



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



In the matter of:)	
)	
)	ISCR Case No. 20-01445
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha (Manns) La Fay, Esq., Department Counsel
For Applicant: *pro se*

02/27/2024

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for a security clearance to work in the defense industry. Applicant intentionally misled his employer and the Government on multiple occasions about his foreign travel and relationships with foreign nationals. Clearance is denied.

Statement of the Case

On December 14, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence and personal conduct guidelines. DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke Applicant’s security clearance. Applicant timely answered the SOR and requested a hearing.

Procedural Matters

Applicant Request for Withdrawal of the SOR

The hearing in this matter was initially scheduled for January 13, 2023. On November 2, 2022, Applicant sent an email containing information he believed mitigated the alleged security concerns and requested that the hearing be canceled. I informed him that I did not have the authority to do so but forwarded the request to Department Counsel. After reviewing the information, Department Counsel declined to withdraw the SOR, and confirmed the government's intent to proceed with the case as scheduled.

Applicant's Pre-Hearing Communications

Between November 28 and December 1, 2023, Applicant sent three emails providing information he believed relevant to the case. In lieu of multiple submissions, I ordered him to file one submission of proposed exhibits by January 3, 2024. He complied with the order. The emails are appended to the record as Hearing Exhibit (HE) IX. The attachments to Applicant's emails are admitted into evidence as Applicant's Exhibits (AE) A through C.

Government's Motion to Amend the SOR

On January 12, 2023, the Government filed a Motion to Amend the SOR, citing the development of new information relevant and material to a determination of Applicant's security worthiness. (See, Hearing Exhibit (HE) III) I convened the hearing as scheduled on January 13, 2023, to hear the parties on the Motion. DOHA received the transcript of the motions hearing on January 26, 2023. (Motion Transcript at. 5-6)

During the motions hearing, Applicant confirmed receipt of the motion but had not read it. Based on the Government's proffer, I granted the Government's Motion to Amend the SOR. However, in the interest of protecting Applicant's Due Process Rights, I continued the hearing until April 13, 2023. On January 13, 2023, I issued a combined ruling on the Government's Motion to Amend and Case Management Order, which is appended to the record as Hearing Exhibit (HE) VI. The Government served Applicant and the Court with a finalized copy of the SOR as amended and updated disclosure letter on January 31, 2023, as ordered. (Motions Transcript at 6-8; HE II, HE VII)

The Government amended the SOR to withdraw allegations ¶¶ 1.b and 2.c. The Government clarified the language in SOR ¶ 2.b to state that Applicant failed to report a February 2018 trip to Colombia to his facility security officer (FSO), as required. He admitted this allegation. The Government also added three allegations, SOR ¶¶ 2.d through 2.f, under the personal conduct guideline. SOR ¶¶ 2.d and 2.e are falsification allegations that Applicant intentionally withheld information from the Government about his travel to Columbia in February 2018, and that he intentionally made false statements to the Government about the circumstances under which he met his then wife in 2017. He denied both allegations. SOR ¶ 2.f alleges that he used dating websites to initiate

and maintain contact with women from Colombia. He denied the allegation. Applicant filed his Answer to the amended Statement of Reasons along with his proposed exhibits on March 10, 2023, as required. (HE IV-V, VII)

During the hearing, the Government moved to withdraw SOR ¶ 2.d, which I granted without objection from Applicant. (Tr. 87-89)

Evidentiary Submissions

At the hearing, I included in the record the following documents as Hearing Exhibits (HE):

- HE I: Disclosure Letter, dated April 28, 2021;
- HE II: Disclosure Letter, dated January 31, 2023;
- HE III: Motion to Amend the SOR, dated January 12, 2023;
- HE IV: Proposed Amendment to the SOR, dated January 12, 2023;
- HE V: Applicant's Answer to the Amended SOR, dated February 2, 2023;
- HE VI: Ruling and Case Management Order, dated January 13, 2023;
- HE VII: Combined SOR as Amended, April 19, 2023;
- HE VIII: Administrative Notice: Colombia, dated September 15, 2021; and
- HE IX: Email Correspondence between parties from November 28, 2022, to December 2, 2022.

I also admitted Government's Exhibits (GE) 1 through 9, and Applicant's Exhibits (AE) A through G, without objection. After the hearing, I left the record open until April 28, 2023, to allow Applicant to submit additional documentation. He sent four emails between April 20, 2023, and April 27, 2023, containing 30 attachments related to foreign travel reports he made to his employer between 2021 and 2022. The emails are appended to the record as HE X through XIII.

The first email (HE X), dated April 20, 2023, contained five attachments, one of which, a two-page foreign travel debrief, dated September 22, 2022, was admitted to the record during the hearing as part of GE 8. The second email, also dated April 20, 2023 (HE XI), contained one attachment – a spreadsheet detailing his foreign travel between July 2021 and September 2022.

The third email (HE XII), dated April 21, 2023, contained three zip files labeled 2021, 2022, and Archives. The 2021 zip file contained four documents; two documents were foreign travel documents submitted in HE X. The 2022 zip file contained six

documents. Two of the travel briefs were duplicates of those contained in HE X as well as two duplicates of the September 22, 2022 foreign travel brief contained in GE 8. The Archives zip file contained 14 documents, of which five were foreign travel reports submitted in HE X, as well as a picture of the employer's logo, and another unsupported file that could not be opened. The fourth email (HE XIII), dated April 27, 2023, did not contain any attachments, but a statement that Applicant submitted all travel reports available to him for consideration in this matter.

The remaining 15 documents are admitted, without objection from the Government (HE XIV) as:

AE H: Foreign Travel Security Briefing for travel dates December 24, 2021 to December 27, 2021, signed on December 21, 2021 (3 pages);

AE I: Foreign Travel Debrief, dated December 30, 2021 (2 pages);

AE J: Foreign Travel Security Briefing for travel dates February 28, 2022 to March 8, 2022 (3 pages);

AE K: Foreign Travel Debrief, dated March 8, 2022 (2 pages);

AE L: Foreign Travel Spreadsheet July 2021 to September 2022 (5 pages);

AE M: Foreign Travel Report ID #3382 (2 pages);

AE N: Foreign Travel Report ID #2306 (2 pages);

AE O: Foreign Travel Report ID #3874 (2 pages);

AE P: Foreign Travel Report ID #6738 (2 pages);

AE Q: Foreign Travel Briefing Acknowledgment Form for travel dates July 8, 2021 to July 12, 2021 (1 page);

AE R: Foreign Travel Debrief, dated July 14, 2021 (1 page);

AE S: Foreign Travel Briefing Acknowledgment Form for travel dates May 12, 2021 to May 18, 2021 (1 page);

AE T: Foreign Travel Briefing Acknowledgment Form for travel dates May 28, 2021 to June 2, 2021 (1 page);

AE U: Foreign Travel Debriefing Form, dated May 19, 2021 (1 page); and

AE V: Foreign Travel Debriefing Form, dated June 14, 2021.

DOHA received the transcript (Tr.) on May 1, 2023.

Findings of Fact

Applicant, 36, worked as an engineer for a federal contracting company from April 2017 to February 2023, when he was placed on administrative leave pending the outcome of his security clearance adjudication. He was initially granted access to classified information in September 2015, in connection with his service in the Army National Guard. DOD initiated the current investigation after Applicant's employer filed an incident report in March 2018 regarding Applicant's travel to Colombia and his relationship with a Colombian national. (Tr. 29-30,33; GE 3)

In early March 2018, Applicant's manager notified the company's facility security office (FSO) that Applicant failed to return to work as expected after a temporary duty assignment in another state. When asked, Applicant told the FSO that he traveled to Colombia to visit a friend, a citizen of that country. The same day the FSO filed the incident report, a counterintelligence (CI) representative from the Defense Security Service (DSS) interviewed Applicant at his place of employment. He admitted to the CI representative that he traveled to Colombia in August 2017 and February 2018. He also admitted that he was engaged to a Colombian national and he initiated the process with the U.S. State Department to sponsor her immigration to United States. He reported that he planned on returning to Colombia in April 2018 for his wedding ceremony. (GE 3; AE E)

On his April 26, 2018 security clearance application, Applicant disclosed his marriage to a Colombian national days before he completed the application. He also disclosed his wife as foreign national to whom he provided financial support. In addition to his wife, he also disclosed his mother-in-law, also a Colombian national, as a relative. He reported traveling to Colombia in August 2017, February 2018, and April 2018. (GE 1; AE D)

As part of the investigation, Applicant had two interviews with a background investigator on February 21, 2019, and March 28, 2019. During the February interview, Applicant told the investigator that in August 2017, he informed his supervisor that he was traveling to his home country to attend a family event but changed his mind and traveled to Colombia instead. He told the investigator that he that he met his wife, a Colombian national, while walking through a shopping mall. After that meeting, he told the investigator that they spent the remaining six days of his trip together. Upon returning the United States, he maintained daily telephonic contact with the woman and started supporting her financially. He denied meeting the woman before the trip. (GE 2)

When asked by the investigator if he reported the August 2017 trip to his FSO, Applicant explained that he was not aware of the requirement to do so. After marrying in April 2018, Applicant claimed to have shown his supervisor a picture of his wedding and provided his wife's information to the human resources department. He believed this constituted sufficient notification to his employer of his relationship with a foreign national. He told the investigator that after March 2018 interview with a DSS agent and receiving additional security training on foreign travel and contact reporting

requirements, that he reported two additional trips to Colombia in January 2019 and February 2019 to his FSO as required. (GE 2)

During the second interview in March 2019, the investigator asked Applicant if he reported his February 2018 travel to Colombia to his FSO. After claiming that he could not remember doing so, he told the investigator that he did not report the trip because he did not know he needed to do so. He contends that he failed to mention his failure to report the trip in his first interview because it slipped his mind. (GE 2)

The investigator asked Applicant details about how he met his wife. He denied knowing his wife before his first trip in August 2017. He reiterated that he met her during the trip. The investigator pressed further:

Subject was asked could it be possible that he met his spouse before traveling to Colombia. Subject responded yes. Subject was asked if he met her online[.] [sic] Subject responded no. Subject was then asked if he met his spouse on [dating web site]. Subject responded no. Subject was asked again how he met his spouse[.][sic] Subject advised that he met her online around May 2017 but did not want to disclose which site [it] [sic] was, because it is his personal business. He wanted to keep some things private and to himself. Subject reluctantly stated that it was a dating site but refused to provide any further details. Subject disclosed that he did not report this information the first time because he was embarrassed by meeting his spouse online and he did not want people to look at him differently. (GE 2)

DOHA sent Applicant a set of interrogatories to which Applicant responded in May 2020. He was asked to review and verify the summaries of the February and March 2019 subject interviews. He reported that the summaries were not accurate, specifically, the details about how he met his wife. He offered the following correction:

Due to stigmatization that "oh he met his wife online," I did not disclose that I met my wife online first. I met my wife online in summer 2017. We talked over the phone and video call for a month or so and then I visited her in Colombia. She met me at the airport. And that is how we started our relationship.

Aside from this correction, he confirmed that the remainder of the summary was accurate as captured. (GE 2)

Applicant returned to Colombia in January 2020. After receiving the SOR in December 2020, he traveled to Colombia to visit his wife in May 2021, July 2021, December 2021, and February 2022. He returned to Colombia in March 2022 to serve her with a divorce petition because she would not complete the necessary steps to immigrate to United States. He claims that his divorce was finalized in April 2022. That same month, he met another Colombian national online and returned there in September 2022 to visit her in-person. He claims that after that visit he decided not to

pursue that relationship or any other with a foreign national. (Tr. 34-36, 41-43, 96-97,100; AE F-G)

At the hearing, Applicant testified that the March 2018 incident report filed by his employer also contained false statements. He denies the statements in the report that he traveled to Colombia instead of reporting to work as required after completing a temporary duty assignment. He also testified he told the FSO that he had traveled to spend time with his girlfriend whom he intended to marry, not just a friend. He claims that everyone knew about his girlfriend in Colombia and that the relationship was not a secret. (Tr. 94-95)

