



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



In the matter of:)
)
) ISCR Case No. 24-00221
)
)
Applicant for Security Clearance)

Appearances

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

12/06/2024

Decision

HALE, Charles C., Administrative Judge

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline B, foreign influence. Eligibility for access to classified information is denied.

Statement of the Case

On February 16, 2024, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline B, foreign influence. The action was taken 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) effective on June 8, 2017.

Applicant answered the SOR on April 10, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written file of relevant material (FORM) on May 29, 2024. On June 5, 2024, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He acknowledged receipt of the FORM on July 15, 2024, and did not provide a response. The case was assigned to me on October 25, 2024.

The SOR and the Answer are the pleadings in the case. FORM Items 3 through 7 are admitted into evidence without objection.

Request for Administrative Notice

The Government provided relevant documents (HE I) and requested administrative notice be taken of certain facts about the Philippines. Without objection, I have taken administrative notice of the facts contained in the request. Of particular note is the significant threat of terrorism, civil unrest, and ongoing human rights problems in the Republic of the Philippines (hereinafter, the Philippines).

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.b through 1.d and 1.f. He denied allegations 1.a and 1.e. He admits the SOR allegations in ¶¶ 2.a through 2.b with an explanation for why these allegations were mitigated. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 49 years old. He has been employed by a defense contractor as systems engineer since January 2023. He has never held a security clearance. He signed a nondisclosure agreement on May 11, 2023. (Item 3 at 1.) He is twice divorced (2003 & 2010) and has an elementary school age child. He married his current spouse in October 2021. He earned a bachelor's degree in 2013.

Applicant was employed as an engineer from 2014 to 2019 by two companies. He was laid off in October 2019 for two months when his industry experienced widespread layoffs. From December 2019 until June 2021, he was self-employed as a contractor. The business ultimately failed. He was hired as an engineering manager in June 2021 for five months until taking a new position with a manufacturing company, which he held for six months. He voluntarily left this position and was unemployed from approximately June 2022 until December 2022. (Item 4; Item 7.)

Guideline F

The SOR alleges six accounts totaling \$33,331 in delinquent debt. Applicant attributed his delinquent debts to COVID related issues that resulted in loss of income, periods underemployment, and a failed business venture. The debts alleged in the SOR are corroborated by Applicant's admissions, statements, and a December 2023 credit report. (Answer; Item 4; Item 5; Item 7 at 5-9.)

Applicant denies a charged off account involving an automobile loan in the amount of \$22,976 (SOR ¶ 1.a), on the basis that he let them voluntarily repossess the vehicle. He purchased the \$58,000 vehicle while he was self-employed. He fell behind on the payments when he had no income due his failed business venture. In his Answer he states that after gaining employment he tried to make arrangements with the creditor to satisfy any late payments with a payment plan. However, the creditor denied him the ability to make the payment in his online account and he was only offered the option to mail a bank check. He had the vehicle repossessed and sold to satisfy the loan. He states

in his Answer "definitely not yielding debt in the amount of \$22k." The account is reflected in the collection section of the December 2023 credit report. He told the DoD investigator in his interview the debt had been satisfied as of February 2023. (Answer; Item 5 at 2; Item 7 at 5-6.)

Applicant admits the delinquent debt in SOR ¶ 1.b (\$4,776), which is for a credit card. He provided a screen shot of a \$368 payment dated February 23, 2024, with his Answer. He states that this payment represents the final payment to satisfy this charged off account and that he has been making payments for the past year. The account is reflected in the collection section of the December 2023 credit report. (Answer; Item 5 at 2.)

Applicant admits the debt in SOR ¶ 1.c (\$2,399), which is for a delinquent individual account that has been placed for collection. The account is reflected in the collection section of the December 2023 credit report. He states in his Answer that he is "in the process of setting up a settlement amount with this account." (Answer; Item 5 at 2.)

Applicant admits the debt in SOR ¶ 1.d (\$1,401), which is for a charged off individual account. The account is reflected in the collection section of the December 2023 credit report. He states in his Answer he is "in the process of setting up a settlement amount with this account." (Answer; Item 5 at 3.)

The debt in SOR ¶ 1.e (\$750) is for an outstanding balance for an individual account that is still open. He denies being in debt to this creditor. In his Answer, he states his apartment complex is trying to get him to pay for replacement carpeting, that was already worn out when he moved in and should have been replaced prior to his move-in. He acknowledges they moved in with the carpet in a worn-out state. He argues he "left the apartment in immaculate condition and left the carpet no worse than it was." He intends to fight this "debt in a court of law." The account is reflected in the collection section of the December 2023 credit report. (Answer; Item 5 at 3.)

The debt in SOR ¶ 1.f (\$10,242) is for a closed credit card that was opened in September 2019. The last activity reported was in September 2023. Applicant admits this credit card debt. This creditor also held the debt alleged in SOR ¶ 1.b and he is attempting to negotiate a settlement and pay-off plan with this creditor now that the SOR ¶ 1.b debt has been paid off. (Answer; Item 5 at 4.)

Guideline B

Applicant admits SOR ¶¶ 2.a and 2.b. Applicant's spouse is a permanent resident of the United States and a citizen of the Philippines. His mother-in-law and father-in-law are residents and citizens of the Philippines. In his Answer, he states his spouse is eligible to begin the naturalization process. He notes he and his spouse do not provide any financial support to his in-laws and they are not a part of the Philippine government. They do not own any property in the Philippines. (Answer.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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." 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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

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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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.

Applicant has incurred delinquent debts since 2022. Since 2014 he has experienced two periods of unemployment totaling about eight months. The last period for six months ended in December 2022. He states that he did not intend to pay the delinquent car debt and would litigate the debt with his former landlord. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributes his financial issues to periods of unemployment and underemployment. He states he resolved one credit-card debt (SOR ¶ 1.b) through regular payments. The screenshot he provided concerning SOR ¶ 1.b shows one withdrawal and no other information concerning the balance or payment history. The credit report in the record, which was pulled approximately six months prior to the payment reflected in the screenshot, does not show any activity since January 2022. AG ¶ 20(d) does not apply to SOR ¶ 1.b.

Applicant states he disputes SOR ¶¶ 1.a and 1.e. In his Answer he acknowledges he allowed the vehicle to be repossessed (SOR ¶ 1.a), and that he did live in the apartment knowing the condition of the carpet (SOR ¶ 1.e). AG ¶ 20(e) does not apply to SOR ¶¶ 1.a and 1.e. Applicant offered no reasonable basis to dispute the legitimacy of the past-due amounts for these debts. He failed to provide documentation to substantiate the basis of the disputing amount of the sale of the car or the terms that he entered into for the apartment with the worn carpet or provide evidence of actions to resolve the issue.

Applicant is aware of his obligation to repay the debts in SOR ¶¶ 1.a-1.f. He has not supported his statements in his Answer regarding the actions he states he has taken to contact the creditors and make payment arrangements. Some of Applicant's financial issues were beyond his control, but he voluntarily left one position. He failed to provide sufficient evidence that he has acted responsibly since he has been gainfully employed. His failure to address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply. AG ¶ 20(b) has minimal application.

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.

There is a significant threat of terrorism and ongoing human rights problems in the Philippines. Applicant's foreign contact creates a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, through his wife. Applicant provided insufficient information about his wife and her parents' background, connection, or lack of connection to the Philippine government. The above disqualifying conditions 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;
- (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 of foreign influence or exploitation.

Applicant failed to provide sufficient information about his wife's immigration status or about his in laws in the Philippines to make a determination that it is unlikely he will be placed in a position of having to choose between the interests of his wife and the interest of the United States. Applicant has the burden of persuasion to show that his foreign contact does not create a security concern. He has failed to provide sufficient evidence to find in his favor.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines F and B in my whole-person analysis and have applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guidelines F and B and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his conduct under Guideline F, financial considerations and Guideline B, foreign influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a and 2.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge