



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXX	)	ISCR Case No. 22-01207
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Dan O’Reilly, Esq., Department Counsel  
For Applicant: *Pro se*

06/30/2023

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant did not provide evidence sufficient to mitigate the national security concern raised by his financial history. He did provide evidence sufficient to mitigate the concerns raised by his foreign influence and his personal conduct. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his security clearance application (SCA) on June 23, 2021. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on September 6, 2022, detailing security concerns under Guideline F, Financial Considerations, Guideline B, Foreign Influence, and Guideline E, Personal Conduct. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an answer (Answer) to the SOR on September 26, 2022, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On November 8, 2022, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Exhibits 1 through 9 (Exs.). DOHA sent the FORM to Applicant on that same day, who received it on December 12, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the Answer (Exs, 1 and 2, respectively) are the pleadings in the case. Exs. 2 through 9 are admitted without objection. The case was assigned to me on March 24, 2023.

### **Findings of Fact**

This is a case under Guidelines F, B, and E. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 46 years old, married (December 2002), with a son age 9 and a daughter age 11. His spouse was born in Colombia and is a citizen of Colombia and the United States and a resident of the United States. He attended community college from January 2008 to June 2012, from September 2014 to December 2014, and from April 2020 to June 2021. He did not earn a degree but was awarded a certificate in electronics and troubleshooting. From February 2006 to March 2017 and from February 2018 to the present, he has worked for the same federal defense contractor. This is his first national security clearance investigation. He was unemployed from March 2017 to February 2018. He explained the reason for his unemployment as follows:

My spouse, who is from . . . Colombia South America wanted to return to her home country to try to get help from [sic] our autistic daughter [then five years old]. I did it to try to get help for my daughter and try to alleviate the tension and strain it caused on my relationship with my spouse at the time. (Ex. 3.)

**Guideline F.** Under Guideline F, the SOR alleged that Applicant has seven delinquent accounts that have been charged off or are in collections totaling \$29,037. Those debts became delinquent between November 2017 and July 2019. (Exs. 1 and 6.) He admitted those allegations. (Ex. 2.)

Applicant identified each of the seven accounts in his SCA. For each of the seven delinquent accounts, he recited as a reason his above explanation for his one year of unemployment. To that explanation, he added that he let the accounts be charged off or go into collection "as an act of desperation on our part . . . [and in] hindsight I do regret making bad judgment to do that." For all but one account, he stated "I am in the process of resolving this debt." For SOR ¶ 1.e, he stated that it was paid in full on June 11, 2021. (Ex. 3.) With his Answer, he submitted a document showing that four of the SOR accounts have been enrolled with a debt relief agency. That document does not show that those accounts (which includes SOR ¶ 1.e) have been resolved. (Ex. 2.)

In Applicant's August 2, 2021 Personal Subject Interview (PSI), he provided more detail about his financial problems. His son was born prematurely on December 19, 2013. As a result, his son was in a neonatal care unit from December 2013 to September 2014. He began to work part time so he could spend time with his son in the hospital. He incurred debts and living expenses that his part-time paycheck could not cover. His debts became delinquent when he and his wife went to Colombia in March 2017 to seek medical treatment for his daughter (then five years old) who was autistic. Her medical treatments left very little money to pay bills. He is currently seeking help from a credit counseling and consolidation agency and intends to pay his overdue bills. (Ex. 5.)

**Guideline B.** Under Guideline B, the SOR alleged that Applicant's: (1) spouse is a dual citizen of Colombia and the United States; (2) spouse owns property in Colombia with an approximate value of \$50,000; and (3) mother-in-law, sister-in-law, and brother-in-law are citizens and residents of Colombia. (Ex. 1.) Applicant admitted the first allegation but said that his spouse last visited Colombia in April 2019 and does not travel there regularly. He admitted the second allegation but said his spouse only made a down payment of \$20,000. He admitted the third allegation. (Ex. 2.)

Applicant's last trip to Colombia was in 2017. The investigation disclosed Applicant's contacts with Colombia and with his Colombian mother-in-law, brother-in-law, and sister-in-law. His mother-in-law is a homemaker. She is not employed outside of the home. She has no connections with the Colombian government, its military, or any business or entity owned by the Colombian government. His spouse is in telephonic or video chats with her mother about weekly. He also participates briefly in those communications. (Exs. 4 and 5.)

Applicant's Colombian brother-in-law and sister-in-law are employed by the same self-owned software company. They have no connections with the Colombian government, military, or any business or entity owned by the Colombian government. He and his spouse speak to those in-laws by telephone about weekly. None of his in-laws receive financial support from Applicant; nor does he receive any financial support from them. (Ex. 4 and 5.)

Applicant explained his spouse's ownership of real property in Colombia. The property was purchased in 2021. It is not important to his overall financial situation. It was purchased to have as a place to vacation when he retires. He is still making payments to own the home. He is not vulnerable to foreign influence because of the property. He plans to maintain ownership, because he wants to keep the property as a vacation home for retirement. It is not in his name; it is in his spouse's name, and her funds were used to make a down payment. His earnings were not used for the purchase of the property. (Ex. 4.) Applicant was asked why he purchased this property having unpaid debts. He answered that it was an investment for the future. (Ex. 5.)

**Guideline E.** Under Guideline E, the SOR alleged that Applicant received written reprimands for performance or conduct issues from his employer in February 2017, April

2019, and June 2019. (Ex. 1.) He admitted those allegations. (Ex. 2.) He discussed those issues in his PSI.

The first incident was in February 2017. He was issued a written warning for failure to follow management expectations for an absence notification. He agrees with this information. He failed to notify his supervisor, because he had to rush to the emergency room (ER) with his son (then three years old). Now he sends a quick text if he is going to miss work. His supervisor is aware of this incident. (Ex. 5.)

The second incident was in April 2019. He was issued a written warning for failure to comply with management for not completing training within the regular time frame. He agrees with this information. He unintentionally missed the training, because he did not have the training assigned to complete it. He was not at fault. His supervisor is aware of this incident. (Ex. 5.)

The third incident was in June 2019. He was issued a written violation with one day of work without pay, for failing to follow policies, procedures, and processes for checking out and in tools. He agrees with this information. He was falsely accused of removing tools from a locked area that he did not have access to. There have been changes as he was not at fault. His supervisor is aware of this incident. (Ex. 5.)

Applicant did not disclose these three incidents in his SCA or in his responses to interrogatories. (Exs. 3 and 4.) He discussed these incidents in his PSI after being confronted with them by the investigator. He explained his omission as an oversight. (Ex. 5.)

### **Administrative Notice**

The Government has requested that I take administrative notice of facts about the Republic of Colombia. (Ex. 9.) Applicant did not object to that request. Exhibit 9 is admitted. I have taken administrative notice of the facts contained in Exhibit 9. Of note is that Colombia is one of the oldest democracies in Latin America. The United States is Colombia's largest trading partner. Colombia has been plagued by transnational criminal and narcotics trafficking organizations, terrorist organizations, and armed criminal gangs. Colombia also continues to have human rights problems. Any person born in Colombia may be considered a Colombian citizen, and dual U.S.- Colombian citizens are required to present a Colombian passport to enter and exit Colombia.

### **Law and Policies**

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

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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."

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

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to Guideline F for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following conditions are potentially applicable in this case:

- (a) inability to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

The SOR debts are established by Applicant's admissions and the Government's credit reports. AG ¶¶ 19(a) and 19(c) apply.

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. Having reviewed all of the mitigating condition under AG ¶ 20, I find only the following potentially applicable:

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

I have considered mitigating condition AG ¶ 20(a). Applicant's SOR debts became delinquent between November 2017 and July 2019. That is not that long ago. And they were not infrequent. They remain delinquent today. I find that AG ¶ 20(a) does not apply.

I have considered mitigating condition AG ¶ 20(b), which has two elements. First, the applicant's financial problems must be caused by conditions "largely beyond the person's control." Second, the person must "have acted responsibly under the circumstances." Applicant's decision to travel to Colombia to seek medical treatment for his daughter who suffered from autism was understandable. Her condition was largely beyond his control, thus satisfying the first element of AG ¶ 20(b).

The next inquiry is whether Applicant acted responsibly in light of the consequences of his decision to go to Colombia to seek treatment. Those consequences were unemployment and an increase in expenses. Faced with those consequences, he elected to let his household accounts go into collections or be charged off. He candidly admitted that his choice was not responsible and was "bad judgment" that he regrets. I agree. I find that AG ¶ 20(b) does not apply.

I have considered mitigating condition AG ¶ 20(c). Applicant has enrolled four of his SOR debts in a debt relief program. And he has sought credit counseling. That is a good start. He earns partial credit under AG ¶ 20(c) for those efforts. He has not yet, however, shown a track record of resolving any of his debts. The Appeals Board has required an applicant to show a track of paying or otherwise resolving debts beyond just enrolling in a debt relief program or getting financial counseling. See, e.g., ISCR Case No. 20-01510 at 4 (App. Bd. Jul. 14, 2021), *citing* ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015). Therefore, AG ¶ 20(c) does not apply in full. For the same reason, mitigating condition AG ¶ 20(d) does not apply.

I find against Applicant on SOR ¶ 1.

### **Guideline B, Foreign Influence**

The security concern under 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; and
- (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.

The Government contends that AG ¶¶ 7(a), (b), and (f) apply. Applicant has three relatives by marriage who are citizens and residents of Colombia, his mother-in-law, his brother-in-law, and his sister-in-law. His mother-in-law is a homemaker. His brother and sister-in-law work for the same privately owned software firm. None of those relatives have any connections to the Colombian government or military. His last visit to Colombia was in 2017 to seek treatment for his daughter. His spouse last visited Colombia in 2019. Neither he nor his spouse regularly visit Colombia. His spouse speaks with her relatives about weekly by telephone, and he sometimes participates. He does not receive any financial support from his in-laws.

SOR ¶ 2.b is directed at the property Applicant's spouse owns in Colombia. He admitted that ownership and its approximate value of \$50,000. He added that his spouse paid the \$20,000 down payment. Thus, the balance is about \$30,000. He also stated that the property was purchased in his spouse's name. Her funds, not his, were used for the purchase.

I also considered that Applicant could liquidate that property to resolve his debts in the United States. I discounted that for three reasons. First, he stated that it was an investment in the future as a home for retirement or vacations. Second, he stated that the property is not important to his overall financial situation. Courts routinely permit individuals to testify about the financial significance of their assets. See, e.g., *Sabal Trail Transmission LLC v. 3921 Acres of Land*, 947 F. 3d 1362, 1368-69 (11th Cir. 2020). Finally, he has enrolled his SOR debts in a credit relief program and has sought financial counseling. He is addressing his financial difficulties. I find that the property is not a "substantial . . . property interest."

Applicant's mother-in-law, and his spouse's brother and sister-in-law are citizens and residents of Colombia. His spouse owns property in Colombia. Applicant intends to keep that property for vacations or as a retirement home. Colombia has been plagued by transnational criminal and narcotics trafficking organizations, terrorist organizations, and armed criminal gangs. Colombia also continues to have human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. AG ¶¶ 7(a), 7(b), and 7(f) have been implicated by the evidence.

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 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 U.S.

I considered the totality of Applicant's ties to Colombia. Colombia has significant problems, but it is also one of the oldest democracies in Latin America. The United States



is Colombia's largest trading partner. In light of the nature and extent of Applicant's connections to Colombia, I find it unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of the Colombian government, a terrorist group, a criminal organization, or a drug cartel. AG ¶ 8(a) is applicable. I find for Applicant on SOR ¶ 2.

### **Guideline E, Personal Conduct**

The security concern relating to Guideline E for personal conduct 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 SOR alleges three workplace infractions, two that resulted in written warnings and one that resulted in a written violation with a one-day penalty of work without pay. Those infractions were in 2017 and 2019. Applicant admitted those infractions. Department Counsel observes that the first two infractions are "not overly concerning." I concur. Applicant provided credible explanations for those, an absence due to a trip to the ER for his son and missing a training he did not think he was scheduled for. These first two infractions were *de minimis* in nature.

The third incident involved Applicant's failure to follow appropriate procedures for checking tools in and out of the workplace. Department Counsel characterizes this as an accusation of theft. But Applicant claims he was falsely accused and that changes have since been made. I do not characterize the incident as something as nefarious as theft, but it was a violation.

The SOR does not specify which disqualifying condition under AG ¶ 16 applies. Department Counsel argues that because Applicant did not disclose these three incidents in his SCA or in his interrogatory responses, this shows a "pattern of rules violations." FORM at 4. That would trigger AG ¶ 16(d)(3): "a pattern of dishonesty or rule violations." But the SOR does not allege facts supporting that disqualifying condition. The "pattern" must include the first two incidents, which were *de minimis*. Therefore, the "pattern" is an allegation not asserted in the SOR. Nor does the SOR allege a deliberate failure to disclose the three incidents. Unalleged conduct cannot be an independent basis for a denial. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). Thus, Applicant's failure to disclose the three incidents and the pattern those incidents might portray cannot be grounds for a denial. I find for Applicant on SOR ¶ 3.

## The Whole-Person Concept

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and its factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For these reasons, I conclude that the security concerns under Guideline F, financial considerations, have not been mitigated. I conclude that there are no established Guideline B, foreign influence, concerns and that security concerns under Guideline E, personal conduct, have not been 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:	AGAINST APPLICANT
Subparagraphs 1.a. – g.:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a. – c.:	For Applicant
Paragraph 3, Guideline E	FOR APPLICANT
Subparagraph 3.a.	For Applicant

### Conclusion

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

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Philip J. Katauskas  
Administrative Judge