



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



In the matter of:)	
)	
)	ISCR Case No. 22-01876
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

08/01/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the security concerns Guideline A (allegiance to the United States) and Guideline E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On December 13, 2022, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines A and E. Applicant responded to the SOR on December 17, 2022, and requested a requested a decision based on the written record in lieu of a hearing. On January 24, 2023, Department Counsel requested a hearing before an administrative judge. The case was assigned to me on May 30, 2023. The hearing convened as scheduled on July 12, 2023.

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Department Counsel requested that I take administrative notice of five documents from

the U.S. Department of State, the U.S. Department of the Treasury, and the U.S. Department of Justice. (Hearing Exhibits (HE) I through V) Without objection, I have taken administrative notice of the information in the requested documents. Applicant testified, but he did not submit any documentary evidence.

Findings of Fact

Applicant is a 38-year-old employee of a staffing company that provides employees to a defense contractor. This is his first application for a security clearance. He earned a bachelor's degree in 2009. He has never married, and he has no children. (Transcript (Tr.) at 14-18, 51-52; GE 1)

In 2009, Applicant uploaded his resume on a job-search website. He received an email from what he thought was a financial consulting company. He responded and a telephonic interview was arranged. During the telephonic discussion, the caller (Ms. C) asked Applicant to set up a limited liability company (LLC) and open a bank account in the LLC's name. Ms. C or someone she represented would deposit \$15,000 into the bank account. Applicant would keep \$500, withdraw the rest, and send it by Western Union to an unidentified location. Applicant would also receive an additional \$2,000 per month. Ms. C told him to withdraw the money from different branches and send the money through different Western Union locations. (Tr. at 19-53; Applicant's response to SOR; GE 2)

When he initially responded to the email, Applicant thought it was legitimate. By the time he agreed to the plan, he realized it was an illegal money laundering scheme. He did not know if the money was going to terrorists, a drug cartel, organized crime, or some other illegal entity, and he did not care. He admitted that he was greedy and did not care who benefitted from the scheme. (Tr. at 21-24, 53; Applicant's response to SOR; GE 2)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in August 2020. He answered "No" to a question under Section 29 that asked, "Have you **EVER** associated with anyone involved in activities to further terrorism?" (GE 1)

Applicant was interviewed for his background investigation on February 23, 2021, and again on February 26, 2021. He was asked if he conducted any wire transfers. He discussed his telephone conversation with Ms. C. He described the wire transfers as part of a legitimate business venture, when he knew it was not. After being confronted by the investigator with inconsistencies, Applicant admitted that he had attempted to conceal the actual nature of his conversation with Ms. C. He admitted to the investigator that he quickly realized that it was not a legitimate business venture, but rather an unscrupulous or illegal money wiring scheme. He told the investigator that he did not have concrete proof, but he thought the money was going to ISIS. He admitted that his actions were solely motivated by greed. (Tr. at 50; AE 2)

Applicant told the investigator that he received four deposits of \$15,000 and transferred \$14,500 three times. When he went to the bank to withdraw the money the

fourth time, he was told by the bank that the account had been frozen due to suspicious activity. He told the bank manager that he was an innocent victim of the scheme. He followed the manager's advice and filed a false police report in which he claimed to be an innocent victim of the scheme. He attempted to call Ms. C and alert her to the developments, but her phone had been disconnected. He had no further communications with her. (GE 2)

Applicant told the background investigator in February 2021 that he was contacted by the U.S. Secret Service about three to four months after the last attempted transfer. He stated that the Secret Service told him that the funds went to ISIS. He downplayed his involvement in the scheme to the Secret Service, and he was never charged with anything. (GE 2)

Applicant contacted the background investigator and indicated he had additional information. On February 26, 2021, he told the investigator that the Secret Service never actually told him the money went to ISIS, and that the only thing the Secret Service would confirm is that the money went to an Eastern European country. Applicant reaffirmed that it was only a "gut" feeling that the money went to ISIS. (Ge 2)

The two interviews in February 2021 were summarized in reports of investigation (ROIs). Applicant certified the ROIs were accurate in September 2022. He initially testified that the Secret Service provided some indication to him that Ms. C represented someone in "the Middle East and overseas." (Tr. at 27) He later testified that the Secret Service did not inform him that the money went to the Middle East, and that it went to an Eastern European country. He stated that he surmised the funds might have gone to ISIS or the Middle East because the Secret Service was investigating the transactions. He stated that he was honest to the bank manager, in the police report, and to the Secret Service. He also stated that he provided the Secret Service with all his emails and electronic communications with Ms. C. (Tr. at 29-40, 46-47, 52-53; GE 2)

