. He has failed to provide sufficient evidence to find in his favor.

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 the 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations and Guideline B, foreign influence.

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.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge