



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 12-11638 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

02/11/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 29, 2008. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on April 3, 2013, following an incident report. The SOR details security concerns under Guideline B, foreign influence, Guideline F, financial considerations, and Guideline E, personal conduct.¹ The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel*

¹The issues raised under Guideline B and some of the debts raised under Guideline F were addressed in a previous decision by Administrative Judge Mark Harvey issued on December 20, 2009. ISCR Case No. 08-12020.

Security Clearance Review Program (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on April 22, 2013, and he answered it on May 7, 2013. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on August 9, 2013, and I received the case assignment on August 26, 2013. DOHA issued a Notice of Hearing on September 16, 2013 for a hearing scheduled on October 10, 2013. Due to the Government shutdown, the hearing was cancelled. A second Notice of Hearing was issued on October 30, 2013, and I convened the hearing as scheduled on November 21, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 13, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE N, which were received and admitted into evidence without objection.² DOHA received the hearing transcript (Tr.) on December 4, 2013. I held the record open until January 6, 2014, for Applicant to submit additional matters. Applicant timely submitted AE O - AE T, which were received and admitted without objection. The record closed on January 6, 2014.

Procedural and Evidentiary Rulings

Motions

At the hearing, Department Counsel motioned to amend the SOR caption to include the case number and to correct the e-QIP section number in SOR allegation 2.c. The motions are granted. The case number, 12-11648, is added to the caption, and SOR allegation 2.c is corrected from section 29 to section 27. (Tr. 7-8, 88-89.)

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts relating to Afghanistan. The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibit 1, I-IX. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.i, 3.a, and 3.b of the SOR. His admissions are incorporated herein as findings of fact.

²Some of the exhibits submitted by Applicant are duplicates of exhibits offered by the Government.

He denied the factual allegations in ¶¶ 1, 1.j - 1.s, and 2.a - 2.f of the SOR.³ He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 43 years old, works as a trainer for DOD contractors and again seeks employment as an Afghan linguist for DOD contractors. Applicant and his wife married in 2000 and divorced in 2008. They have a 13-year-old son, who lives with his mother. Applicant is required by the court to pay \$1,000 a month in child support.⁴

Foreign Influence

Applicant, his parents, his two sisters, ages 41 and 37, and his former wife were born in Afghanistan. His 29-year-old brother was born in Pakistan. When Applicant's father's life was threatened by the Russians following their invasion of Afghanistan, Applicant and his family fled from Afghanistan to Pakistan in the early 1980s. Applicant's father fought the Russians as a resistance fighter until 1987, when he sought political asylum in the United States. Applicant and his family moved to the United States in 1987, where Applicant graduated from high school and lived until 1993. From 1993 until 1996, Applicant lived overseas with his family while his father worked as a consultant in an Afghan embassy. During this time, Applicant attended college. The family returned to the United States after the Taliban came into power in Afghanistan because his father did not agree with the governmental policies of the Taliban. Applicant, his parents, his younger sister, and his brother became U.S. citizens in 2001 or 2002. His son was born in the United States. His older sister became a U.S. citizen in 2008.⁵

Following the ouster of the Taliban, Applicant's father returned to Afghanistan to help rebuild the country after nearly 20 years of war. He worked in two important government positions during the nearly four years he lived in Afghanistan. Through his position and work, Applicant's father worked with high-level Afghan government officials

³When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

⁴GE 1; Tr.53, 135-136, 147-148.

⁵GE 1; GE 8; AE A; AE N; Tr. 16-24.

and coalition forces.⁶ Applicant's father was well-respected in the province where he grew up and sought to unify the various tribes in the province. His father left Afghanistan in 2006 for health reasons and because of increasing threats to his life by extremists. His father continues to live in the United States. Applicant returned to work in Afghanistan twice in 2004. Applicant's younger brother spent the three summers living with their father in Afghanistan. His brother owns a residence in the United States, where he lives when he is in the United States. His brother works for nongovernment organizations (NGO) as a researcher, writer, and cultural advisor. Although his brother does not have a security clearance, he provides assistance with security in Afghanistan. In December 2012, his brother's car was attacked with a rocket launched by the Taliban. His younger sister recently returned from Afghanistan, where she worked as a linguist and cultural advisor to the U.S. military. She has a security clearance.⁷

Financial Considerations

After his return to the United States in 1996, Applicant started working in the mortgage industry. He began his own mortgage business in 2000, which, with the help of his former wife, he operated until 2007. Applicant hired an individual to work in his business. When he traveled to Afghanistan in 2004, this employee induced unsuspecting homeowner's to refinance their soon to be foreclosed property or to restructure their existing mortgage, charging them an illegal fee for the refinance and using a false credit rating. The employee forged Applicant's name on financial documents and misrepresented the services of Applicant's company. Customers sued Applicant and his company. When he discovered the illegal and fraudulent actions of his employee, Applicant filed criminal charges against the employee. Applicant worked with the local district attorney, who obtained a conviction against the employee. The district attorney verified that Applicant was the victim of forgery caused by the actions of his employee. As the result of this situation and the economic downturn, Applicant ceased operating his business in 2007. He spent thousands of dollars on attorney fees, exhausting his savings and other assets to resolve his legal situation. Applicant and his wife divorced in 2008. He also paid legal expenses related to his divorce.⁸

From October 2008 until March 2009, Applicant worked part-time as a carpenter. He was unemployed for the next year. From March 2010 until October 2010, Applicant worked as a linguist and cultural advisor in Afghanistan for a DOD contractor. He was unemployed between October 2010 and April 2011. He began working as a language and cultural instructor for military bases, a job he still holds. His current work is sporadic. In June 2011, while working at an Army base, he broke his ankle. He did not

⁶In 2004, the U.S. Army commanding general wrote a highly complimentary letter about Applicant's father's skills and work. AE K. His father also received a distinguished medal of achievement award from another U.S. military general. *Id.*

⁷GE 8; AE A; AE L; AE M; AE N; Tr. 97-100, 103-104, 109-110.

⁸GE 8; AE A; AE B; Tr. 79-84.

have medical insurance to pay his medical expenses. He believed his medical bills had been paid through an assistance program at the hospital.⁹

Applicant provided a copy of two Internal Revenue Service (IRS) account transcripts for the tax years 2008 and 2011. The account transcript for 2008 shows an income of \$2,273 and no tax due. He also provided his federal tax returns for the tax years 2009, 2010, and 2011. His 2009 tax return reflects a total income of \$4,348 and an entitlement to a refund of \$601. Applicant requested an extension of time to file his 2009 federal tax return, which was received by the IRS in October 2012. His 2010 federal tax return, which was prepared and filed in December 2012, indicates an income of \$89,093, a tax liability of \$16,379 owed to the IRS, and a tax liability of \$5,786 owed to the state revenue department.¹⁰ Applicant failed to withhold any money from his income as an independent contractor to pay these taxes, which remain unpaid. Applicant used this money to repay his family and friends money owed. Applicant's 2011 federal tax return, which was prepared and filed in December 2012, reflects an income of \$29,911 and a tax liability of \$5,990 owed to the IRS and a tax liability of \$450 owed to the state revenue department. His tax transcript for 2011 also shows he owes \$3,674 in self-employment taxes and about \$1,400 in penalties. He has not paid these taxes.¹¹

Applicant lives with his parents. He does not pay any living expenses at this time because of his income. He provided two documents, which show his income for 2013. These documents indicate earnings totaling approximately \$13,610 plus per diem and travel payments of approximately \$6,800. In an income statement prepared for the IRS, Applicant indicated he had a monthly income of \$1,500, \$1,100 in assets, and \$1,620 in monthly expenses, including \$1,000 a month in child support. He admitted that he was behind in his child support payments.¹²

The SOR identified 19 purportedly continuing delinquencies as reflected by credit reports from 2008 and 2013, totaling approximately \$78,557. SOR allegations 1.j through 1.s raise a security concern about debts presented to Administrative Judge Harvey in Applicant's prior case. Judge Harvey concluded the SOR allegations 1.k (\$474), 1.o (\$422), and 1.q (\$399) had been paid. These debts are resolved in Applicant's favor. Judge Harvey concluded that the debts in SOR allegations 1.m (\$171) and 1.p (\$599) had not been resolved and that the debt in SOR allegation 1.j (\$166) was in a payment plan. He did not discuss the debts in SOR allegations 1.l (\$164) and 1.n (\$1,854). Applicant provided documentation indicating that the debts in SOR allegations 1.j and 1.n are paid. This same documentation reflects that Applicant had

⁹GE 8; GE 12; Tr. 59, 61.

¹⁰Applicant income in 2010 came primarily from his contract work overseas, which may not be subject to federal income taxes.

¹¹GE 9; AE O - AE R; Tr. 66, 140-141.

¹²GE 1; GE 10; AE O; Tr. 58-59, 147-148.

only one account with the creditor listed in allegations 1.j and 1.l. Thus, allegation 1.l is resolved. Judge Harvey noted that Applicant paid four other non-SOR debts and that Applicant had a settlement proposal for his car repossession, which is not listed on recent credit reports. The debts listed in SOR allegations 1.m through 1.q are not listed on the January 2013 and November 2013 credit reports.¹³

Judge Harvey also discussed existing tax liens. He found that Applicant had paid on the \$8,162 IRS tax lien and that the lien had been released. Judge Harvey also concluded that Applicant agreed to pay the state revenue department \$100 on his \$3,230 tax debt. Two tax liens in the amount of \$3,230 have been released. Applicant resolved more than \$14,000 of federal and state tax debts in the past. However, Applicant has again incurred unpaid taxes. The 2013 credit reports show a state tax lien of \$9,370 and an IRS tax lien of \$24,581. The November 2013 credit report also shows an IRS tax lien of \$30,079.¹⁴ This last tax lien has not been alleged as a debt and the SOR was not amended to include this debt. Because the SOR alleges financial problems, this debt will be considered in conjunction with the whole-person analysis.¹⁵

In April 2010, after obtaining employment as a linguist, Applicant retained the services of a tax group to help him resolve his tax issues. He paid this group \$2,500. Shortly thereafter, he deployed to Afghanistan. He did not keep regular contact with the company while deployed. Upon his return to the United States, he learned that the company had not performed any services for him and despite his requests, did not perform any work to resolve his tax debts. In November 2012, he contacted another tax service company to help with his tax issues. He paid them \$300 for limited services. With an additional \$2,500 payment, this firm will work with him to resolve his tax debts. Applicant prepared two forms for the IRS. One form provides information about his income and assets, and one form is an Offer in Compromise. On the second form, Applicant indicates problems with his taxes for the years 2002 through 2006, which are related to his business and problems connected to his accountant,¹⁶ and for the years 2010 through 2012. He offered to settle his federal tax debt for \$18,000, payable in monthly installments of \$750 for 24 months. He advised the IRS that he will make the payments from any income he has or with the help of his family. Applicant did not provide proof that he submitted this document to the IRS.¹⁷

¹³ISCR Case No. 08-12020, p.4; GE 2; GE 13; AE C.

¹⁴Applicant believes the two IRS tax liens are for the same tax years. Tr. 132-133.

¹⁵ISCR Case No. 08-12020, p.4; GE 2; GE 13.

¹⁶Applicant indicated his accountant died while he was in Afghanistan in 2004. Thus, his tax returns were not filed. (GE 8, p. 20 - April 19, 2008 personal subject interview). In this same statement, he indicated that he negotiated a payment plan for the taxes owed for the years 2003, 2004, and 2005. He paid the IRS \$380 a month and still owed \$15,000. *Id.* His payments stopped when his business failed.

¹⁷GE 10; AE T; AE U; Tr. 65-66, 132-139.

The SOR alleges that Applicant owes two unpaid judgments. Applicant denied knowledge of these judgments, particularly the \$7,610 judgment in allegation 1.r.¹⁸ Applicant provided a letter dated March 17, 2010 from the judgment creditor in SOR ¶ 1.r. The judgment creditor advised that Applicant was not the defendant based on his middle name and social security number. This debt is resolved in Applicant's favor.¹⁹

During the course of the lawsuits filed against his business and him, Applicant stipulated to the entry of a \$17,500 judgment against him on the advice of the prosecutor. The court signed the judgment order on April 24, 2007. Two months later, on June 20, 2007, plaintiff's counsel filed a Notice of Entry of Dismissal and Request for Dismissal of this case. This judgment is resolved in Applicant's favor.²⁰

The two 2013 credit reports identify seven medical bills, totaling \$15,229 (allegations 1.a through 1.g). The reports also reflect that Applicant disputed six of the seven debts. Except for allegation 1.e, which Applicant continues to dispute after resolution, the results of his disputes of the other debts are unknown. He has not disputed SOR allegation 1.a, a \$3,224 medical bill. At the hearing, Applicant denied disputing these medical bills. The November 2013 credit report lists five additional medical bills, totaling \$5,719. Applicant intends to consolidate his medical bills, but does not have the ability to pay these bills on his current income. He has not had financial counseling in recent years.²¹

Personal Conduct

The SOR alleges that Applicant intentionally falsified the following questions on his January 2008 E-QIP:

Section 23: Your Police Record

- c. Are there currently any charges pending against you for any criminal offense? He answered "no" and did not disclose his 2007 pending driving under the influence (DUI) charges.
- d. Have you ever been charged with or convicted of any offenses related to alcohol or drugs? He answered "yes", but did not disclose his 2007 DUI arrest.

Section 23: Public Record Civil Court Actions

¹⁸He denied any knowledge of this judgment at his previous hearing. ISCR Case No. 08-12020, p.4.

¹⁹GE 4; AE C; Tr. 74-75.

²⁰GE 5; GE 6; AE S.

²¹GE 2; GE 13; Tr. 61-63.

In the last 7 years, have you been a party to any public record civil court actions not listed elsewhere on this form? Applicant answered “no” without listing the judgments identified in SOR allegations 1.r and 1.s.

Section 27: Your Financial Record

- d. In the last 7 years, have you had any judgments entered against you that have not been paid? Applicant answered “no”, failing to disclose the two judgments listed in SOR allegations 1.r and 1.s.

The police arrested Applicant for DUI in October 2007, specific date unknown. The court sentenced Applicant to community service, fined him \$2,000, and directed him to attend alcohol education programs on an unknown date. Applicant completed all of the requirements of his sentence by the date of his second personal subject interview on May 23, 2008. Applicant did not acknowledge this arrest on his e-QIP, but he did list his 2005 DUI arrest and a 2001 driving with a suspended license arrest. He also listed delinquent debts. He did not acknowledge the judgments, one of which he was unaware, nor the civil actions. During his initial personal subject interview on April 18, 2008, Applicant discussed his financial problems in depth with the Office of Personnel Management investigator (OPM), including being sued many times because of the actions of his employee. He also discussed all three of his DUI arrests. The interview summary does not state that he volunteered this information nor does it indicate that he was presented with evidence of his DUI arrest in 2007 or of the lawsuits against him. The record does not contain any evidence of his DUI arrest, except his statement to the OPM investigator. The three credit reports do not list the two judgments. Applicant denies an intent to hide this information from the Government.²²

Applicant deployed to Afghanistan in the spring 2010 and returned to the United States on leave on October 1, 2010. During this time, he worked with classified information. He took all precautions to protect classified and sensitive information, and he took online classes for protecting classified information. While on vacation in the United States in October 2010, Applicant contacted his employer and advised that he did not intend to return to Afghanistan because he was dissatisfied with his employer’s management of personnel. Before he left on vacation, he told his supervisor of his intent not to return to Afghanistan. On December 3, 2010, his employer placed an incident report in the Joint Personnel Adjudication System (JPAS), concerning Applicant. The employer stated that on November 22, 2010 during an inspection of a room in a residential facility used by Applicant while in Afghanistan, military police discovered a classified document. The incident report assigns the placement of the classified

²²Response to SOR; GE 3; GE 8.

document in this room to Applicant and notes that there is little likelihood that the document had been compromised.²³

Applicant's employer leased four rooms in a residential building for use by its employees on a base through which they all passed while in Afghanistan. Applicant signed for use of a room in June 2010. He remained in the room for three or four days then moved to another location to work. He returned to the room in August 2010 for four days before moving to another work location. At the beginning of September 2010, he stayed in the room two days before going to a third work location. He last returned to the room a few days before he left for the United States on October 1, 2010.²⁴

The JPAS incident report states that his room and the other rooms rented by his employer were for transient purposes. Applicant provided three statements from co-workers in Afghanistan who also used these same rooms. All three stated that the rooms were transient quarters used by many different staff moving through this base. The rooms were often not cleaned, as indicated by the trash and debris the witness found in the rooms. Applicant denies leaving the document in the room.²⁵

Applicant received several letters of recommendation, praising his skill and expertise in assisting the military in Afghanistan. His knowledge of the language and culture provided valuable assistance when working with the local people and the many issues in Afghanistan. He has received many letters of recognition for his work as a trainer between 2011 and 2013. His student evaluations of his teaching skills reflect a rating of 3.6 out of 4.0, and high satisfaction with his presentation skills and willingness to work with the students. His performance appraisal for his 2010 work in Afghanistan states that he was the best Afghan American to work with the military and civilians in Afghanistan.²⁶

Administrative Notice

Afghanistan

I take administrative notice of the following adjudicative facts. Afghanistan is an Islamic Republic and emerging democracy. With the support of the United States and other nations, its new government endeavors to build a new system of government and to rebuild the country's infrastructure. Its Army and police force are well trained. It continues to face significant challenges from the insurgency and terrorist organizations supported by the ousted Taliban and Al Qa'ida. Security and violence remain a serious issue. The government is not complacent about the terrorist threat, the insurgency, or

²³GE 7; GE 8; AE F.

²⁴GE 8.

²⁵GE 11; AE F.

²⁶GE 11; AE F - AE J.

security issues; rather it actively seeks to eliminate all with the assistance of the United States and NATO. The new government is working to reverse a long legacy of serious human rights abuses, but serious problems remain. Afghanistan is now an active member of the international community, has signed a “Good Neighbor” declaration with six nations bordering it, and promotes regional cooperation. The United States supports the emergence of a broad-based government in Afghanistan and has made a long-term commitment to help Afghanistan rebuild itself. The leaders of both countries concluded a strategic partnership agreement committing to a long-term relationship between both countries, which was signed on May 2, 2012. Despite its differences with the United States, Afghanistan continues to seek U.S. support as it moves forward towards democracy and stability. None of the documents offered in support of the request for administrative notice indicate whether Afghanistan is an active collector of intelligence information.²⁷

Policies

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(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 access to classified information will be resolved in favor of 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.

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. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

²⁷HE 1.

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 an applicant may deliberately or inadvertently fail to protect or 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 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

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant developed significant financial problems when his mortgage business failed and due to unemployment and underemployment. He filed his income tax returns for the years 2009, 2010, and 2011 in December 2012. He owes federal and state income taxes. Many of his debts have not been resolved. The above disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 20(a) through ¶¶ 20(f), and the following are potentially applicable:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or under control;

(d) the individual initiated 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.

While he was in Afghanistan in 2004, an employee misrepresented the services of Applicant's mortgage company, defrauded customers, and forged Applicant's name to financial documents. As a result of his employee's actions, customers sued Applicant and his business, resulting in a significant loss of business and income. Shortly after this incident, the mortgage industry collapsed, which ended his business in 2007. In 2008, he and his wife divorced, causing more financial difficulties. Since the collapse of his business, Applicant has worked sporadically and often for low wages. He broke his ankle in 2011. He did not have health insurance to pay his medical bills as he could not pay for insurance. Applicant's financial problems are the result of circumstances beyond his control. When he learned about the actions of his employee, he filed criminal charges against his employee and cooperated with the prosecution of the employee. When he appeared for his hearing in 2009, he established that he resolved his IRS lien and a number of small debts. Since then, he resolved the remaining debts listed in his earlier SOR despite his limited income in most years.

Applicant has not had financial counseling. Since his last hearing, he has not incurred credit card debt or obtained loans for a car or a house. He lives with his parents, which limits his monthly living expenses. His current living expenses are under control. However, he has not been able to resolve his new tax liens or his medical bills partially due to unemployment or underemployment. His credit reports reflect that he disputed the medical bills, which he denies. He has indicated that he will pay these bills when his income increases. He used his 2010 income to repay debts to family and friends, however, he did not pay his taxes or his current debts. He works as an independent contractor and as such, he is responsible for withholding money to pay his yearly taxes and money for his social security taxes. To his credit, he twice hired tax

consultants to help resolve his tax issues. The first company did not perform any services, and the second company has obtained his tax transcripts. He has prepared an offer in compromise for the IRS and explained how he plans to pay his debt. The above mitigating conditions are only partially applicable because he did not act responsibly about his taxes under the circumstances and I am not confident at this point that his tax debt and medical bills can or will be resolved or are under control.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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 provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

The Government alleges four incidents of falsification by Applicant when he completed his 2008 e-QIP. For AG ¶ 16(a) to apply, Applicant's omissions must be

deliberate. The Government established that Applicant omitted material facts from his 2008 security clearance application when he answered “no” to questions about his civilian court record and failed to list his 2007 DUI. This information is material to the evaluation of Applicant’s trustworthiness and honesty. At the hearing, he denied intentionally withholding this information on his e-QIP.

When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant’s intent or state of mind at the time the omission occurred.²⁸

Applicant was aware of his 2007 DUI arrest when he completed his e-QIP. He was also aware of the multiple lawsuits filed against him because of the conduct of his former employee. I find this evidence sufficient to establish that he provided incorrect information on his e-QIP. He, however, did not intentionally falsify the e-QIP, as alleged in SOR ¶ 2.d.1 because this debt is his father’s debt and he had no knowledge of it. A security concern has been established under AG ¶ 16(a) by SOR allegations ¶¶ 2.a - 2.c and 2.d.2, but a security concern has not been established by SOR allegation 2.d.1, which is found in favor of Applicant.

Concerning the security violation allegation in SOR ¶ 2.f, the JPAS entry detailing a possible security violation by Applicant in Afghanistan is sufficient to raise a security concern under AG ¶ 16(c). Likewise, Applicant’s agreement to the entry of a judgment against him in 2007 in a civil lawsuit raises a security concern under AG ¶ 16(e) because his failure to list this judgment could create vulnerability to exploitation, manipulation or duress for him.

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through ¶ 17(g), and 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;

- (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; and

- (f) the information was unsubstantiated or from a source of questionable reliability.

²⁸See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

When Applicant met with the OPM investigator, he openly discussed his 2007 DUI as well as his 2005 and 2001 arrests. He also discussed the fact that multiple lawsuits had been filed against him because of the criminal conduct of his former employee. Since the record does not contain a criminal records report and the credit reports do not reference either judgment, I find that Applicant voluntarily provided this information to the OPM investigator and was not confronted with this negative information. He mitigated the security concerns raised in SOR allegations 2.a, 2.b, 2.c, and 2.d.2 under AG ¶ 16(a).

Applicant mitigated the security concern raised by the \$17,500 consent judgment because he proved that the judgment had been dismissed and because the circumstances surrounding the entry of the judgment arose out of the actions of his former employee, conduct that is unlikely to recur as Applicant is no longer in business for himself. AG ¶ 16(c) applies to SOR allegation 2.e.

Finally, Applicant mitigated the security concerns raised by the JPAS entry because the entry itself acknowledges that the room in which the classified document was found is a transient room, a fact verified by Applicant's coworkers and friends. From June 2010 until October 1, 2010, Applicant used the room four times for a few days each time while transiting between assignments. Many other individuals used the room during this time period and after Applicant left Afghanistan. His employer conducted an inspection of the room seven weeks after Applicant departed and after others had used the room. His employer placed the entry in JPAS nearly two months after Applicant returned to the United States and after Applicant resigned. The information provided is insufficient to substantiate SOR allegation 2.f under AG ¶ 16(f). The personal conduct guideline is found in favor of Applicant.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

(a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's parents, sisters, and son are citizens and residents of the United States. His former wife is a permanent resident, who reside in the United States. Thus, no security concern is raised by these family members, except his father because of his past connections. Applicant's brother is a citizen of the United States, but he works in Afghanistan for NGOs. Applicant's father worked in important positions in Afghanistan from 2002 until 2006. Through his work, his father had regular contact with high ranking officials in the Afghan government. Applicant has other family members in Afghanistan, but these family members are not a security concern as his contacts with them are minimal Applicant maintains a normal familial relationship with his brother. His father returned to the United States almost eight years ago for health and safety reasons. His father does not stay in contact with officials in Afghanistan. His family relationships and his father's past affiliations are not *per se* a reason to deny Applicant a security clearance, but his contacts with his brother and his father's past positions must be considered in deciding whether to grant Applicant a clearance.²⁹ The Government must establish that these family and business relationships create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his brother who may be threatened by terrorists.

In determining if such a risk exists, I must look at Applicant's relationships and contacts with his family, as well as the activities of the Government of Afghanistan and terrorist organizations within Afghanistan. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his brother in Afghanistan and his father's past business contacts raise a heightened risk and a security concern because of the terrorists activities in Afghanistan. The evidence of record fails to show that the Afghan Government targets U.S. citizens in the United States or in Afghanistan by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Afghan Government will seek classified information is moderate. The same cannot be said of the terrorists organizations operating in Afghanistan, whose goals are to destroy or prevent the growth of a stable, central government.³⁰

²⁹ISCR Case No. 09-06457 (App. Bd., May 16, 2011)

³⁰*Id.*

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Afghanistan cause security concerns, I considered that Afghanistan and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the Afghan Government targets U.S. citizens for protected information. The human rights issues in the Afghanistan continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his brother in Afghanistan. Applicant's contacts with his brother and his father's past business contacts raise a heightened risk under AG ¶¶ 7(a) and (b).

The Foreign Influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and 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 U.S.; and

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

The past official contacts of Applicant's father are not likely to place Applicant in a position of having to choose between the interests of the United States and Afghanistan because his father is no longer working in the positions which bring him into contact with Afghan government officials. His father lives quietly in the United States and has no plans to return to work in Afghanistan. Applicant's brother works in Afghanistan to support its continued economic growth. Terrorists bombed his brother's car in late 2012, intending to kill the occupants of the car. The evidence is not clear as to whether his brother was a specific target, which Applicant believes, or the bombing was more general. His brother provides security support to U.S. forces. Applicant's sister worked as a linguist and cultural advisor in Afghanistan. The work of Applicant's family members provides support to the United States and to Afghanistan. Applicant and his family members recognize the obligations they have to the United States. They are loyal to the United States as is Applicant. Applicant can be expected to resolve any conflict of interest in favor of the United States.³¹

³¹*Id.*; Except for his American-raised brother, Applicant's close family members live in the United States.

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Following the invasion of Afghanistan by Russia and threats to his family's well-being, Applicant and his family sought a new life in the United States. His family remains in the United States, and over time, all family members became U.S. citizens. Applicant, his father, his brother, and one sister have worked in Afghanistan to help their former homeland develop economic and political stability, after living in the United States where economic and political stability are more readily experienced. Neither Applicant nor his family members has expressed an intent to permanently return to Afghanistan, although his brother continues to work regularly in Afghanistan for NGOs to help ensure democracy. Applicant has little, if any, contact with extended family members in Afghanistan. His brother is the target of terrorists whose intent appears to be to kill anyone helping the Afghan people achieve economic and political stability, not because of his father or Applicant.

Applicant has been forthright with the OPM investigator about his finances and the legal problems arising from his mortgage business without being confronted about his debts or his 2007 DUI. The 2007 judgment, which is dismissed, is the result of actions by his employee, not Applicant. Since others used the room in which the

classified document was found, the JPAS entry does not reflect negatively on Applicant because his employer has no way of determining that Applicant is the one who left the classified document in the room. Applicant was the last one to sign for the room, but not the last one to use the room. This fact is insufficient to establish that he left the document in the room.

Since his last hearing, Applicant resolved the debts identified in his prior SOR. He, however, has incurred more debts. He has been unable to resolve these debts because of sporadic income. While his past history reflects that he will probably resolve his unpaid medical bills, a concern remains about unpaid debts, particularly his substantial tax debts. As an independent contractor, Applicant is responsible for setting aside money to pay his federal and state taxes out of his earnings, as well as his self-employment social security taxes. He did not do this. To his credit, he is taking steps towards the resolution of his federal tax debts by making an offer in compromise to the IRS to resolve his debts. At this time, it is unknown if his offer has been submitted to the IRS and if it will be accepted. He needs more time to resolve his debts, particularly his tax debts.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance concerning his personal conduct and his foreign influence, as he mitigated the security concerns raised. However, a security concern remains about his finances under Guideline F. He has not mitigated the security concerns raised about his finances.

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.i: | Against Applicant |
| Subparagraphs 1.j - 1.s: | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraphs 2.a - 2.f: | For Applicant |
| Paragraph 3, Guideline B: | FOR APPLICANT |
| Subparagraph 3.a: | For Applicant |
| Subparagraph 3.b: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

MARY E. HENRY
Administrative Judge