



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



In the matter of:)	
)	
)	ISCR Case No. 21-00257
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

04/25/2023

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations, and the foreign influence security concerns were not established. Eligibility for access to classified information is granted.

Statement of the Case

On April 30, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline B, foreign influence. The DOD acted 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 implemented by DOD on June 8, 2017 (AG).

Applicant answered the SOR on October 14, 2021 His answer contained supporting documentation referred to as enclosures (Encl) 2-12, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 4, 2022, and the hearing was

convened as scheduled on December 1, 2022. The Government offered exhibits (GE) 1 through 7, which were admitted into evidence without objection. The Government's exhibit list was identified as hearing exhibit (HE) I, its discovery letter was marked as HE II, and its request for me to take Administrative Notice was marked as HE III. Applicant testified and offered exhibits (AE) A (broken down further by attachments (Atch A-H), which were admitted without objection. The record remained open to allow Applicant to submit additional documentary evidence. He timely submitted AE B-D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 12, 2022.

Administrative Notice

I take administrative notice that the United Arab Emirates (UAE) experiences political instability due to military conflicts with various factions. There is a Level 3 (Reconsider Travel), U.S. State Department travel warning for the UAE. Terrorist threats are ongoing within the UAE. UAE's human rights record is poor. (HE- III)

Findings of Fact

Applicant admitted SOR ¶ 1.d, with explanations, but he denied the remaining allegations (SOR ¶¶ 1.a–1.c, 1.e–1.g, and 2.a–2.b). His admission is incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 48-year-old employee of a defense contractor. He began working at his present job in August 2020. He has worked for U.S. defense contractors since 2007, except for two periods of unemployment (March-July 2018 and January-March 2016); and when he worked for a foreign contractor that had a contract with the UAE, discussed below (May 2014-January 2016). He served in the U.S. Air Force for 10 years, and he was honorably discharged in 2007. He holds a Ph.D. He has been married over 24 years and has four children, ages 22, 21, 19, and 17. (Tr. 6, 23, 34, 27; GE 1)

Under Guideline F, the SOR alleged that Applicant had a past-due mortgage account in the amount of approximately \$29,400 (SOR ¶ 1.a) and two charged-off accounts in the approximate amounts of \$1,300 and \$2,398 (SOR ¶¶ 1.b-1.c); that he was delinquent on a loan to a foreign bank in the approximate amount of \$103,000 (SOR ¶ 1.g); that he had an IRS tax lien filed against him in April 2017, for approximately \$31,000 (SOR ¶ 1.d); that he owed delinquent federal income taxes to the IRS for tax years 2014 and 2018, in the amount of approximately \$54,000; and that he failed to file federal income tax returns for tax years 2014 through 2018, as required. Under Guideline B, the SOR cross-alleged SOR ¶ 1.g (SOR ¶ 2.a) and that Applicant had approximately \$42,000 frozen by the foreign bank servicing his account because of his delinquent loan. (SOR ¶ 2.b) Applicant's admissions and documentation contained in his undated answers to interrogatories and credit reports, establish the SOR allegations under Guideline F. (GE 3-4)

Financial Considerations

Applicant credibly explained that there were several reasons for his financial difficulties that began in approximately 2013. First, he took on the responsibility for his father's nursing-home care after his mother passed away in 2013. His father was 100% disabled due to a stroke he suffered. Applicant became financially responsible for his father's nursing home costs and medical expenses not covered by insurance. He was not prepared for the extent of those expenses. He ended up taking money out of his retirement plan, which resulted in penalties and led to his large federal tax debt in 2014. (Tr. 61-63; SOR answer)

The second contributing reason for Applicant's financial difficulties occurred in December 2015, when he lost his employment in the UAE due to his company losing the contract with the UAE government. He had accepted a position with a contractor in May 2014. The contractor had a four-year contract with the UAE government, which was the contract for which Applicant was hired. After about 18 months, in December 2015, the UAE rescinded the contract and Applicant was out of a job. His yearly salary at the time was approximately \$250,000. He also had relocated his whole family to the UAE and was required to leave the country within 30 days because he was no longer on a work visa. He moved back to the United States, but remained unemployed for approximately four months, resulting in an income loss over the period of about \$80,000. This is when his monthly debts started becoming delinquent. (Tr. 24-25; SOR answer)

