



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



In the matter of:)	
)	
)	ISCR Case No. 21-02677
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

April 13, 2023

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On December 22, 2021, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F and B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on April 13, 2022, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 22, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 30, 2022, scheduling the hearing for October 13, 2022. The hearing was convened as scheduled. The Government offered six Exhibits (GXs) 1 through 6, which were admitted into evidence, and Hearing Exhibit (HE) I for Administrative Notice. Applicant testified on his own behalf. Applicant offered no documents. The record was left open until November 10, 2022, for receipt of some documentation. Applicant

submitted nothing further on his behalf. DOHA received the transcript of the hearing (TR) on October 25, 2022.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a. through 1.o. He initially admitted SOR allegation ¶ 2.a, and denied SOR ¶¶ 2.b. through 1.f.. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 31-year-old employee of a defense contractor. He has been employed with the defense contractor since December of 2015. He has a security clearance. Applicant is divorced and has custody of two children. (TR at page 5 line 22 to page 7 line 3, at page 8 lines 17~19, at page 17 line 3 to page 18 line 18, and GX 1 at pages 7, 12 and 46.) Applicant attributes his current financial difficulties to his divorce. (TR at page 48 line 6 to page 51 line 19.)

Guideline F - Financial Considerations

1.a. Applicant admits that he has a past-due debt to Creditor A, in the amount of about \$5,670, as the result of a vehicle repossession. (TR at page 51 line 20 to page 52 line 6.) He has submitted nothing further in this regard. This allegation is found against Applicant.

1.b. Applicant admits that he has a past-due debt to Creditor B, in the amount of about \$3,714. (TR at page 52 line 9 to page 53 line 21.) He has submitted nothing further in this regard. This allegation is found against Applicant.

1.c., 1.f~1.j. and 1.m Applicant admits that he has past-due medical debts to Creditor C, in an amount totaling about \$7,058. (TR at page 55 line 3 to page 55 line 9.) He has submitted nothing further in this regard. These allegations are found against Applicant.

1.d. and 1.e. Applicant admits that he has past-due debts to Creditor D, in an amount totaling about \$3,352. (TR at page 54 lines 10~14.) He has submitted nothing further in this regard. These allegations are found against Applicant.

1.k. Applicant admits that he has a past-due debt to Creditor K, in the amount of about \$453. (TR at page 15~19.) He has submitted nothing further in this regard. This allegation is found against Applicant.

1.l. Applicant admits that he has a past-due debt to Creditor L, in the amount of about \$219. (TR at page 15~19.) He has submitted nothing further in this regard. This allegation is found against Applicant.

1.n. and 1.o. (These are one and the same debt.) Applicant admits that he has a past-due debt to Creditor N, in the amount of about \$29,000, as the result of another

vehicle repossession. He is making “\$100 bi-weekly” payments toward this debt as evidenced by documentation attached to his Answer. (TR at page 55 line 20 to page 57 line 12, and Answer at pages 8~12.) These allegations are found for Applicant.

Guideline B - Foreign Influence

2.a. Applicant no longer has a Filipina fiancé. As a result, he does not send her any monies. (TR at page 18 line 19 to page line 4, and at page 39 line 10 to page 45 line 6.) This allegation is found for Applicant.

2.b. Applicant’s mother is a U.S. citizen, living in the United States. (TR at page 20 line 18 to page 21 line 11, and at page 21 line 24 to page 22 line 22.) This allegation is found for Applicant.

2.c. ~ 2.d. All of Applicant siblings were born in either Russia or the Republic of Georgia. They immigrated to the United States as children, with their parents in 1991. All are now U.S. citizens, except for the eldest brother who is a dual national with Russia. All of Applicant’s siblings, to include his eldest brother, live in the United States. The eldest brother is a handyman who “fixes trailers and sells them.” (TR at page 32 line 8~10, at page 36 line 18 to page 37 line 7, at page 45 lines 7~14, and at page 37 line 17 to page 39 line 9.) These allegations are found for Applicant.

Administrative Notice

As Applicant no longer has a Filipina fiancé, I only take administrative notice of the following facts about Russia: It is a highly centralized authoritarian political system dominated by its president. Russia has violated Ukraine’s sovereignty and territorial integrity in 2014 and again in 2022. Russia is a serious threat to our national security.

Policies

When evaluating an applicant’s 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 to be used in evaluating an applicant’s national security eligibility.

These 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 AG ¶ 2 describing 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states the “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 the applicant may deliberately or inadvertently fail to protect or 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 Executive Order (EO) 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F - Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

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

Applicant has significant past-due indebtedness.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts

Although Applicant attributes much of his financial problems to his divorce, they are ongoing. He is only addressing one of his numerous, admitted past-due debts. Applicant has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established. Financial Considerations is found against Applicant.

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 that could raise security concerns under AG ¶ 7. Three 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.

Applicant had a Pilipino fiancé, and family members born outside of the United States. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; 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.

All of Applicant's family members are residents of the United States. All of his siblings, except for his eldest brother, are only citizens of the United States. The eldest brother is a dual national, who is self-employed, and has lived in the United States since 1991. Mitigation under AG ¶ 8 has been established. Foreign Influence is found for Applicant.

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 relevant 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a~1.m:	Against Applicant
Subparagraphs 1.n. and 1.o:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a~2.f:	For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge