



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 21-00975
)
 Applicant for Security Clearance)

Appearances

For Government: Jeffrey Kent, Esq., Department Counsel
For Applicant: *Pro se*

10/24/2022

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and B (Foreign Influence). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 26, 2020. On July 1, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and B. The DCSA CAF acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on July 14, 2021, and requested a hearing before an administrative judge. Department Counsel was ready to proceed in November 2021 and

the case was assigned to an administrative judge. It was reassigned to me on June 3, 2022. On June 17, Applicant requested that his hearing be postponed, because he was being reassigned to an overseas location. His request was granted. On July 1, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on August 25, 2022. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I held the record open until September 23, 2022, to enable him to submit documentary evidence. He timely submitted AX B through AX G. DOHA received the transcript (Tr.) on September 7, 2022.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Nigeria. The request and supporting documents were not admitted in evidence but are attached to the record as Hearing Exhibit I. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 45-year-old security officer employed by a defense contractor since January 2021. He served on active duty in the U.S. Navy from March 1996 to August 2005, in the U.S. Navy Reserve (USNR) from October 2005 to April 2007, and in the U.S. Army Reserve (USAR) from April 2007 to September 2019, when he retired from the USAR as a staff sergeant. (Tr. 17.) He served in a combat zone from December 2018 to August 2019 and has received an Army Achievement Medal and various service medals. (AX B.) He has worked for defense contractors since May 2011. He has held a security clearance since January 2008.

Applicant was married from September 2000 to September 2008, March to October 2011, February 2012 to September 2014, and October 2019 until January 2022. He has two children, ages 20 and 16. His most recent marriage was to a citizen of Nigeria, giving rise to the security concerns under Guideline B.

The SOR alleges 17 delinquent debts, including federal tax debts for tax years 2011, 2015, and 2018. The evidence concerning the debts is summarized below.

SOR ¶ 1.a: federal tax debt of \$3,050 for tax year 2011. Applicant testified that he worked overseas for six months and then vacationed in another overseas country for four months, erroneously thinking that the four months of overseas vacation continued his eligibility for tax-exempt status. He started a payment plan with the IRS in May 2021, with one \$250 payment and followed by monthly \$750 payments. After three or four

months, he stopped making payments when his ex-wife passed away and he became financially responsible for his daughter, who had been living with her mother. (Tr. 37-40.) He made a payment of \$2,803 on September 15, 2022. (AX G.) The debt is resolved.

SOR ¶ 1.b: federal tax debt of \$2,790 and failure to file for tax year 2015. Applicant testified that he was living in a high-cost area in 2015, and when he computed his taxes, he found that he could not afford to pay them. (Tr. 43-44.) He filed this return in March 2021. (Tr. 60-61.) He did not submit any evidence of payments on this tax debt.

SOR ¶ 1.c: federal tax debt of \$509 for tax year 2018. Applicant testified that this debt was for tax preparation and that he did not pay it immediately because his financial situation was uncertain, and then he forgot about it. (Tr. 46-47.) This debt was paid on September 16, 2022. (AX E; AX F.)

SOR ¶¶ 1.d and 1.e: medical debt placed for collection of \$4,130. Applicant testified that this debt was incurred when he suffered a back injury and his insurance did not pay the full amount. As of the date of the hearing, he had not taken any action to resolve this debt. (Tr. 49-50.)

SOR ¶ 1.e: medical debt placed for collection of \$2,699. Applicant testified that this debt was incurred for ambulance service after he was injured in a gym, and it was not covered by insurance. As of the date of the hearing, he had not taken any action to resolve this debt. (Tr. 51.)

SOR ¶ 1.f: debt to jewelry store placed for collection of \$548. Applicant testified that this debt was for jewelry, and it became delinquent when he could not afford to pay it. The debt was not resolved because he forgot about it. (Tr. 52.)

SOR ¶ 1.g: credit card account placed for collection of \$399. Applicant testified that he could not remember how this debt was incurred. (Tr. 53.) It is not resolved.