Applicant reviewed GE 7, which contains the security training he received when he started his job in April 2017 and confirmed the signature on the training record as his own. He testified that he was not aware of the foreign travel reporting requirements because he did not read the training materials. He also admitted receiving annual refresher training on the reporting requirements. (Tr. 56-70; GE 5-9)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an Applicant's eligibility for access to classified information.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security-y 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 protect 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 Executive Order 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

Foreign Influence

The SOR alleges disqualifying conduct under the foreign influence guideline. “[F]oreign contacts and interests . . . are a national security concern . . . if they create circumstances in which the individual may be manipulated or induced to help a foreign person in a way that is inconsistent with U.S. interest or otherwise made vulnerable to pressure and coercion by any foreign interest.” (AG ¶ 6) At the time the SOR was issued, Applicant had relationships with his then wife, mother-in-law, and a friend, who were residents and citizens of Colombia. The following disqualifying conditions apply:

AG ¶ 7(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

AG ¶ 7(c) failure to report or fully disclose, when required, associations with a foreign person, group, government, or county.

Typically, the foreign influence analysis requires an examination of the risks raised by the country at issue. Here, such an analysis is not necessary. The country at issue here is not of particular importance, because the risk was created by Applicant’s conduct. Applicant feared the stigma associated with online dating, so he attempted to hide his foreign contacts from the Government and his employer in violation of his duties as a clearance holder. While online dating is common, that does not mean that it is not without risk, especially when the relationship is with a foreign national. Applicant’s initial failure to report also prevented his employer from giving him proper security briefings and obtaining debriefs that may have been necessary and appropriate.

Notwithstanding Applicant’s failure to report these foreign relationships, they have ended and says he has no intention of pursuing relationships with foreign nationals in the future. Although none of the specific foreign influence mitigating conditions apply, I conclude that concern is mitigated, and the allegation is resolved in his favor.

Personal Conduct

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 cooperate or provide truthful answers during national security investigative or adjudicative process. (AG ¶ 15)

The SOR alleges that Applicant intentionally misled the Government about how he met his ex-wife, a Colombia national, in two background interviews in February and March 2019, respectively. (SOR ¶¶ 2.a and 2.e) The SOR also alleges that Applicant failed to report his February 2018 trip to Colombia to his FSO and denied that the trip

occurred during a background interview in February 2019 (SOR ¶ 2.b) The SOR alleges that the Applicant continues to use websites to initiate and maintain relationships with women from Colombia (SOR ¶ 2.f).

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported. Falsification allegations require a finding regarding an applicant's state of mind when the alleged falsification occurred. Here, the record contains direct evidence of Applicant's intent to mislead his employer and the Government.

The record establishes that Applicant was trained on the reporting requirements for foreign travel and contacts. He admitted the self-perceived stigma he believed associated with online dating was his motivation for lying to both his employer and the Government and his failure to report as required. The following disqualifying conditions apply:

AG ¶ 16 (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 qualification, award benefits or status, determine national security eligibility or trustworthiness, or fiduciary responsibilities; and

AG ¶ 16(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 national security eligibility determination, or other official government representative.

None of the personal conduct mitigating conditions apply. Although Applicant eventually disclosed all his international travel and the circumstances under which he met his ex-wife, he only did so after being directly confronted with the truth. Even at the hearing, Applicant did not present as a credible witness. He continued to cast doubt on his ability to provide full and truthful disclosure to the Government on personal or professional matters.

Whole-Person Concept

I have also evaluated Applicant's conduct under the whole-person factors at AG ¶ 2(d). Applicant failed to meet his burdens of production and persuasion to overcome the negative whole-person assessment established in the record. Applicant has not taken any responsibility for his misconduct. Nor has he demonstrated that he understands the seriousness of the underlying issues. Applicant cannot be relied upon to follow the rules and regulations attendant to the safeguarding and handling of classified information. He has also demonstrated that the Government cannot trust him

to self-report required information if he believes doing so may have adverse consequences. His behavior makes him an unacceptable security risk.

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, Foreign Influence	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Withdrawn
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant
Subparagraph 2.c – 2.d:	Withdrawn
Subparagraphs 2.e – 2.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Clearance is denied.

Nichole L. Noel
Administrative Judge