



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



In the matter of:)
)
) ISCR Case No. 21-02260
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2023

Decision

BENSON, Pamela C., Administrative Judge:

Although the Guideline B (foreign influence) security concerns were found in Applicant’s favor, the Guideline E (personal conduct) and Guideline F (financial considerations) security concerns were not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 20, 2021. The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on January 25, 2022, detailing security concerns under Guidelines E, B, and F. 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on February 9, 2022, and he elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On September 22, 2022, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 8. Applicant received the FORM on November 10, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant failed to file objections or submit any documentation. Items 1 through 8 were admitted into evidence without objection. The case was assigned to me on January 26, 2023.

Findings of Fact

In Applicant's SOR response, he denied SOR ¶¶ 1.a, 1.b, 1.c, 3.a, and 3.b. He admitted SOR ¶ 2.a. Applicant's admission is accepted as a finding of fact. (Item 1)

Applicant is 56 years old. He enlisted in the U.S. Air Force in 1985, and he received an honorable discharge in 1996. He was married and divorced twice. He was married a third time to a Filipino national in 2000, and the marriage was annulled in 2013. In August 2020, he met a female citizen of Thailand online, with whom he maintains a long-distance romantic relationship. Since January 2021, Applicant has worked for a government contractor, and his job title is fuel-systems employee. (Items 1, 3 and 4)

Personal Conduct

The SOR alleges personal conduct security concerns under Guideline E. On April 25, 2013, Applicant's employment with a government contractor was terminated following an investigation into computer misuse. His United Arab Emirates (UAE) base privileges were revoked, and he was barred from the UAE worksite. (SOR ¶ 1.a.) When he completed the security clearance application in January 2021, he deliberately misrepresented his 2013 employment termination. He listed that his employment with the government contractor began in March 2005 continuing through March 2014, and his employment concluded at that time due to "end of contract." (SOR ¶ 1.b.) Applicant denied these allegations. (Items 1 and 2)

In his SOR response, Applicant claimed that he was released from employment "due to other issues and slots closing." He stated that he inadvertently misdated the end date (March 2014) of his employment "by a few months." He provided a letter from the government contractor as supporting evidence. The letter dated April 25, 2013, stated that Applicant was being terminated effective the date of the letter "due to customer restrictions in [his] current position." It did not mention that his employment ended after fulfillment of a contract, as listed on the 2021 SCA. The Government submitted an adverse incident report and a current email communication from the human resources (HR) department of this former employer. Both documents showed that Applicant was terminated in 2013 as follows: (Items 1, 2, 4 and 5)

“Subject’s employment with [DOD contractor] has been terminated due to ongoing investigation into computer misuse. Base pass was revoked by UAE and he was barred from the UAE site. Investigation was being conducted by the Emirates.” (Item 5)

SOR ¶ 1.c alleges that Applicant falsified his January 2021 SCA by deliberately omitting information about his close and continuing contact with a citizen of Thailand, with whom he had a romantic relationship and to whom he was providing financial support at the time. In his February 2022 SOR response, he denied this allegation, but admitted that he is very close with the foreign national and he had recently asked her to marry him. Since she is his fiancée, he expected that if she requested monetary assistance in the future, he would provide it to her. (Items 1, 2, 3 and 4)

Foreign Influence

The SOR alleges a Guideline B security concern that Applicant has maintained close and continuing contact with a citizen of Thailand, whom he met online in August 2020, and to whom he has provided financial support. (SOR ¶ 2.a.) In his February 2022 SOR response, he admitted this information and explained that they are now engaged but they have not set a wedding date. During his background interview in March 2021, he freely disclosed, without confrontation by the investigator, that they met online in August 2020, after she was introduced to him by mutual friends. She is independently wealthy and does not need to work. They communicate with each other almost daily. She has a bachelor’s degree in hotel management. In February 2021, she requested that he send her \$200, and he did so without requiring an explanation. She is unaware of this job and his current DOD security clearance. She is not affiliated with Thailand’s government, and he made an inadvertent mistake by not listing her on his SCA. He stated that he has served honorably in the U.S. military for over a decade, he is an American first, and he would never betray his country. (Items 1, 2, 3 and 4)

Financial Considerations

The SOR alleges under Guideline F that Applicant has an outstanding state tax lien filed against him in the amount of approximately \$6,000, and he has a consumer credit account that was charged off in 2020 for \$11,232. (SOR ¶¶ 3.a and 3.b.) Applicant denied these allegations. He claimed that he never resided in the state that filed a tax lien against him, and he was considering hiring a company or firm to dispute this lien. During Applicant’s 2012 clearance investigation, a February 2012 credit report listed this September 2010 state tax lien. Court records dated October 2021 also report this outstanding state tax lien. (Items 1, 2, 6 and 8)

Applicant’s February 2021 credit report lists the delinquent credit account. Applicant claimed in his SOR response that his delinquent consumer account was paid following his March 2021 background interview. He had opened this account to make repairs on his home. He did not submit any documentary evidence to corroborate his claim. (Items 1, 2, 3, 6 and 7)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 access to classified information 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. Under Directive ¶ E3.1.15, 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.

Analysis

Guideline E: Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 includes the following conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations.