Applicant admitted, without explanation, all the SOR allegations. His testimony was inconsistent with parts of the ROIs. He testified that he did not intentionally provide false information on his SF 86 or during his background interview. He stated that he told the interviewer that the information that Applicant received was false, and the interviewer misinterpreted his statements to mean that Applicant intentionally provided false information. (Tr. at 47-51)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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 A, Allegiance to the United States

The security concern for allegiance to the United States is set out in AG ¶ 3:

The willingness to safeguard classified or sensitive information is in doubt if there is any reason to suspect an individual's allegiance to the United States. There is no positive test for allegiance, but there are negative

indicators. These include participation in or support for acts against the United States or placing the welfare or interests of another country above those of the United States. Finally, the failure to adhere to the laws of the United States may be relevant if the violation of law is harmful to stated U.S. interests. An individual who engages in acts against the United States or provides support or encouragement to those who do has already demonstrated willingness to compromise national security.

The guideline notes several conditions that could raise security concerns under AG ¶ 4. The following are potentially applicable in this case:

(a) involvement in, support of, training to commit, or advocacy of any act of sabotage, espionage, treason, terrorism, or sedition against the United States;

(b) association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts; and

(c) association or sympathy with persons or organizations that advocate, threaten, or use force or violence, or use any other illegal or unconstitutional means, in an effort to:

(1) overthrow or influence the U.S. Government or any state or local government;

(2) prevent Federal, state, or local government personnel from performing their official duties;

(3) gain retribution for perceived wrongs caused by the Federal, state, or local government; and

(4) prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

I am not convinced by substantial evidence that the transferred funds went to a terrorist organization. I am convinced that Applicant knew he was involved in an illegal money laundering scheme. He did not know if the money was going to terrorists, a drug cartel, organized crime, or some other illegal entity, and he did not care. He admitted that he was greedy and did not care who benefitted from the scheme. It is unnecessary to establish that the money went to a terrorist organization and that Applicant knew at the time that it went to a terrorist organization. It is sufficient that Applicant believed it was a real possibility that he was helping to fund a terrorist organization, and he did it anyway. The above disqualifying conditions are applicable.

Conditions that could mitigate allegiance to the United States security concerns are provided under AG ¶ 5. The following are potentially applicable:

(a) the individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;

(b) the individual's involvement was humanitarian and permitted under U.S. law;

(c) involvement in the above activities occurred for only a short period of time and was attributable to curiosity or academic interest; and

(d) the involvement or association with such activities occurred under such unusual circumstances, or so much time has elapsed, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or allegiance.

Applicant proved that he valued money over innocent people and the interests of the United States. As indicated in AG ¶ 3, "An individual who engages in acts against the United States or provides support or encouragement to those who do has already demonstrated willingness to compromise national security." None of the mitigating conditions are sufficiently applicable to overcome security concerns about Applicant's allegiance to the United States.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 clearance investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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; and

(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.

SOR ¶ 2.a cross-alleges the allegiance to the United States allegation. Applicant's conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. The conduct also created vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. AG ¶ 16(c) is not perfectly applicable because Applicant's conduct is sufficient for an adverse determination under the allegiance to the United States guideline. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established.

Applicant answered "No" to a question under Section 29 of his August 2020 SF 86 that asked, "Have you **EVER** associated with anyone involved in activities to further terrorism?" I am not convinced by substantial evidence that the transferred funds went to a terrorist organization. I am therefore not convinced that the answer was false. AG ¶ 16(a) is not established. SOR ¶ 2.b is concluded for Applicant.

I am convinced by substantial evidence that Applicant intentionally provided false information during his background interview when he described the wire transfers as part of a legitimate business venture. AG ¶ 16(b) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

Applicant provided additional information to the background investigator, but only after he was confronted with the facts. I am not convinced he was completely honest during any stage of these proceedings.

The analysis under allegiance to the United States applies equally here. There are not many things that carry the same stigma as helping terrorists. Applicant remains vulnerable to exploitation, manipulation, and duress. His conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the above mitigating conditions are applicable.

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 have incorporated my comments under Guidelines A and E in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guidelines A and E.

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 A:	Against Applicant
Subparagraphs 1.a:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge