



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



In the matter of:)
)
) ISCR Case No. 22-02267
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

11/09/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns under Guideline B (foreign influence), but he did not mitigate the security concerns under Guideline E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On February 9, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B and E. Applicant responded to the SOR on February 24, 2023, and requested a decision based on the written record in lieu of a hearing. On March 27, 2023, Department Counsel requested a hearing before an administrative judge. The case was assigned to me on April 5, 2023. The hearing was convened as scheduled on May 25, 2023. The transcript of the first hearing (Tr.1) was received on June 5, 2023. The case was continued after the SOR was amended (see below) and reconvened on July 6, 2023. The transcript of the second hearing (Tr.2) was received on July 17, 2023.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1, 2, and 3 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. When the hearing reconvened, GE 4 and 5 were admitted in evidence without objection. Applicant testified again and submitted Applicant Exhibits (AE) A through H, which were admitted without objection. The record was held open for Applicant to submit additional documentary evidence. He submitted an email and attached documents that I have marked AE I through M and admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about Ethiopia. (Hearing Exhibit (HE) I) Without objection, I have taken administrative notice of the facts contained in the request. The pertinent facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the political instability, threat of terrorism, and ongoing human rights problems in Ethiopia.

SOR Amendment

Department Counsel moved to amend the SOR by adding four allegations under Guideline E. (HE III and V) Over Applicant's objection, I amended the SOR to add SOR ¶¶ 2.b and 2.c as identified in HE III and V, with slight variations as described in the record. I denied the motion to add SOR ¶¶ 2.d and 2.e as I do not find that the requested amendments conform to the evidence. (Tr.1 at 60-62; Tr.2 at 7-8, 13-14, 49-51)

Findings of Fact

The facts in this case are not always clear as Applicant is a poor historian, either from poor memory, inattention to detail, prevarication, or a combination of those factors.

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer for about six years. He has worked overseas for defense contractors since 2015. He has held a security clearance since about 2015. He attended college for a period without earning a degree. He has never married, and he has no children. (Tr.1 at 19-20, 32-33, 62; GE 1, 3, 4; AE F, I-M)

Sometime before 2015, Applicant met a woman (Ms. A) on Facebook who was a citizen and resident of Ethiopia. They were friends who regularly communicated by electronic means but were not in a romantic relationship. It is unclear when Applicant met her because he gave differing times: 2010, 2011, 2012, 2013, and 2014. He stated that he met her when he was working for a specific employer. He reported on his October 2014 Questionnaire for National Security Positions (SF 86) that he worked for that employer from March 2002 to May 2012. I believe he met her online in 2012 or

earlier. (Tr.1 at 29, 39-40; Tr.2 at 28-32, 40-42; Applicant's response to SOR; GE 3; AE C)

Applicant reported in the October 2014 SF 86 that he started working for a defense contractor in September 2014. He was sponsored by the defense contractor to work overseas, but he had not started working yet. He reported that he had a vehicle repossessed in 2014. He indicated the matter was resolved because he returned the vehicle. He did not report any foreign contacts. (GE 4)

Applicant was interviewed for his background investigation in January 2015. He stated that he was supposed to start work for the contractor at the end of January 2015, and he was scheduled to work overseas. He did not discuss any foreign contacts. (GE 5)

Applicant started working overseas for a defense contractor in 2015. At some point his relationship with Ms. A changed, and he felt they were in a boyfriend-girlfriend relationship. He stated that occurred in late December 2014. He visited Ms. A in Ethiopia on three to four occasions. The exact dates are unclear. A background investigator viewed Applicant's passport in August 2021. It revealed that Applicant had 30-day visas to Ethiopia in August 2015, March 2016, December 2016, and August 2017. The report of investigation noted that there were five 30-day visas and reported the same visa from December 2016 twice. It is possible that this was an error, and that the last visa was from December 2017. The investigator reported that there were other visas, and entry and exit stamps in the passport, but they were illegible. Applicant admitted that he traveled to Ethiopia three to four times, with the last trip in December 2016 or 2017. He traveled to India for tourism in 2017. (Tr1. at 19, 40, 42-43, 66; Tr.2 at 14, 28-30, 37-39; Applicant's response to SOR; GE 1, 3; AE C, D, F)

Applicant sent money to Ms. A. He stated that she was unemployed, and he sent her \$100 every month for about one and a half years to pay her rent. He also stated that he sent her around \$7,000 to \$8,000 for a medical issue. He estimated that he sent her about \$12,000 to \$13,000 total. He sent the money through Western Union, and he also sent money to his mother in the United States by Western Union. He and Ms. A broke up in about 2017. He has had no further contact with her, and he has not returned to Ethiopia since they broke up. (Tr.1 at 29-31, 40-46, 72-73; Tr.2 at 33-36, 43-44, 48, 54-55; Applicant's response to SOR; GE 3; AE C)

Applicant met another Ethiopian citizen (Ms. B) online. He gave conflicting information about when he met her. In his SOR response, he stated that he met her online before he went to work overseas in 2015. He later testified that he met her online after his first trip to Ethiopia. He considered her a pen pal. He visited her and her family during one of his trips to Ethiopia. She worked for an airline. They maintain electronic communication, and he met her in Dubai a few times when they were both traveling through. She now lives in Spain. They are friends only, with no romantic interests. He sent her about \$1,500. Part of that was a wedding gift for her sister, and part went to pay her back for helping him when he was in Ethiopia. (Tr.1 at 29-31, 41, 54-60; Tr.2 at 45-46; Applicant's response to SOR; GE 2; AE A)

Applicant submitted another SF 86 in May 2021. There were many inaccuracies in the questionnaire, including his education, employment history, and work location overseas. He answered “no” to questions in the foreign section that asked:

Section 19 - Foreign Contacts

A foreign national is defined as any person who is not a citizen or national of the U.S.

Do you have, or have you had, close and/or continuing contact with a foreign national **within the last seven (7) years** with whom you, or your spouse, or legally recognized civil union/domestic partner, or cohabitant are bound by affection, influence, common interests, and/or obligation? Include associates as well as relatives, not previously listed in Section 18.

Section 20A – Foreign Activities

Foreign Financial Interests - Foreign National Support

Have you **EVER** provided financial support for any foreign national?

Section 20C – Foreign Travel

Have you traveled outside the U.S. **in the last seven (7) years**?

The answers to the above questions were all false because in the previous seven years, Applicant had close and continuing contact with Ms. A; he financially supported Ms. A; and he traveled for personal reasons to Ethiopia and India.

Applicant was interviewed for his background investigation in July 2021. He stated that he traveled to Ethiopia in December 2016 to January 2017 for 20 to 30 days to visit his foreign girlfriend, Ms. A. He stated that he traveled to India in August 2017 for 6 to 10 days for tourism. He stated that he did not report his foreign travel because he forgot about it, and he thought all his foreign travel was for government business. He discussed the funds he sent to Ms. A after the investigator questioned him about the transactions. He stated that his relationship with Ms. A ended in December 2017 because things did not work out, she was lazy, and he was embarrassed by the relationship. He also discussed his relationship with Ms. B. (Tr.1 at 43; GE 3)

Applicant denied intentionally providing false information on the 2014 and 2021 SF 86s. He stated in his response to the SOR that he did not list Ms. A and Ms. B because he did not consider them to be foreign nationals. His illogical argument was that if he knew them before he needed a security clearance then “I wouldn’t call those people foreign national[s] because I knew them in a different setting, and they were my friend[s].” (Tr.1 at 36-39; Applicant’s response to SOR; GE 1, 3)

Applicant stated that he did not list Ms. A on the 2014 SF 86 because they were just friends at that time. (Tr.1 at 29; AE I) I am not convinced by substantial evidence that Applicant intentionally provided false information on that questionnaire.¹

Applicant testified that information from the 2014 SF 86 did not repopulate in the 2021 SF 86, and he had to complete the 2021 questionnaire “from scratch.” He did not have all the information to fill it out, but he did the best he could. He admitted that he “probably just pencil-whipped it and guessed just to submit it.” He stated that he filled out another SF 86 in 2020 or 2022 that had the correct information. He did not submit a copy of a third SF 86, and Department Counsel was unable to locate one. There are many identical phrases in the 2014 and 2021 SF 86s (see e.g., sections 11, 13A, 16, and 18). I find that the 2021 SF 86 repopulated with information from the 2014 SF 86. (Tr.1 at 21-25, 37; Tr.2 at 37; AE H)

Applicant stated that he did not list his foreign travel on the 2021 SF 86 because he was living overseas at the time and was traveling to a lot of countries for work. He also stated that he was living on a U.S. military installation, so he thought of it like it was part of the United States. He did not think about his trips to Ethiopia and India when he filled out the SF 86, but he let his company security manager know about the trips before and after he took them and that he was going to visit his girlfriend. A coworker confirmed that it was required to inform security about any leave taken to foreign countries. The coworker wrote that he and other employees knew that Applicant was going to Ethiopia to meet a Facebook friend. (Tr.1 at 34-39, 50, 62-63; Tr.2 at 17-25, 40; AE D, E, I, J)

Applicant stated that he did not list Ms. A on the 2021 SF 86 because he did not consider a friend to be a foreign national. He stated that he did not list her and the financial support he provided her because the SF 86 said to only go back seven years. He stated that he was done with her and no longer wanted to think about her. He was adamant he discussed her during his background interview in 2015. He stated “[t]hat man sent me a copy of our interview and in that interview I told him about [Ms. A].” There is nothing in the ROI of the 2015 interview about Ms. A. He testified that he broke up with her because he was embarrassed by the relationship because she was lazy, and she did not grow. Department Counsel then asked, “Do you think maybe that embarrassment might be why you didn’t mention her on your electronic questionnaire?” to which Applicant replied, “Probably so, honestly, being honest with you.” (Tr.1 at 43-44, 47-50, 63-64, 72-73; Tr.2 at 26-27, 37, 44, 55-56; Applicant’s response to SOR; GE 1-3; AE G, I, K)

¹ Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See, e.g., ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994); ISCR Case No. 04-07187 at 5 (App. Bd. Nov. 17, 2006).

I did not find Applicant credible. After considering all the evidence, including Applicant's age, education, experience, admissions, inconsistent responses, and the illogical rationale for the incorrect information on the 2021 SF 86, I find by substantial evidence that he intentionally provided false information on the 2021 SF 86, as discussed further in the analysis.

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 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; 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.

Applicant had a relationship with Ms. A, a citizen and resident of Ethiopia, a country with political instability, terrorism, and human rights problems. That relationship raised security concerns when it was ongoing, but it ended in about 2017. It does not generate any current security concerns or establish any disqualifying conditions. SOR ¶ 1.a is concluded for Applicant.

Applicant is friends with Ms. B, a citizen of Ethiopia, who currently resides in Spain. That is enough to create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are 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 United States; and

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

I considered the totality of Applicant's ties to Ms. B and Ethiopia. He is not romantically involved with Ms. B, and he has not returned to Ethiopia since he broke up with Ms. A in about 2017.

I find that Applicant's ties to Ms. B and Ethiopia are outweighed by his deep and long-standing relationships and loyalties in the United States. It is unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of Ethiopia. There is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

SOR ¶ 2.a

SOR ¶ 2.a alleges that Applicant intentionally failed to report that he had “close and/or continuing” contact with foreign nationals Ms. A and Ms. B on his 2021 SF 86. The question is straightforward, and Applicant’s explanation that he did not think a friend could be a foreign national is nonsensical. I find that he intentionally did not report Ms. A, who was his girlfriend for several years. AG ¶ 16(a) is applicable for his failure to report Ms. A. However, he was never romantically involved with Ms. B. I am not convinced that he was aware that he had to report her. AG ¶ 16(a) is not applicable for his failure to report Ms. B.

SOR ¶ 2.b

SOR ¶ 2.b alleges that Applicant intentionally failed to report on his 2021 SF 86 that he provided financial support to Ms. A, a foreign national. He admitted that what he sent her amounted to support, but his argument that he did not think a friend could be a foreign national strains credulity. I find that he intentionally did not report his support to Ms. A. AG ¶ 16(a) is applicable.

SOR ¶ 2.c

SOR ¶ 2.c alleges that Applicant intentionally failed to report on his 2021 SF 86 his foreign travel, including at least three trips to Ethiopia and a trip to India. The SF 86 was replete with mistakes and incorrect information. As indicated above, I found that some of the incorrect information was due to intentional falsification. Other incorrect information can be attributed to inattention to detail, slack attitude, inability to comprehend the question, or just a mistake. This is one of the incorrect answers that I am attributing to a reason other than intentional falsification. AG ¶ 16(a) is not applicable. SOR ¶ 2.c is concluded for Applicant.

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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant discussed his relationship with Ms. A and his travels to Ethiopia and India during his background interview in July 2021. He indicated that he did not report his foreign travel because he forgot about it, and he thought all his foreign travel was for government business. In his SOR response and hearing testimony, he asserted that he did not list Ms. A and Ms. B because he did not consider them to be foreign nationals. Applicant denied that he lied on the 2021 SF 86. Having determined that he intentionally omitted information about his foreign contacts in an attempt to mislead the government, I have also determined that his explanations that the omissions were unintentional were also false. It would be inconsistent to find his conduct mitigated.²

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

² See ISCR Case 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant Applicant's security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a "whole person" analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

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 Guideline B and E in my whole-person analysis. I also considered Applicant's work overseas for defense contractors.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns, but he did not mitigate the personal conduct security concerns.

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 B:	For Applicant
Subparagraphs 1.a-1b:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 1.a:	Against Applicant (except as it relates to Ms. B, which is found For Applicant)
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For 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