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

In his January 2021 SCA, Applicant deliberately omitted his 2013 employment termination. In April 2013, his employment was terminated for misconduct. Department Counsel did not prove that Applicant intentionally falsified information on the SCA about his close continuing relationship with a foreign national, and that he had recently provided monetary support to this foreign national. AG ¶¶ 16(a), 16(d), and 16(e) apply.

AG ¶ 17 provides the following potential conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

During the March 2021 background interview, Applicant provided details about the foreign national. He told the investigator that he should have listed her on the January 2021 SCA, and it was an oversight on his part. He disclosed during his interview that he had provided the female foreign national \$200 in February 2021. In this instance, Applicant could not have intentionally omitted information about providing financial support to a foreign national on the January 2021 SCA because the conduct had not yet occurred. I find Applicant was candid and provided prompt information about his relationship with the foreign national without confrontation from the investigator during his March 2021 background interview. Personal conduct security concerns are mitigated for SOR ¶ 1.c.

Applicant continues to deny his 2013 termination for cause and his deliberate misrepresentation of his termination on the January 2021 SCA. The Government's evidence in the record is clear, unequivocal, and convincing. Thus, none of the mitigating conditions apply. Personal conduct security concerns are not mitigated for SOR ¶¶ 1.a and 1.b.

Guideline B: Foreign Influence

The security concern relating to the guideline 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 under AG ¶ 7 that could raise security concerns, and 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

(c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country.

The Government failed to provide specific and current information about the country in which the foreign national is located, to include whether it is known to target U.S. citizens to obtain classified information or is associated with a risk of terrorism. The Government failed to establish "heightened risk" under AG ¶ 7(a).

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

(a) contact, regardless of method, with a foreign family member, business 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; and

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

Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

Applicant discussed the Thai foreign national during his background interview. He noted that they were introduced by mutual friends, and she had no connections to the Government of Thailand. She is unaware of this job or that he possesses a DOD security clearance. He admitted it was oversight on his part when he did not disclose her on the January 2021 SCA. They became engaged in approximately February 2022. Applicant was in this type of situation before during his three-year marriage with another foreign national. He is fully aware of the Government's concerns under these circumstances. He served honorably in the U.S. Air Force for over ten years, and he has worked overseas for several years as a DOD contractor. He stated that he is an American first, and he would never betray his country. He has such deep and longstanding relationships and loyalties in the United States, I find that he can be expected to resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) applies. Foreign influence security concerns are mitigated.

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. . . .

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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;
- (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.

The SOR debts are established by the tax lien record and the two credit reports. AG ¶¶ 19(a), 19(c) and 19(f) apply.

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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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 arrangement with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

In his February 2022 SOR response, Applicant denied that he had ever resided in the state that had filed the tax lien against him in 2010, and he planned to hire a tax company to take care of this issue. During a previous investigation, the unreleased state tax was listed on his February 2012 credit report in the amount of approximately \$6,000. The October 2021 Westlaw state court research document showed the state tax lien continued to be unresolved.

In March 2021, Applicant was placed on notice during his background interview that he had an outstanding credit account. He acknowledged he had opened the account to make repairs on his home. The February 2021 credit report showed the account was referred for collection in the amount of \$11,232. In his February 2022 SOR response, he stated that he had paid this account after his interview. He did not provide a receipt or documentation to support his claim. (Items 2, 3, 6, 7 and 8)

Applicant's financial issues were not due to circumstances beyond his control. Although he provided a detailed explanation in his SOR response about the two debts, he provided no corroborating proof of payment for the collection account, and he did not submit any extenuating information about the resolution of his 2010 state tax lien with the

state tax authority. There is insufficient documentary evidence in the record showing Applicant's efforts to resolve either debt. As such, I find that Applicant's financial problems are not under control and are likely to recur. None of the mitigating conditions apply. Applicant failed to mitigate the financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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(a):

(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 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 E, B, and F and the AG ¶ 2(d) factors in this whole-person analysis.

Applicant is 56 years old. Since January 2021, he has been employed by a government contractor. He enlisted in the U.S. Air Force in 1985, and he received an honorable discharge in 1996. He is currently engaged to a Thai foreign national he met online after being introduced by mutual friends.

Applicant failed to list the true circumstances of his April 2013 employment termination with a former DOD contractor when he listed that his employment, lasting over a decade, ended in March 2014 after the "contract ended." This was untrue, and when he listed the information on his 2021 SCA, he knew it was a falsehood. The Government's evidence in the record was clear and persuasive.

Applicant also failed to provide supporting documentation that he had paid an overdue consumer account, as claimed. He failed to submit any action undertaken to resolve a longstanding tax lien filed in 2010 that was discovered during his 2012 background investigation. The evidence in the record shows his consumer account and state tax lien remain unresolved.

Overall, Applicant's deliberate misrepresentation of his past employment termination and his inability or unwillingness to resolve his financial issues raise questions about his trustworthiness, reliability, and ability to protect classified information. I have carefully applied the law, as set forth in Egan, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Although foreign influence security concerns were found in his favor, I conclude that personal conduct and financial considerations security concerns are not mitigated.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b.:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge