



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



In the matter of:)	
)	
)	ISCR Case No. 20-03834
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

05/01/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On January 12, 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 March 15, 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 May 31,

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 2 through 5 (Item 1 is the SOR). Applicant submitted a response to the FORM, which is marked as Applicant Exhibits (AE) A. There were no objections to the Items or AE A, and they are admitted in evidence. The case was assigned to me on January 26, 2023.

Administrative and Procedural Matters

Department Counsel requested that I take administrative notice of certain facts about Kyrgyzstan (Hearing Exhibit I). 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 fact that Kyrgyzstan has increasingly aligned its interests with Russia and China. These countries provide support and regularly conduct joint exercises with Kyrgyzstan and provide information on people suspected of terrorism and provide military technical equipment. Russia maintains a military base in the country. Russia has asserted that it has a rightful claim to all territories from the former Russian Empire, which include Kyrgyzstan. An undetermined number of citizens of Kyrgyzstan have left the country to join ISIS and other terrorist groups. Organized crime is a problem in the country. There are significant human rights issues in the country, including arbitrary killings by police, high-profile disappearances, use of torture by law enforcement and security services, arbitrary arrests, and violence against journalists and minority groups.

Findings of Fact

Applicant admitted the allegations in SOR except for ¶ 1.f, which he denied. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. He served in the National Guard from 2008 to 2014 and was honorably discharged. He attended community college from 2010 to 2011 and another college for one semester in 2017. He married in 2015. His wife is a citizen of Kyrgyzstan and is pending naturalization as a U.S. citizen. She does not yet have a permanent resident card. Applicant has a stepchild and two children. All three children were born in Kyrgyzstan. His two biological children are citizens of the United States. Applicant is employed overseas, and he and his family live with him there. (Item 3; AE A)

Applicant has been employed by a federal contractor since July 2018. On his September 2018 security clearance application (SCA), he disclosed he was unemployed from May 2014 to November 2014 and November 2014 to February 2015. (Item 3)

In his 2018 SCA, Applicant disclosed the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, and 1.f. The debts in SOR ¶¶ 1.a (\$462) and 1.b (\$878) are to the same creditor. Applicant said he was in the process of repaying both of these debts. During his December 2018 interview with a government investigator, he said he intended to address

his financial issues aggressively with excess pay he was earning. He acknowledged the debts in SOR ¶¶ 1.a, 1.b, 1.d, 1.e and 1.f. In Applicant's March 2022 answer to the SOR, he admitted the debts in SOR ¶¶ 1.a through 1.e and denied the debt in 1.f. Regarding the debts in SOR ¶¶ 1.a and 1.b, he said once he contacts the creditor to get the necessary information to access pay options, he will pay the debt in SOR ¶ 1.a and make a partial payment for the debt in SOR ¶ 1.b. In his response to the FORM, Applicant did not provide any evidence that he has taken action to resolve these debts. SOR ¶¶ 1.a and 1.b are unresolved. (Items 2, 3, 4)

The debts in SOR ¶¶ 1.d (\$6,719) and 1.e (\$9,595) are to the same creditor. SOR ¶¶ 1.d is a credit card debt. It appears that SOR ¶ 1.e is a loan. In his SCA, Applicant stated for SOR ¶ 1.d that he was unable to make the payments on the account. He said, "repayment is ongoing to correct this debt." (Item 3) The delinquency began in 2017. He stated the action he was taking was as follows: "I am working with [creditor] to resolve this issue and hopefully have the card reinstated." (Item 3) For SOR ¶ 1.e he said, "I am planning to make payments for this after repaying the credit card debt." (Item 3) He acknowledged the debts with the government investigator and said he was aggressively addressing them with his excess pay. In his SOR answer, he said he will work with the creditor to resolve both debts as soon as possible after he completes paying the debts in SOR ¶¶ 1.a through 1.c. He said it may take time, but he will bring the accounts into good standing. In Applicant's response to the FORM, he said he had contacted the creditor and made payment arrangements whereby monthly payments would be automatically deducted from his account. No evidence was provided to show the payment arrangements or other actions to resolve the debts. SOR ¶¶ 1.d and 1.e are unresolved. (Items 2, 3, 4, 5; AE A)

In his SOR answer, Applicant admitted the debt in SOR ¶ 1.c (\$1,720) and said he will pay it off after he has paid the debts in SOR ¶¶ 1.a and 1.b. No evidence was provided to show he has been paying any of his delinquent debts.

Applicant reported the debt in SOR ¶ 1.f (\$13,047) in his SCA. This debt was for a repossessed car in 2014 during a time when he was laid off from his job, and unable to make payments on the car and then his son was born. He said the car was sold and the debt resolved. During his December 2018 background interview, he acknowledged the debt. In his answer to the SOR, he said the debt should not be on his credit report because the creditor recouped the money owed. He said, "I am opening a dispute to have it removed." The debt is reported on his April 2021 credit report as "charged off" and "account paid for less than full balance." He said he received a letter that the car was sold, and the debt recovered. He assumed he did not have to repay any amount. This debt is resolved. (Items 2, 3, 4, 5; AE A)

In his response to the FORM, Applicant said "I am working to resolve my debt issues but right now I am trying to get my wife a green card so that we can have two incomes which will help with repayments as well." (AE A)

Applicant's mother-in-law, two sisters-in-law and a brother-in-law are all citizens and residents of Kyrgyzstan. His wife speaks to her mother and sisters almost daily and her brother often. Applicant provides monthly financial support to his wife's mother and sisters. His mother-in-law is not employed. In his SCA, he reported his sisters-in-law were not employed. He reported his brother-in-law has a logistics company. In his answer to the SOR, he said his sisters-in-law own and operate a restaurant. In his response to the FORM, he acknowledged that Kyrgyzstan is a hostile place to him and his children because of their race. He said his wife's family is not affiliated with the government of Kyrgyzstan. (Items 2, 3, 4; AE A)

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

Applicant has delinquent debt totaling approximately \$19,375. He began to incur delinquent debt in 2014 when he was laid off and after the birth of his child. He has been steadily employed since 2015. Since approximately 2018, he has repeatedly stated that he either was paying or intended to pay his delinquent debt but has not provided evidence that he has taken any action to resolve his debts. 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
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant failed to provide any documentary proof that he has paid or made payment arrangements to resolve any of the alleged debts, despite promising to do so for years. His debts are ongoing and recent. He lost his job in 2014 and his car was repossessed, and his child was born. He has been steadily employed since 2015. Applicant has not provided evidence he has acted responsibly regarding the resolution of any of his debts. AG ¶ 20(b) has minimal application. There is no evidence that Applicant has participated in financial counseling or that he has made good-faith efforts to resolve any of his debts. The debt is SOR ¶ 1.f was resolved through the sale of the repossessed vehicle. None of the above mitigating conditions apply.

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 are terrorism concerns, ongoing human rights problems, and concerns about Kyrgyzstan's ties to both Russia and China. I considered the totality of Applicant's ties to Kyrgyzstan. 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. Based on detailed information provided in HE I there is sufficient intelligence information that raises security concerns about Kyrgyzstan.

Applicant's mother-in-law, two sisters-in-law and brother-in-law are citizens of Kyrgyzstan. Applicant stated that he has applied for a green card for his wife, but it has not yet been approved. She remains a citizen of Kyrgyzstan, as does his stepchild. His wife has almost daily contact with her mother and sisters and frequent contact with her

brother. Applicant provides monthly financial support to his wife's mother and sisters. Because of Kyrgyzstan's threat of terrorism, human rights issues, and close relationship with Russia and China 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;

(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. interests; and

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

Applicant's contact through his spouse is not casual or infrequent. His wife has daily contact with her mother and sisters and frequent contact with her brother. Applicant provides monthly support to his wife's mother and sisters. Although there is not a question as to Applicant's loyalty to the United States, it would be a difficult choice to ask Applicant to choose between his loyalty toward his wife and her family and his country if there was a conflict of interest. Applicant acknowledges the issues in the country of Kyrgyzstan that raise security concerns. Due to the issues, I am unable to find that it is unlikely that Applicant would be placed in a position of having to choose between his family and the interests of the United States. None of the mitigating conditions apply.

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 Guidelines F and B in my whole-person analysis.

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 and 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
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant

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