DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 19-02790
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison P. O'Connell, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

04/06/2023

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Decision

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines E (Personal Conduct) and B (Foreign Influence). Applicant mitigated the Guideline B security concerns, but he did not mitigate the Guideline E concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 13, 2018. On July 24, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines K (Handling Protected Information), E (Personal Conduct), B (Foreign Influence), and F (Financial Considerations). The 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 October 8, 2020, and requested a hearing before an administrative judge. On March 8, 2020, Department Counsel was ready to proceed. On the same day Department Counsel amended the SOR to withdraw the allegation under Guideline K (SOR ¶ 1.a), add SOR ¶¶ 2.b-2.i under Guideline E, withdraw SOR ¶ 3.b under Guideline B, and withdraw all the allegations under Guideline F.

Applicant submitted a supplemental response to the amended statement of reasons on January 21, 2022. The case was assigned to me on January 24, 2023. On February 2, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on March 7, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 16 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through EE, which were admitted without objection.

Department Counsel requested that I take administrative notice of relevant facts about Canada and Iraq. (GX 15 and 16) Applicant requested that I take administrative notice of facts about Canada. He submitted two post-hearing exhibits marked as AX FF. One was a motion to supplement testimony and the other was a request for administrative notice. I have marked his request for administrative notice as Hearing Exhibit (HX) I. I took administrative notice as requested by Department Counsel and Applicant. I have not taken administrative notice of the facts and conclusions in the Congressional Research Services documents submitted by Department Counsel (Items II and VI of GX 15), because there is no evidence that the facts and conclusions in those studies have been accepted as U.S. policy. On my own motion and without objection, I took administrative notice of the facts in the State Department fact sheet, "U.S. Relations with Iraq," dated June 6, 2022. (HX II) The facts administratively noticed are set out below in my findings of fact.

I kept the record open until March 27, 2023, to enable Applicant to submit additional documentary evidence. He timely submitted AX FF through RR, which were admitted without objection. DOHA received the transcript (Tr.) on March 16, 2023.

Findings of Fact

In Applicant's answer to the amended SOR, he admitted the allegations in SOR ¶ 2.d and 3.a. He denied all the other allegations. His admissions are incorporated in my findings of fact.

Applicant is a 55-year-old strategic cyber-security advisor who has been employed by another government agency (AGA) for about a year. (Tr. 18) He was previously employed by a defense contractor as a cyber planner from August 2017 until he was hired by the AGA on a date not reflected in the record. The SOR was issued while he was employed by a defense contractor.

Applicant has held a security clearance for about 35 years, working for various government agencies as well as defense contractors. (Tr. 20-21) He first received a

security clearance in 1992. He received a top-secret clearance in 2009 as an employee of a defense contractor. (AX HH)

Applicant attended college on an Army ROTC scholarship, and he was commissioned as an officer in the Army National Guard in May 1989. In February 1992, he received an honorable discharge from the Army National Guard to accept a commission in the Army Reserve. (AX MM) He served on active duty in the Army Reserve until he was released from active duty in January 1999 and separated with a general discharge under honorable conditions. (AX D at 1) He served in the Army Reserve again from July 2000 to September 2002 and received an honorable discharge. (GX 11 at 16; AX D at 2) He has a 30% disability for service-connected injuries. (AX G; AX NN) He received a bachelor's degree in May 1989, a master's degree in June 1992, and a master's in business administration in May 2001.

At the hearing, Applicant submitted testimonials from numerous co-workers and supervisors in the cyber-security field. He is highly regarded for his technical skills, leadership, and understanding of foreign policy. (AX A; AX OO)

The amended SOR alleges multiple falsifications (SOR ¶¶ 2.a and 2.e-2.i), other personal conduct (SOR ¶¶ 2.b-2.d) under Guideline E, and foreign influence concerns under Guideline B (SOR ¶¶ 2.a and 2.c). The evidence pertaining to the allegations in the amended SOR is summarized below.

SOR ¶ 2.b. On November 19, 1998, while Applicant was on active duty, he received nonjudicial punishment under Article 15, Uniform Code of Military Justice, 10 U.S.C. § 815, on July 19, 1998, for violation of a general order by being in an off-limits club, engaging in private employment at the off-limits club, committing an indecent act with a female stripper, and ejecting the female stripper from his apartment while she was naked above the waist. Initially, he was charged with conduct unbecoming an officer and false swearing, but those offenses were not reflected in the record of nonjudicial punishment. His punishment was forfeiture of $1,600 pay per month for two months and restriction to his quarters and the military installation for 60 days. (GX 4)

Applicant testified that he was out-processing when the misconduct occurred, and it delayed his separation. (Tr. 47) He was discharged with a general discharge under honorable conditions on January 27, 1999. (AX D)

SOR ¶¶ 2.a, 2.f, and 2.g. When Applicant submitted SCAs in November 2007, August 2014, and December 2018, he answered "No" to a question asking if he had ever had a security clearance suspended or revoked. His clearance was suspended in July 1998 while the conduct alleged in SOR ¶ 2.b was being investigated, but he did not disclose the suspension of his clearance in any of the SCAs. (GX 2 at 64; GX 10 at 30; GX 11 at 77) On August 11, 1999, an attorney acting on his behalf requested that his clearance be reinstated. His clearance was reinstated on May 19, 2001. (GX 7)

At the hearing, Applicant testified: "I took the question as asking about operational suspension, and I did not remember any at the time. Because it happened between out-processing from one unit and in-processing into another unit, I did not consider it to be an operational suspension, and I forgot about it completely as a reportable event." He admitted at the hearing that he now understands that he should have disclosed it. (Tr. 25)

SOR ¶ 2.c. On January 25, 1999, Applicant opened a checking account with a bank on an overseas military installation and deposited a worthless check for $2,050. He represented on a signature authorization card that he was scheduled to return from overseas in May 2000, knowing that he was scheduled to depart on January 26, 1999, the day after he opened the account. He reimbursed the bank after being contacted by law enforcement authorities. He was not prosecuted. (GX 5)

At the hearing, Applicant testified that he had no recollection of this incident. (Tr. 28, 49) To support his claim of a lack of memory, he submitted evidence that in December 2021, he was evaluated by his physician for chronic stroke that was discovered during a brain scan. His physician noted that about 50% of stroke patients have memory impairment. (AX X.) Applicant is currently taking a prescription drug to enhance memory. (Tr. 78; AX KK; AX LL)

SOR ¶ 2.d. In January 2003, Applicant was charged with obstructing a public officer, disorderly conduct involving drugs or alcohol, and disturbing the peace by loud and unreasonable noise. In March 2003, he entered a *nolo contendere* plea. He was convicted, fined, required to pay restitution, and placed on probation for two years. (GX 9; Tr.28) In November 2012, he filed a petition for dismissal of the charges. His petition was granted in January 2013. The plea and finding of guilt were set aside and vacated. A plea of not guilty was entered and the charges were dismissed. (AX JJ; AX PP; AX QQ; AX RR)

SOR ¶ 2.e. When Applicant submitted an SCA in November 2007, he answered "No" to the questions asking: "Have you even been charged with or convicted of any offense(s) related to alcohol or drugs"; and, "In the last 7 years, have been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above?" He did not disclose that he was charged with alcohol-related conduct in January 2003. He testified that his attorney incorrectly advised him that a *nolo contendere* plea would result in the entire proceeding being expunged from his record. (Tr. 28) He did not provide any documentation of his lawyer's advice.

SOR ¶ 2.h. In December 2010, a company that Applicant had founded and operated filed a lawsuit in British courts against several companies doing business in Iraq, seeking damages for violation of the oil rights of Applicant's company. In December 2013, a British court ruled that the claim "failed on every point," and ordered Applicant's company to reimburse the defendants for their costs. In a subsequent proceeding in October 2014, the High Court of Justice, Queen's Bench Division, Commercial Court, the Court adopted a summary of the December 2013 findings submitted by a British barrister, including a finding that Applicant "told lies and misleading statements from the outset."

(GX 12 at 13) The record does not reflect what statements were made or the context in which they were made. At the hearing, Applicant submitted evidence that the founder and chief executive officer of one of the defendants in the British case was a U.S. citizen who was indicted in January 2022 in a U. S. federal court for wire fraud and money laundering. He was subsequently convicted, pursuant to a plea agreement, of five counts of willful failure to file individual income tax returns on income of more than $20 million earned through the business that Applicant sued. (AX U; AX Y; AX II)

SOR ¶ 2.i. In the December 2018 SCA, Applicant answered "No" a question asking, if in the last seven years, he had been fired, quit after being told he would be fired, or left by mutual agreement following notice of unsatisfactory performance. He did not disclose that he was terminated from a job in December 2015. In his SCA, he stated that he left this job for a "professional opportunity." (GX 2 at 17) At the hearing, he testified that he had an issue with a supervisor, was given the option of moving to another position, declined the offer, and sought employment elsewhere. He testified that he was informed by this employer that his declination would not be recorded as a termination. (Tr. 33-34) The employer's records reflect that he was involuntarily terminated. However, the same record reflects that he was eligible for rehire. (GX 13) Applicant's explanation for his termination is supported by the employer's records showing that he was eligible for rehire. (GX 13 at 2) I conclude that his negative answer to this question was not intentionally false.

SOR ¶ 3.a. Applicant is married to a citizen of Canada. His spouse is a trade advisor for Canada, employed at the Canadian Embassy since August 2001. She attended college in the United States from August 1998 to May 2001, obtained a college degree, holds a green card, and intends to become a U.S. citizen. (AX E; Tr. 19) She and Applicant began cohabiting in March 2013 and recently married on a date not reflected in the record. (GX 2 at 25)

SOR ¶ 3.c. Around 2012, Applicant met an Iraqi diplomat who was promoting investments in Iraq. In Applicant's December 2018 SCA, he stated that he met the diplomat at a reception at the Embassy of Iraq, and they became social friends and met for cocktails on multiple occasions. He stated that they visited when the diplomat became a member of the Iraqi delegation to the United Nations in December 2013. (GX 2 at 40) He testified that they stopped meeting around 2014, met once in 2017, and have not met since early 2020. He testified that when he was employed by an AGA, he disclosed his previous contacts with the Iraqi diplomat to his facility security officer (FSO), and did not make any further contacts after 2020, because he received no guidance from his FSO. (Tr. 69-73).

Applicant's report to his FSO, dated September 1, 2020, includes the following comments:

> I would note that I already reported this individual as being an ongoing, although intermittent foreign contact six years ago. I had not heard from this individual in some time, but we remain old friends from his previous time as

> a junior diplomat in Washington. I had understood his wife and child were living in Virginia. I assume they still are. I would note the directions above state that a report should be made using this form if a foreign person is "inquiring about classified or sensitive" information. By way of clarification, this did not happen. Rather, I am filing out this form as directed by my FSO after reporting the contact IAW company SOP.

(AX GG)

I have taken administrative notice that the United States and Canada share the world's longest international border, and the defense arrangements between the two countries are more extensive than any other countries. They work to enhance and accelerate the legitimate flow of people, goods, and services between the two countries. The two countries are indispensable allies in the defense of North America. They share deeply integrated economies and enjoy the largest bilateral trade and investment relationship in the world. There is no evidence that Canada targets the United States for economic or military intelligence.

I have taken administrative notice that Iraq is now a key partner for the United States in the region and is considered by the United States as a voice of moderation and democracy in the Middle East. Iraq benefits from functioning government institutions, including an active legislature, and plays an increasingly constructive role in the region. The United States maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accordance with the U.S.-Iraq Strategic Framework Agreement (SFA). The SFA between Iraq and the United States provides the foundation for the U.S.-Iraq bilateral relationship. Covering a wide range of bilateral issues, including political relations and diplomacy, defense and security, trade and finance, energy, judicial and law enforcement issues, services, science, culture, education, and environment, it emphasizes the important relationship and common goals the two countries share

U.S. bilateral assistance to Iraq focuses on economic reform, assistance to vulnerable groups, and democracy and governance. The U.S. continues to help strengthen the capacity of Iraq's civil society organizations and elected representatives. U.S. bilateral assistance aims not only to bolster Iraq's democratic institutions, but also to preserve the strategic, political, and economic importance of the U.S.-Iraq partnership in a changing Middle East region.

Sectarian militias and insurgent groups remain active in Iraq, attacking Iraqi security forces and civilians and U.S. interests. Iraq remains a dangerous place due to terrorism, kidnapping, armed conflict, civil unrest, COVID-19, and the ability of the U.S. Embassy's limited capacity to provide support to U.S. citizens. The U.S. State Department's Travel Advisory is Level 4 ("do not travel").

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 E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15

> 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. . . .

The evidence establishes the conduct alleged in SOR ¶¶ 2.b (nonjudicial punishment), 2.c (bad check), and 2.d (alcohol-related disorderly conduct). It also establishes SOR ¶ 2.e, alleging concealment of the fact that he was charged with an alcohol-related offense. While Applicant submitted evidence that his conviction was set aside, he offered no explanation for failing to disclose in his SCA that he had been charged with an alcohol-related offense. When he submitted the SCA in November 2007, he was a well-educated adult who had previously gone through the adjudication process in 1992. The questions in the SCA clearly asked whether he had been arrested, charged, or convicted of an alcohol-related offense. I conclude that his failure to disclose that he was charged with an alcohol-related offense was an intentional omission.

The evidence establishes the falsifications alleged in SOR ¶¶ 2.a, 2.f, and 2.g. Applicant may not have known that his security clearance was suspended while his conduct in 1998 was being investigated, and falsification of this part of his 2007 SCA is not alleged. However, he knew that the suspension raised security issues when he submitted SCAs in August 2014 and December 2018, because he had hired a lawyer in August 2011 to seek reinstatement of his clearance. His quibbling about whether the suspense was an "operational suspension" is not persuasive. A security clearance investigation is not a forum for an applicant to split hairs or parse the truth narrowly. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002)

The evidence does not establish the false statement in a British court, alleged in SOR ¶ 2.h. The evidence shows that a British judge made the findings alleged, based on a summary prepared by a British barrister, but it does not show what statements were made or the context in which they were made. I conclude that the evidence supporting

SOR ¶ 2.h is too sparse and vague to constitute the "substantial evidence" required by the Directive.

The evidence does not establish the falsification of the December 2018 SCA regarding the circumstances under which Applicant left a job. The evidence shows that Applicant and his supervisor had disagreements, that Applicant was offered another position with the company, and he declined it, preferring to seek employment else.

The following disqualifying conditions under this guideline are relevant:

> AG ¶16(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;
>
> AG ¶ 16(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 . . . (2) any disruptive, violent, or other inappropriate behavior; [and] (3) a pattern of dishonesty or rule violations; and
>
> AG ¶ 16(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 . . . .

AG ¶¶ 16(a) and 16(e) are established by Applicant's multiple falsifications of his SCAs. AG ¶ 16(d) is established for the alcohol-related disorderly conduct alleged in SOR ¶ 2.d.

AG ¶ 16(d) is not applicable to Applicant's conduct alleged in SOR ¶ 2.b (the nonjudicial punishment), because it is covered under Guidelines D (Sexual Behavior) and J (Criminal Conduct). It is not applicable to the conduct alleged in SOR ¶ 2.c (the bad check), because it is covered under Guidelines F and J.

The following mitigating conditions are relevant:

> AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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.

AG ¶ 17(a) is not established. Applicant made no effort to correct his SCAs until confronted with the evidence.

AG ¶ 17(c) is established for the conduct alleged in SOR ¶ 2.b, 2.c, and 2.d, which are mitigated by the passage of time. It is not established for the falsifications alleged in ¶¶ 2.e, 2.f, and 2.g. They are not minor offenses, and they reflect a pattern of deception. An act of falsification has security significance independent of the underlying conduct. *See* ISCR Case No. 01-19278 at 7-8 (App. Bd. Apr. 22, 2003). The mitigation of the underlying conduct has little bearing on the security significance of the falsification, particularly where there are multiple falsifications. ISCR Case No. 08-11944 at 3 (App. Bd. Aug 15, 2011). Falsification of a security clearance application "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

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 are relevant:

> 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 (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, e.g.*, ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). It is a level of risk one step above a State Department Level 1 travel advisory ("exercise normal precaution") and roughly equivalent to a Level 2 advisory ("exercise increased caution").

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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

No disqualifying conditions are established by Applicant's marriage to a citizen of Canada and his wife's employment in the Canadian embassy. The evidence falls short of establishing the heightened risk in AG ¶¶ 7(a) and 7(c) and the potential conflict of interest in AG ¶ 7(b). The United States and Canada are close allies and economic partners, and Applicant's wife is engaged in promoting their economic partnership. There is no evidence that Canada targets the United States for military or economic espionage.

Applicant's friendship with an Iraqi diplomat is a closer question. In the past, we have recognized that an applicant's ties to persons of high rank in a foreign government or military are of particular concern, insofar as it is foreseeable that through an association with such persons the applicant could come to the attention of those interested in acquiring U.S. protected information. *See, e.g.*, ISCR Case No. 08-10025 at 2 and 4 (App.

Bd. Nov. 3, 2009). Applicant's initial acquaintance with the diplomat was based on Applicant's economic interests in Iraq. While Iraq is now an ally of the United States, the unstable political and military conditions raise the possibility that insurgents and terrorists would coerce or otherwise influence the Iraqi diplomat to obtain military information through his friendship with Applicant. However, the evidence indicates that Applicant terminated his contact with the Iraqi diplomat in 2020 after he reported his contacts to his FSO but received no guidance. I conclude that no disqualifying conditions are established by Applicant's friendship with an Iraqi diplomat.

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 B and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guideline(s), but some warrant additional comment. I have considered Applicant's lengthy military service, his service-connected disability, and the testimonials to his technical skills, leadership, and understanding of foreign policy. I have considered his service as an employee of a defense contractor and multiple government agencies while holding a high-level security clearance. I have also considered his lack of candor during the adjudication of his multiple applications to continue his security clearance.

After weighing the disqualifying and mitigating conditions under Guidelines B and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns under Guideline B, but he has not mitigated the security concerns under Guideline E.

Formal Findings

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

Paragraph 1, Guideline K (Handling Protected Information):	Withdrawn
Subparagraph 1.a:	Withdrawn
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b-2.d:	For Applicant
Subparagraphs 2.e-1.g:	Against Applicant
Subparagraphs 2.h and 2.i:	For Applicant
Paragraph 3, Guideline B:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Withdrawn
Subparagraph 3.c:	For Applicant
Paragraph 4, Guideline F (Financial Considerations):	Withdrawn
Subparagraphs 4.a-4.f:	Withdrawn

Conclusion

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

LeRoy F. Foreman
Administrative Judge