The third reason for his financial problems came about because of a second period of extended unemployment beginning in March 2018, due to an unexpected job loss. Applicant was let go by his employer over a misunderstanding about being able to charge for labor under the contract when he was working remotely. He had not sought approval beforehand to do so and was relieved of his duties. His resulting unemployment lasted six months. He received unemployment benefits, but his overall loss of income during this period was approximately \$60,000. He was forced to use savings to keep up with his bills, but he kept getting further behind. (Tr. 26; GE 1; SOR answer)

The status of Applicant's debts and federal tax return issues is as follows:

Past-Due Mortgage-\$29,466 (SOR ¶ 1.a). Applicant explained that his mortgage became delinquent in late 2019 or early 2020. He missed some payments because he had children starting college. In February 2020, he sent the bank two catch-up payments, but it refused to accept them. The bank told Applicant that he had to apply for a mortgage modification. After ignoring two requests by Applicant, the bank began processing his loan modification request in the fall of 2021. The process was delayed because of Covid-19. After extended delays by the bank, Applicant decided to sell the home. The home sold in November 2021, and Applicant documented that the mortgage was paid in December 2021. This debt is resolved. (Tr. 33-39; AE A (Atch A); SOR answer (Encl 2))

Consumer Debt-\$1,307 (SOR ¶ 1.b). This account was charged off and assigned for collection in May 2017. Applicant set up a payment plan and completed making payments in September 2019, settling the debt before the issuance of the SOR. This debt is resolved. (Tr. 40; GE 4; AE A (Atch B))

Consumer Debt-\$2,398 (SOR ¶ 1.c). This account was charged off and assigned for collection in February 2017. Applicant set up a payment plan and completed making payments in March 2019 settling the debt before the issuance of the SOR. He received an IRS 1099-C, cancellation of debt form for the remainder of the debt. He claimed this amount on his 2019 tax return. This debt is resolved. (Tr. 4; GE 4; AE A (Atch C))

Bank Loan-\$103,781 (SOR ¶ 1.g). This debt originated when Applicant took a job in the UAE in 2014. He took out a \$200,000 loan to establish his family's household in the UAE and pay for private schooling for his children. The terms of the loan provided for a four-year payback period. When Applicant's company's contract was cancelled after approximately 18 months and Applicant was required to leave the UAE within 30 days, this loan became immediately due. Applicant received approximately \$42,000 in severance pay when he was terminated because of the lost contract. The bank applied this amount against the loan balance. This is what SOR ¶ 2.b erroneously referred to as an amount "frozen" by the bank due to the delinquent loan. Initially the bank was unwilling to accept a payment plan and demanded payment in full. Thereafter, Applicant communicated with the bank, and it agreed to accept a payment plan for the loan. He documented making monthly payments from June through September 2021. When he sold his home in 2021, he used some of the sale proceeds to pay off this bank loan in the UAE. He provided documentation showing the payoff. Once the loan was paid, he closed all bank accounts in the UAE. He no longer has any bank accounts in the UAE. This debt is resolved. (Tr. 32, 55-60, 69; AE A (Atch F); SOR answer (Encls 8-11))

IRS Tax Lien-\$31,015 (SOR ¶ 1.d). This tax lien is an enforcement mechanism for the taxes owed as alleged in SOR ¶ 1.e and is therefore a duplicitous pleading alleging the same underlying conduct. I find for Applicant on this allegation.

Federal Taxes Owed for 2014 and 2018-\$54,236 (SOR ¶ 1.e). Applicant incurred a large tax debt in 2014 because he withdrew funds from his retirement account to pay for his father's care, which resulted in an early withdrawal penalty and capital gains taxes. He was unable to pay the taxes when due because he had recently lost his job in the UAE. He worked out a payment plan with the IRS and began making payments in May 2021. The establishment of the plan was delayed because of difficulties reaching the IRS during Covid-19. When he sold his home in December 2021, he used some of the proceeds to pay all his remaining IRS debt. He documented that he owes no further federal tax debt, and the tax lien was released. This debt is resolved. (Tr. 36, 43-46, 61-63; AE A (Atch D), AE B, D; SOR answer)

Unfiled Federal Tax Returns for 2014-2019: Applicant documented that for his 2014 tax return, he requested an extension, and that return was timely filed within the extended time frame. For the remaining tax returns in question, he filed as follows:

TY 2014-filed October 2015
TY 2015-filed February 2021
TY 2016-filed August 2019
TY 2017-filed July 2019
TY 2018-filed October 2020
TY 2019-filed February 2021 (AE A (Atch E))

Applicant explained that his 2015 tax return was very complicated because of his overseas employment and subsequent termination. He did not receive timely tax information from his former employer, which further delayed being able to file his 2015 return. He initially sent in his 2015 tax return only to have it returned because of a missing healthcare form (1095-A-C). The delayed filing of his 2015 return had a snowball effect on the subsequent years' filings and they were also delayed. Applicant also accepted responsibility for putting the burden of handling the family's finances and doing their taxes on his wife. He realizes this was unfair and he now shares the financial responsibilities with her. They timely filed their 2021 federal tax returns. He does not foresee working overseas in the future and does not expect to encounter the same tax filing problems in the future. (Tr. 46-51; AE A (Atch E); SOR answer)

Applicant uses a nationally known financial expert's guidelines to manage his finances. He documented using a written family budget to track their monthly income and expenditures. The budget shows a monthly residual of approximately \$1,350. He has approximately \$100,000 in his retirement account. His most recent credit report shows that all his debts are being paid on time. (Tr. 51, 53, 77, 80-81; GE 6; AE A (Atch G), AE C)

Foreign Influence

As explained above, Applicant's sole connection with the UAE arose because of his 18-month employment within the country. That employment ended in late 2015 and Applicant has never returned. When he was employed there, he took out a loan from a local bank to fund his family's move to the country, establish a home there, and fund his children's schooling. He defaulted on the loan when he lost his job. His severance pay was applied to the loan balance and he paid the remaining amount, initially through monthly payments, and finally by using some of the proceeds from his home sale in December 2021. He closed all bank accounts in the UAE. He has no current financial or family connection to the UAE. (Tr. 56: AE A (Atch F))

Character Information

Applicant presented statements from former and current coworkers (including supervisors), who attested to his integrity, work ethic, trustworthiness, honesty, and good judgment. They also recommend that he retain his security clearance. (SOR answer (Encl 12))

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(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. 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 to obtain 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 about 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

(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 evidence showed Applicant failed to timely file his federal tax returns for 2015-2018, but 2014 was timely filed. He was also indebted to the IRS in the amount of approximately \$54,200 for tax years 2014 and 2018. The record also establishes that he incurred two delinquent consumer debts, his home mortgage became past due, and he defaulted on a UAE bank loan. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant resolved the consumer debts before the issuance of the SOR. He ultimately resolved his mortgage by selling his home, but before that he exercised good faith with the lender by sending it makeup payments, which were rejected, then he attempted to qualify for a mortgage modification, which the lender was dilatory in processing. He also resolved his bank loan debt in the UAE, first by making monthly payments, and then by using his home-sale proceeds to pay the debt. His untimely and unexpected unemployment from his UAE position and expenses related to the care for his father contributed to his financial problems, which were conditions beyond his control. Under the circumstances, he acted responsibly by resolving these debts as quickly as he was able to do. He also participated in financial counseling which has improved his overall financial picture.

There is no doubt that Applicant should have responded in a timelier fashion to his tax problems. However, he has now resolved his federal tax-filing issues and he has paid what he owed to the IRS. He filed all his delinquent tax returns before the issuance of the SOR. There are clear indications that his financial issues are resolved, he timely filed his 2021 federal tax return, and recurrence is unlikely because he now has a firm handle on his finances and assists his wife with the overall management of their taxes. AG ¶¶ 20(a)-20(d), and 20(g) are all applicable.

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” as follows:

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.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying 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

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant’s contact with the UAE came about because of his employment in that country from 2014 until December 2015, when his employer’s contract was terminated and he lost his position. In order to fund his family’s household in the UAE for the length of his expected employment there, he secured a personal loan from an in-country bank. He ended his employment connection with the UAE in 2015 and repaid the loan in March 2022. He has no further connections with the UAE, personal or financial. The above listed disqualifying conditions are not established.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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, but some warrant additional comment.

I considered Applicant's military service, his contractor service, the recommendations from his coworkers and supervisor, and the circumstances surrounding his delay in filing his tax returns and paying his taxes. I'm convinced he will act in a timely manner with his taxes from now on, and that he will not incur tax problems in the future. He also formed a plan to address his delinquent debts and executed that plan. He is on stable financial ground now and he plans to remain so in the future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security concerns and the foreign influence concerns were not established.

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:	FOR APPLICANT
Subparagraphs: 1.a - 1.g:	For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraphs: 2.a - 2.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge