



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



In the matter of:)
)
) ISCR Case No. 23-00090
)
)
Applicant for Security Clearance)

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: *Pro Se*

12/06/2024

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is alleged to be delinquent on three debts, in a total exceeding \$29,000. Applicant's unique circumstances show that his history of financial delinquencies does not cast doubt on his current judgment. Financial considerations security concerns under Guideline F are mitigated. Additionally, foreign influence security concerns under Guideline B are mitigated due to his close ties to the United States and because he can be expected to resolve any conflict of interest in favor of the United States. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 21, 2022. On March 29, 2023, following a background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DSCA CAS) issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guidelines F, financial considerations, and B, foreign influence. The DCSA CAS issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

Applicant answered the SOR on May 17, 2023, and requested a hearing before an administrative judge. (Answer) The case was initially assigned to another administrative judge and then reassigned to me on September 24, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2024, scheduling the hearing for November 6, 2024. The hearing was convened as scheduled. The Government offered one Hearing Exhibit, marked HE I and Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf and offered five exhibits, marked (AE) A through E, which were also admitted without objection. The record was left open until November 20, 2024, for receipt of additional documentation. Applicant presented 16 additional pages that I marked AE F and G. Department Counsel had no objections to these exhibits and they were admitted. DOHA received the transcript of the hearing (Tr.) on November 20, 2024.

Department Counsel requested that I take administrative notice of certain facts about Colombia, Taiwan, and the People's Republic of China (Administrative Notice (AN) I through III). Without objection, I have taken administrative notice of the facts contained in the requests. The pertinent facts are summarized in the written requests and fact sheets and will not be repeated verbatim here. Of note is that the Department of State has issued travel warnings to Americans traveling to Colombia due to crime, terrorism, civil unrest, human-rights violations, and kidnapping risks there. While Colombia is a constitutional republic, former Revolutionary Armed Forces of Colombia (FARC), and drug-trafficking gangs still operate there. With respect to China, it is an authoritarian state dominated by the Chinese Communist Party, with a poor record with respect to human rights. Taiwan is a democracy. The United States and Taiwan enjoy a robust unofficial relationship. However, the United States does not support Taiwan's independence from China. The United States faces a serious threat to its national security from Chinese intelligence operations. China aggressively targets U.S. sensitive and protected information, and Chinese actors are the world's most active perpetrators of economic espionage. Taiwan is also targeted by China. Taiwanese interests have also been active collectors of U.S. economic technologies that have sensitive military applications. Numerous cases have arisen involving the illegal export or attempted export of sensitive, dual-use technology to Taiwan.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a through 1.c, 2.a, and 2.b. He denied the allegations in SOR ¶¶ 2.c and 2.d. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 42-year-old employee of a government contractor. He earned a Doctorate degree in 2011 and works in a research lab. He has worked for his employer since March 2022. Applicant is divorced from his first wife since 2019. He has one minor child with his first wife. He remarried in 2020. His second wife is from Colombia. She

entered the United States as an *au pair* in 2005 and became a naturalized U.S. citizen in March 2018. (GE 1, GE 5; Tr. 27-29)

When Applicant and his first wife divorced, he assumed the marital debt. His first wife had only worked part-time jobs and had not acted responsibly with her spending. They did not share the same financial values. To give her a fresh start, he transferred her debt to himself. He was current on all his bills at that time, but with his divorce came a new child-support obligation and a decrease in household income. He contacted each of his creditors and asked them to lower his interest rates or lower his monthly payments. None of the creditors were willing to work with him. As he struggled with his finances, he sought help from a debt relief firm in May 2019. That firm advised him to stop paying on his debt and let them negotiate settlements with his creditors. He followed that advice. He later realized that he made a mistake because the firm charged him a 25% fee. He ended his relationship with the firm in December 2019. He then attempted to resolve debts when a creditor would threaten to sue him. He worked a second job for additional income but lost that second job in 2020. He proceeded "strategically" once the debts passed the statute of limitations and decided to build up his savings. When Applicant received the SOR, he used the funds his second wife saved on their behalf to resolve the remaining debts as follows. (GE 1, GE 2; AE F; Tr. 42-55)

SOR ¶ 1.a alleged that Applicant was indebted on a charged-off account in the amount of \$13,399 in March 2022. This debt was resolved through settlement in June 2023. (GE 3, GE 4; AE C, AE E)

SOR ¶ 1.b alleged that Applicant was indebted on a charged-off account in the amount of \$9,608 in March 2022. This debt was resolved through settlement in June 2023. (GE 3, GE 4; AE C, AE E)

SOR ¶ 1.c alleged that Applicant was indebted on a charged-off account in the amount of \$5,999. This debt had been delinquent since at least December 2019. This debt was resolved through settlement in June 2023. (GE 4; AE C, AE E)

Applicant and his second wife share a common goal to pay off their debt and improve their credit, to purchase a home, and to resolve their student loans. His student loans are currently in forbearance. They have an extensive budget for their expenses, spanning multiple years documenting their plan to achieve these goals. Additionally, since 2019, his household income has tripled. (AE F)

During the same period that he struggled to resolve his delinquent accounts, Applicant traveled internationally. In 2018, he traveled to France to attend a work-related conference at the expense of his employer. He also traveled to Denmark, Sweden, Estonia, and Latvia to visit friends, family, and for tourism. In December 2020 to January 2021, he visited Colombia. In summer 2021, he visited Sweden and Denmark again. He has also made two additional trips to Colombia, for a wedding and for medical treatment. When he traveled internationally, he often stayed with friends and family to reduce the costs of travel. He also bought inexpensive airline tickets. (GE 1, GE 5; Tr. 67-70)

Applicant has extensive international contacts. The SOR alleged that four of his contacts raised a concern under foreign influence, including: SOR ¶ 2.a, Applicant's father-in-law in Colombia and his work for the government there; SOR ¶ 2.b, Applicant's mother-in-law in Colombia and the support his wife sends to her mother; SOR ¶ 2.c, Applicant's former colleague who is a citizen of China (Friend 1); and SOR ¶ 2.d, Applicant's former colleague who is a citizen of Taiwan (Friend 2).

Applicant's parents-in-law are divorced. They are both citizens and residents of Colombia. His father-in-law served compulsory military service in the Colombian Navy from 1961 to 1963. He then worked as a pharmacist at a government-funded hospital until he retired. He receives a pension from the government. Applicant believes his wife's contact with her father is limited to birthdays, holidays, and in-person visits. Applicant is unable to speak with his father-in-law due to the language barrier. Applicant's 77-year-old mother-in-law supported herself as a seamstress and has no pension. His wife has a bank account in Colombia that she uses to send approximately \$150 to \$200 a month to her mother for support. Applicant is unable to speak much to his mother-in-law as she has a localized dialect that he does not understand. However, his wife speaks to her mother daily using WhatsApp. She also visited them in the United States once for approximately two weeks. (GE 1; AE F, AE G; Tr. 71-77, 81-86)

Applicant's wife also has unalleged family in Colombia. Her brother and sister are residents in and citizens of Colombia. His wife is in close contact with her sister and will occasionally send her money for a new dress. She is also close with her aunt and cousins in Colombia. (GE 1; Tr. 71-77, 81-85)

With Applicant's post-hearing documentation, he submitted a letter indicating that he and his wife have discussed the situation in Colombia and do not want to jeopardize his employment. They are willing to forgo all future trips to Colombia. (AE F.) Further, a letter from his wife states, "we would never jeopardize our safety or livelihood to go there." Further, she discussed how living in the United States was her dream and that she has deep affection for the United States. She also mentioned that her former husband served in the U.S. military during their marriage. (AE G)

In addition to Applicant's wife's family in Colombia, he identified 13 foreign contacts when he completed his SCA. They range in closeness from his best friend who lives in Denmark to his wife's ex-boyfriend in Venezuela, a person with whom she no longer has contact. Applicant included two former colleagues, one that is a citizen of China, and one that is a citizen of Taiwan. (GE 1; Tr. 71, 93-102)

Applicant disclosed that during his post-doctorate job in Denmark from August 2011 to December 2013, he met and became friends with Friend 1 who was a citizen of China. After Applicant left Denmark in 2013, he had "very infrequent" contact with this friend. Their last contact was in July 2021, when Applicant visited Denmark. Applicant believes that his friend runs a business exporting goods like baby formula to China. (GE 5; Tr. 87-90)

At that same post-doctorate job, Applicant met Friend 2, a citizen of Taiwan. Applicant clarified that they were not close and did not really hang out much. Aside from their in-person interactions while Applicant lived in Denmark from 2011 through 2013, Applicant recalled only one communication with Friend 2 between 2014 and 2021. In 2021, when Applicant visited Denmark, Applicant met up with both Friend 1 and Friend 2 for a beer. They all shared a meal at Friend 1 's home in Denmark. Applicant has not had any contact with either Friend 1 or Friend 2 since that trip. (GE 5; Tr. 90-92)

Applicant also presented letters of recommendation from supervisors, colleagues, and friends. One reflected that Applicant "always struck [him] as a humble person not given to extravagance or spending beyond his means." Another talked about Applicant's upbringing in a small southern U.S. town that instilled in him a foundation in family values, community, and patriotism. Another colleague wrote of Applicant's devotion to his son. That colleague concluded, "I truly believe you will be hard pressed to find someone who is more true to themselves, strong in conviction, and morally sound" than Applicant. Applicant's supervisor considers him an excellent team member and finds him trustworthy. (AE G)

Policies

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

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of several variables known as the "whole-person concept" The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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

A person who seeks access to classified information enters 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Since his 2019 divorce to June 2023, Applicant had financial delinquencies that he was unable to resolve. Instead, he strategically resolved only the accounts in which the creditors threatened to sue him, which is evidence of an unwillingness to satisfy his debts. The evidence is sufficient to raise these three disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all the mitigating conditions under AG ¶ 20 including:

(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; and

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

Applicant's financial problems occurred because of his divorce in 2019 and financial decisions made by his first wife. Since that time, he resolved all his delinquent debt. While he did not do so in the most expedient or responsible manner, he has demonstrated that he is more responsible and savvy about finances now. He has a budget, shares common financial goals with his wife, and has learned to plan for future financial obligations. He credibly established he has learned from his mistakes and is unlikely to become delinquent on financial obligations in the future. He has the means to continue to pay his financial obligations. I find that Applicant's past indebtedness does not cast doubt on his current reliability, trustworthiness, and judgment. AG ¶ 20(a) is established.

AG ¶¶ 20(a) and (b) are not fully applicable. He did not resolve his debts fully until after he received the SOR. That decision did not demonstrate responsibility or a good-faith effort to resolve his debts. Nevertheless, he has changed his financial practices and now has the means and maturity to be financially responsible.

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;

(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

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's parents-in-law are citizens and residents of Colombia. His wife is in frequent contact with her mother and sends her monthly financial support. Her father is supported by a government pension earned by serving compulsory military service more than 50 years ago, and by working as a pharmacist in a hospital. Due to the crime, terrorism, civil unrest, human-rights violations, and kidnapping risks in Colombia there is a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶¶ 7(a), 7(b), and 7(e) have been raised by the evidence with respect to his parents-in-law.

Additionally, Applicant's friendships with Friend 1 and Friend 2, from China and Taiwan respectively, could create a potential conflict of interest between their friendships and the interests of protecting classified information. China aggressively targets U.S. sensitive and protected information, and Chinese actors are the world's most active perpetrators of economic espionage. Taiwan is also known to actively collector U.S. economic technologies that have sensitive military applications. AG ¶¶ 7(a) and 7(b) have been raised by the evidence with respect to Friend 1 and Friend 2.

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;

(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; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

I find that Applicant's ties to Colombia are outweighed by his deep and longstanding relationships and loyalties in the United States. I heavily weigh the reference letters from his supervisor, friends, and colleagues in this regard. He is known as a moral, humble, patriotic employee. He is closely tied to his American son. 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 Colombia. Further, 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 to his in-laws.

Applicant's ties to Friend 1 and Friend 2 are minimal. He has not had any communication with them in over three years. His ties to them are casual and unlikely to create any risk of foreign influence or exploitation. Further, he can be expected to resolve any conflict in favor of the United States, as discussed above. AG ¶¶ 8(b) and 8(c) are applicable to Friend 1 and Friend 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 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 considered the potentially disqualifying and mitigating conditions considering all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and B in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant mitigated the financial considerations and foreign influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a-1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 1.a-1.d:	For Applicant

Conclusion

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

Jennifer I. Goldstein
Administrative Judge