SOR ¶¶ 1.h-1.i: student loans placed for collection of \$7,568; \$5,158; \$157; \$3,677; and \$8,276. Applicant testified that he incurred these loans for his own education, and they became delinquent in 2017. He consolidated his loans in 2020 but could not afford the payments. He applied for consolidation again in 2021, which was approved, but he did not make any payments after the consolidation. At present, he is not making any payments because of the COVID-19 deferment. He testified that he has saved \$35,000 to pay off the loans in a lump sum by the end of 2022. (Tr. 55-60.)

SOR ¶ 1.m: collection account for \$532. Applicant was unable to identify this debt at the hearing. It is not resolved. (Tr. 61.)

SOR ¶ 1.n: collection account for \$188. Applicant testified that this was a utility bill and that he had made arrangements to pay it in full. (Tr. 62.) He submitted no evidence that he made any payments. It is not resolved.

SOR ¶ 1.o: past-due rent placed for collection of \$1,658. Applicant testified that this debt was incurred because he did not give a rental agency a 30-day notice before he moved out and deployed. It is not resolved. (Tr. 62.)

SOR ¶ 1.p: medical debt placed for collection of \$226. Applicant provided no information about this debt. It is not resolved. (Tr. 63.)

SOR ¶ 1.q: utility bill placed for collection of \$124. Applicant provided no information about this debt. It is not resolved. (Tr. 63.)

Applicant testified that he currently earns about \$60,000 per year, which is exempt from federal income taxes because he is overseas. (Tr. 35.) His contract provides for base pay of \$10.00 per hour, with an overtime rate of 125% of base pay, holiday pay of 200% of base pay, and a completion bonus of 10% of base pay for regular hours worked at the completion of the 12-month contract. (AX C.) His gross monthly pay for the two-week period ending on August 27, 2022, was \$1,629. (AX D.)

When Applicant's ex-wife passed away in 2021, his daughter began living with a grandparent, and his child-support obligation of about \$400-450 per month stopped. He opened a joint bank account with his daughter, and he deposits about \$250 per month into the account. (Tr. 65-66.) In addition, he sends his disabled mother a total of about \$3,000 per year, and he sends his disabled father about \$6,000 per year. (Tr. 67-68.) He sent his son \$3,000 last Christmas. (Tr. 69.)

Applicant met his most recent wife in 2018 through social media. He was on active duty in the USAR at the time, and he took leave for five weeks to meet with her in Nigeria. He proposed marriage, she accepted, and they were married in Nigeria. Applicant returned to his overseas duty station, and his wife came to the United States in March 2021 on a temporary green card. She stayed with Applicant's mother for a while and then moved out in June 2021. However, his ex-wife continues to use Applicant's mother's address as a point of contact. His ex-wife has two children, ages 11 and 6, who stayed in Nigeria with her family. He has no feelings of obligation for her children.

Applicant decided that a divorce was "the right thing to do" because they were unable to live together. They were divorced in January 2022. The terms of the divorce included a payment of \$11,000 to his wife to make sure that she was financially stable. (AX A; Tr. 25-26.) He remains in contact with his ex-wife, talking to her every week or two. His ex-wife's green card will expire in March 2023, and he expects that she will return to Nigeria. Applicant testified that he wrote a letter to U.S. immigration authorities, requesting that any application for a permanent green card be denied. (Tr. 28.) His ex-wife's father is deceased, and her mother has no connection to the Nigerian government or military. (Tr. 30-34.)

Nigeria is a federal republic with an elected president. It faces serious security challenges due to armed Islamist insurgencies, cybercrime, terrorism, and violent crime. There are significant human rights abuses in Nigeria, including arbitrary killings by

government and non-state actors, forced disappearances, and arbitrary arrest or detention. The Department of State has issued a Level 3 (Reconsider Travel) travel advisory due to crime, terrorism, civil unrest, kidnapping, and maritime crime.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

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, an administrative judge applies these guidelines 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 and reliable information about the person, past and present, favorable and unfavorable.

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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant’s admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 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;

AG ¶ 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 resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant encountered several conditions beyond his control: his multiple divorces, the death of his ex-wife that shifted the entire financial burden of caring for his daughter to him, and injuries not covered by insurance. His mistaken belief that his pay was tax-exempt after he left his overseas job and spent four months on vacation was not a condition beyond his control. He has acted responsibly regarding two of his tax debts, but he has not acted responsibly regarding the other debts alleged in the SOR.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling, and his financial problems are not yet under control.

AG ¶ 20(d) is established for the tax debts alleged in SOR ¶¶ 1.a and 1.c. It is not established for the tax debt alleged in SOR ¶ 1.b. It is not established for the delinquent

student loans because he did not resume making payments after they were consolidated in 2021. Although payments on student loans were deferred due to COVID-19, Appellant's student loans were delinquent before the forbearance went into effect. Accordingly, there is a continuing concern that he will not make payments on his student loans when they are no longer in forbearance. He testified that he had made arrangements to pay the utility bill alleged in SOR ¶ 1.n, but he submitted no evidence that he had made any payments. A promise to pay or otherwise resolve a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner. ISCR Case No. 17-04110 (App. Bd. Sept. 26, 2019).

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR.

AG ¶ 20(g) is partially established. Applicant paid the taxes due for tax years 2011 and 2018, and he has filed his past-due return for tax year 2015. He submitted no evidence that he has paid or has made a payment agreement for tax year 2015. His partial compliance with his tax obligations by filing the past-due return for 2015 does not end the inquiry. A security clearance adjudication is not a tax-enforcement procedure. It is an evaluation of an individual's judgment, reliability, and trustworthiness. The fact that Applicant has filed his past-due return "does not preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014).

Guideline B, Foreign Influence

The security concern under this guideline 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 maybe 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 following disqualifying conditions under this guideline are potentially applicable:

AG ¶ 7(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;

AG ¶ 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; and

AG ¶ 7(e): shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a) and 7(e) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. See ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). “Heightened risk” is not a high standard. See, e.g., ISCR Case No.17-03026 at 5 (App. Bd. Jan. 16, 2019). It is a level of risk one step above a State Department Level 1 travel advisory (“exercise normal precaution”) and equivalent to the Level 2 advisory (“exercise increased caution”). The State Department travel advisory for Nigeria is Level 3 (reconsider travel) due to crime, terrorism, civil unrest, and violent crime.

Applicant’s ex-wife is currently living in the United States, but his former mother-in-law and his ex-wife’s two children are living in Nigeria. Applicant did not express any feelings of obligation toward his ex-wife’s mother and children. However, notwithstanding the divorce, Applicant has demonstrated feelings of obligation toward his ex-wife, and he remains in contact with her. He expects his ex-wife to return to Nigeria when her temporary green card expires in March 2023. His continuing feelings of obligation to his ex-wife and the unsettled conditions in Nigeria are sufficient to establish the “heightened risk” in AG ¶¶ 7(a) and 7(e) and the potential conflict of interest in AG ¶ 7(b).

The following mitigating conditions are potentially applicable:

AG ¶ 8(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; and

AG ¶ 8(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;

AG ¶ 8(a) is not established. Notwithstanding Applicant's divorce, he continues to feel an obligation to his ex-wife that is sufficient to raise a possibility of having to choose between the interests of his ex-wife and the interests of the United States.

AG ¶ 8(b) is established. Applicant's sense of obligation to his ex-wife is minimal compared to his deep and longstanding relationships and loyalties in the United States.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines F and B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's lengthy and honorable military service. I have considered that he has worked for defense contractors for many years and held a security clearance since January 2008. After weighing the disqualifying and mitigating conditions under those guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his previous marriage to a Nigerian woman, but he has not mitigated the security concerns raised by his delinquent debts and tax delinquencies.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.q:	Against Applicant
Paragraph 2, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge