



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



In the matter of:)
)
) ISCR Case No. 21-02710
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

12/06/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On March 23, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline B, foreign influence. 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 within the DOD on June 8, 2017.

Applicant answered the SOR on April 14, 2022, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on July 14, 2022.

He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 4. Applicant submitted a response to the FORM, which included documents marked as Applicant Exhibits (AE) A through C. There were no objections to the Items or AEs offered and they are admitted into evidence. The case was assigned to me on September 29, 2022.

Administrative and Procedural Matters

Department Counsel requested that I take administrative notice of certain facts about Turkey (Item 5). 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 abuses in Turkey.

In the FORM, Department Counsel moved to withdraw SOR ¶ 2.b. The motion was granted without objection.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.e. He denied the allegations in SOR ¶¶ 1.b through 1.d, 1.f through 1.i, and 2.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old. He is a high school graduate and earned some college credits, but not a degree. He served in the military from January 1989 to March 1990 and received an honorable discharge. Applicant married in Turkey in 2000. His wife is a dual citizen of Turkey and the United States. They have two children, ages 21 and 19 years old. (Item 2)

In his March 2021 security clearance application (SCA), Applicant did not disclose any periods of unemployment. He worked for a federal contractor from 2009 to 2018. He left his job for a new opportunity. He worked for a different federal contractor from January 2019 to September 2019, and was laid off when his department was eliminated. He worked for different employers from September 2019, including a period of self-employment from March 2020 to June 2020, until his present employment in December 2020. (Item 2)

In Applicant's SCA, he disclosed that he had not filed his 2018 federal income tax return because his accountant was amending his return. He stated he owed \$4,000, but the amendment would show he did not owe a balance. He said he was working with his accountant. He also disclosed in his SCA that he had not filed his 2019 federal tax return and was working with his accountant to file that tax return. He stated, "We have currently hired [CE] and they are in the process of submitting our 2019 tax return and also will be

amending my 2018 tax return.” He provided no explanation for his failure to timely file either return. (Item 2)

Applicant was interviewed by a government investigator in April 2021. He told the investigator that he had been late filing his federal income tax returns for tax years 2018 and 2019. He said he contacted the IRS and had been granted extensions for both tax years. He said he did not owe taxes for either year and would receive a refund. (Item 3)

In Applicant’s April 2022 answer to the SOR, he said, “all taxes are being filed to date, currently 2020 and 2021 and are expected to be completed by our CPA by June 1, 2022.” (Item 1) He said he had requested extensions at the appropriate time, and he was waiting for his accountant to complete his paperwork to file the tax returns. He said he did not owe taxes. He said his accountant informed him that there was a backlog of 2020 filings and his tax returns would be completed by June 1, 2022. He said he was told his 2020 tax returns would be filed by then and his 2021 return would follow shortly thereafter. He believed he would receive a refund. He said he would continue to work with his accountant to ensure timely filing. (Item 1)

In the FORM, Applicant was put on notice as to what documents were required to substantiate his claims about his tax returns. In Applicant’s response to the FORM, he did not say anything about his delinquent tax returns. Applicant did not provide a copy of his 2018 federal tax return that he said was being amended, which presumably would have been filed if he was requesting it be amended. He did not provide documentation to show he had timely filed for extensions for tax years 2018, 2019, or 2020. He did not provide copies of filed tax returns for 2018, 2019, and 2020, or any documentation from his accountant. He did not provide an explanation for his failure to timely file for the three tax years. (AE A)

The SOR alleges eight delinquent debts (SOR ¶¶ 1.b through 1.i). They are corroborated by Applicant’s admissions in his SCA, statements to the government investigator, and a March 2021 credit bureau report. Applicant provided proof that the collection account in SOR ¶ 1.b (\$2,424) was settled for \$1,940 in February 2022. Applicant provided a copy of the page from his credit report showing this debt. The complete credit report was not provided. (AE B, C)

In Applicant’s SCA, he disclosed the debts alleged in SOR ¶¶ 1.e (\$4,735), 1.f (\$7,389), 1.g (\$4,431), 1.h (\$3,654), and 1.i (\$3,532). He stated they were credit card debts that he fell behind on paying. The same collection company holds the debts in SOR ¶¶ 1.g, 1.h and 1.f. He said he contacted the collection company and it was unwilling to accept a reduced payment. He was going to contact an attorney to assist him. He also disclosed the debt in SOR ¶ 1.e (\$4,735) and said it was a credit card debt now owned by a collection company. He had contacted the company to settle the debt. He said the debt owed in SOR ¶ 1.i (\$3,532), also a credit card debt held by a collection company, was not owed to the creditor and would be dismissed in court. No documentation regarding any of the debts was provided. (Item 2)

In his April 2021 background interview, Applicant explained that he incurred credit card debts for moving expenses in 2015, when he moved to a different state and his wife was not working. He acknowledged to the investigator that he owed the debts in SOR ¶¶ 1.f, 1.g and 1.h and they were not being paid. He stated that in 2019, he purchased a boat for \$35,000 and as he was driving it to his residence the engine failed. He sold the boat later in 2019 for \$13,000. He also stated that during this time he was building a new home. He told the investigator that he would not pay certain debts owed to the collection company as alleged in SOR until they accepted his offer to pay a lesser amount.

Applicant stated in his SOR answer that he paid the debts in SOR ¶¶ 1.c (\$65), 1.d (\$319), 1.f, 1.g, 1.h and 1.i, and they were removed from his credit report. He did not provide documents to show he paid these debts and they were removed from his credit report. Regarding the debt in SOR ¶ 1.e, he stated that he had reached a payment arrangement with the creditor and the debt would be resolved by May 2022. He did not provide proof the debt was paid. (Item 1)

Applicant disclosed in his SCA that he and his family took cruises in 2017 and 2018. He stated, "We may have outstanding debt but I have more than \$300,000 in investments waiting for them to mature and previous debt to be settled." Applicant did not elaborate on his investments. (Item 1)

Applicant stated in his SOR answer "All noted previous collections will be paid and satisfied by May 2022. (Item 1) He further stated, "All taxes are being filed to date and currently 2020 and 2021 are expected to be completed by our CPA by June 1st, 2022." (Item 1) He stated he had put measures such as budgeting, investing and savings plans in place to prevent any future problems. He had investments that provided a significant cushion. He stated, "Regardless money is no longer a concern considering the available funds to date and [incoming] capital from the sale of our house that will provide \$160K over what is owed on the mortgage." No substantiating documents were provided. (Item 1)

Applicant stated in his response to the FORM, "During 2019 and into 2020, we had some unexpected expenses and life events, while the debts added up to an unsustainable amount." He further stated that he had always planned to pay his debts sooner, but he had extra expenses for his daughter who was attending college and his move. He said the pandemic also affected him. He said he was investing and saving money.

The SOR alleged that Applicant's mother-in-law is a dual citizen of the United States and Turkey and resides in Turkey. Applicant stated in his SOR answer that his mother-in-law is a permanent resident of the United States and holds a green card. She is a citizen of Turkey. He disclosed in his SCA that prior to the pandemic, she would live with them in the United States for most of the year and said during his background interview that she lived with them for two to six months a year, but due to the pandemic, she had not been to the U.S. since 2020. Prior to her retirement, she worked in the financial world and was not affiliated with any government entity. She was divorced from

her husband. Applicant stated that she is close with her grandchildren, who were born in and are loyal to the United States, and would never put them in jeopardy or at risk.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

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

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (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.

Applicant failed to timely file his 2018, 2019, and 2020 federal income tax returns. He has numerous delinquent debts that he failed to pay. 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 persons 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

(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.

Applicant failed to provide documentary proof that he filed his 2018, 2019 and 2020 federal tax returns. He failed to provide any mitigation for why he failed to timely file those federal income tax returns for three years. AG ¶ 20(g) does not apply.

Applicant stated that he has paid all of the debts alleged in the SOR, or they would be paid by May 2022. He provided proof that he settled the debt in SOR ¶ 1.b in February 2022. AG ¶ 20(d) applies to that debt. He failed to provide proof that he paid the remaining debts alleged in the SOR.

Applicant attributed his delinquent debts to his 2015 move, purchasing a boat in 2019 and selling it later for less than he paid, buying a new house, unexpected college expenses, and life events. His move may have been beyond his control, but he chose to purchase a boat and house, either ignoring his credit card debts or increasing them. His daughter's unexpected college expenses may have been beyond his control, but it is unknown what life events affected his finances. Applicant alludes to investments he has, but does not provide further details. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He did not. His debts began accumulating when he moved in 2015 and in 2017 and 2018, he took his family on vacation cruises and in 2019, he purchased a boat. He has not provided evidence that he paid the alleged debts. AG ¶ 20(b) has minimal application.

There is no evidence that Applicant has received financial counseling. Although he states his finances are under control, his failure to provide corroborating evidence that his tax returns are filed or proof he paid his delinquent debts, prevents the application of AG

¶ 20(c). Applicant's debts are recent and there is insufficient evidence that his financial issues occurred under circumstances that are unlikely to recur. His behavior casts doubt on his reliability, trustworthiness, and good judgment.

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;

(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

(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.

There is a significant threat of terrorism and ongoing human rights problems in Turkey. I considered the totality of Applicant's ties to Turkey. 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's mother-in-law is a citizen of Turkey and a permanent resident of the United States. She visits Applicant and his family in the United States for extended periods. She is retired, worked in the financial world, and has no ties to government entities. Because of Turkey's threat of terrorism and human rights issues, there is a heightened risk of foreign exploitation, manipulation, inducement, pressure, and coercion. AG ¶¶ 7(a), 7(b) and 7(e) apply.

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

(a) the nature of the relationships with foreign person, 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.

Applicant's mother-in-law is a permanent resident of the United States. When she visits Applicant and his family, she stays for extended periods. She is close to her grandchildren and would never jeopardize their safety. She is retired and has no ties to the government of Turkey. It is unlikely Applicant would be placed in a position of having to choose between his mother-in-law's interests and that of the United States. AG 8(a) applies.

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 Guideline F and B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Insufficient evidence was provided and Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations. He mitigated the security concerns under 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.i:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Withdrawn

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