DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 13-00142
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: Sheldon I. Cohen, Esq.

07/31/2014

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's connections to his wife's relatives in Belarus are outweighed by his connections to family members in the United States. He has established deep and longstanding relationships and loyalties in the United States. His many years working for the United States in imminent danger areas show that he can be expected to resolve any conflict of interest in favor of the United States. Foreign influence security concerns are mitigated. The personal conduct security concerns resulting from his falsifications of security clearance applications and false statements to investigators are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on November 1, 2012. The Department of Defense (DOD) issued a statement of reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence) and Guideline E (personal conduct) on January 14, 2013.[1] Applicant answered the SOR on August 2, 2013, and requested a hearing before an administrative judge.

[1] The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines

The scheduling of the hearing was delayed because Applicant was working overseas and unavailable. The case was assigned to me on May 21, 2014, after Applicant requested an expedited hearing. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on May 28, 2014, scheduling a hearing for June 13, 2014. At the hearing, the Government offered exhibits (GE) 1 through 19. GE 19 is a request for me to take administrative notice of facts concerning the government of Belarus. GE 19 was considered and attached to the record, but not admitted into evidence. Applicant did not object, and I took administrative notice concerning the government of Belarus as outlined in the Government's request for administrative notice, incorporated herein.

Applicant testified, presented the testimony of one witness, and submitted exhibits (AE) 1 (comprised of Tabs A through JJ) and AE 2 (an extract of the Federal Rules of Evidence). AE 2 was considered and attached to the record, but not admitted into evidence. All remaining Government and Applicant's exhibits were admitted. DOHA received the hearing transcript (Tr.) on June 23, 2014.

Findings of Fact

Applicant's SOR response admitted the allegation in SOR ¶ 1.c, and denied all remaining SOR allegations. His admission is incorporated herein as a finding of fact. After a complete and thorough review of the evidence of record, and having observed Applicant's demeanor while testifying, I make the following findings of fact:

Applicant is a 44-year-old linguist employed by a government contractor. He was born and raised in Egypt by Egyptian parents. He attended an Egyptian university for a period of two years. He received a "career certificate" for completing a one-year study from 1990-1991, and another "career certificate" for completing another one-year study from 1991-1992. The career certificates made no reference to Applicant having completed an associate's or a bachelor's degree, or the equivalent thereof. He presented no documentary evidence to show he attended any other Egyptian university before or after 1990-1992, or that he received an associate's or a bachelor's degree from any Egyptian university. Applicant testified that his college education was funded by his father. After college, he worked for his father in the family business.

Applicant married his first wife, a U.S. citizen by birth, in 1995, and that same year he immigrated with her to the United States. He has a 13-year-old daughter of this marriage. Applicant became a naturalized U.S. citizen in July 2000, and he formally renounced his Egyptian citizenship and surrendered his Egyptian passport in January 2005. Applicant attended college in the United States during 1997-1998, but did not complete a degree.

In May 2005, Applicant filed for Chapter 7 bankruptcy protection. The filing listed total assets of $9,450 and total liabilities of over $94,000, which included a $50,000 promissory note from 1994 (a loan from his then father-in-law), 10 credit accounts

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for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

totaling over $39,600, with the remainder $4,372 encompassing debts to utilities, medical providers, and an insurance company. The larger credit accounts included credit card debts for $8,000; $6,773; $7,846; $11,144; and $1,055. Applicant provided the list of creditors and collection notices to his bankruptcy attorney to be included in the bankruptcy filing. He also appeared in court with his attorney. He claimed that although he signed the bankruptcy petition, he never read it, and that he was not fully aware of the total of his bankruptcy liabilities.

Applicant explained that his debt became unmanageable while going through a contentious divorce from 2001 to 2005. He used his credit to pay for his day-to-day living expenses and his divorce legal fees. He testified he filed for bankruptcy protection because he was going through a stressful period, the roughest time in his life, and he could not fulfill his financial obligations. He claimed to be embarrassed about his past financial situation and having to file bankruptcy. (Tr. 127)

Although separated from his then wife, Applicant lived with his in-laws, wife, and daughter while the divorce was pending from 2001 to 2004. In 2004, he moved to another state to live with his mother and brother who immigrated to the United States in 2001. His divorce became final in 2006. Applicant claimed that he paid back $22,000 of the promissory note. However, he failed to submit documentary evidence of any payments made. In his 2005 bankruptcy filing, Applicant swore he owed the $50,000 promissory note.

Applicant married his current wife (W) in April 2006, and they have a three-year-old daughter. His wife was born, raised, and educated in Belarus. She completed a bachelor's degree in Belarus, and entered the United States in 2003, at age 21, under a work visa. She later was granted asylum for religious beliefs because she was being discriminated by authorities in Belarus. She became a naturalized U.S. citizen by marriage in June 2013. She attended college in the United States and is now a registered nurse. She has three different jobs and works long hours while Applicant is deployed. She works as a nurse in a hospital, as a hospice nurse, and as a visiting nurse for the elderly. Applicant and his wife work hard to fulfill their dream and own a home in the United States.

Applicant enlisted in the U.S. Army in August 2006, at age 34, for a period of three years. He testified that he joined the Army because he felt obligated to the United States for all the privileges and benefits he received after immigrating to the United States. He believes it was his responsibility to volunteer for military service to repay the United States for all the benefits that he has received.

While on active duty, Applicant served three tours in Iraq in imminent danger pay areas. He and his unit were constantly under hostile fire. He completed his enlistment in April 2009, and received an honorable discharge. Applicant said he was discharged as a sergeant (E-5). However, his Certificate of Release or Discharge From Active Duty (DD 214) shows that he was an E-4 at the time of his discharge.

After his discharge from the Army, Applicant worked as a linguist for several defense contractors providing services to deployed U.S. personnel in Iraq, Kuwait, and recently in Afghanistan. He testified that since 2009, he has been consistently deployed to dangerous areas where he has risked his life in support of U.S. personnel. In April 2010, he was terminated from his job with a government contractor because he allegedly violated a company policy prohibiting harassment in the workplace. (SOR ¶ 2.k) Applicant admitted that he was terminated, but denied any misconduct. Email exchanges and telephone calls between the alleged victim and Applicant showed they continued a close friendship even after he was terminated. She encouraged, supported, and offered to assist Applicant in contesting his termination. (AE M, N)

Applicant has been deployed to Afghanistan from January 2012 to present. He was wounded in Afghanistan as a result of a roadside bomb that damaged the military vehicle he was riding. During the last two years, he has returned to the United States twice for short periods to visit his family and to appear at his security clearance hearing.

Applicant's wife testified that her family came to Belarus from the Ukraine. Her father is deceased. Her mother is a citizen of Belarus who has been residing in the United States with Applicant's wife for close to three years. Her mother worked 24 years for the government of Belarus and recently retired. She is entitled to a $200 pension from the government of Belarus. Applicant's mother-in-law is 64 years old. She came to the United States to help care for Applicant's daughter while Applicant is deployed and his wife is working. She is currently a green card holder, and has not visited Belarus since she entered the United States. According to Applicant's wife, her mother has no intention to return to Belarus, and is learning English to apply for U.S. citizenship. Her mother has no access to her pension because she has to be present in Belarus to withdraw the money from the bank. Applicant and his wife are supporting his mother-in-law. His wife testified that her mother has no interest in the pension and is willing to forfeit it to stay in the United States.

Applicant's brother-in-law is 38 years old. He works the family farm with his wife and two children. The evidence of the size and market value of the family farm, or whether Applicant's wife would have a future interest in the property is unclear. Applicant's wife has monthly contact with her brother via the internet or the telephone. Her mother has frequent contact with him and his family. Applicant testified he has no contact with his brother-in-law because of the language barrier and his many deployments.

The SOR alleges that Applicant falsified both his August 2006 (SOR ¶ 2.a) and his May 2008 (SOR ¶ 2.c) SCAs when he failed to disclose in response to Section 8 (Citizenship, Item d, Dual Citizenship) that he had been a dual citizen of Egypt and the United States from July 2000 (when he became a naturalized U.S. citizen) until January 2005 (Egyptian government's acceptance of Applicant's citizenship renunciation). In his responses to both SCAs, Applicant answered "not applicable," and failed to disclose that he had been a dual citizen of Egypt and the United States from July 2000 to January 2005. Applicant explained that he believed that he had renounced his Egyptian citizenship when he became a U.S. citizen in 2000. (Tr. 116)

Applicant disclosed on both SCAs (2006 and 2008) that he was born, educated, and married in Egypt. He also disclosed that his immediate family members were citizens and residents of Egypt, and that he became a naturalized U.S. citizen in July 2000. Considering the evidence as a whole, I find that Applicant's omission was not deliberate or made with the intent to mislead the Government. He had otherwise provided sufficient information for the Government to conclude that he had been a dual citizen of Egypt and the United States.

SOR ¶ 2.b alleges that Applicant falsified his August 2006 SCA when he failed to disclose in response to Section 18 (Foreign Countries You Have Visited During the Last Seven Years), that he visited Egypt from March to June 2001, and from September to October 2001. Applicant explained that he had provided the agency a handwritten SCA (AE HH) in which he disclosed his two 2001 trips to Egypt. Apparently, that information was omitted when the agency transcribed the handwritten SCA to the computerized SCA version. (GE 5) Applicant claimed that he was not allowed sufficient time to review the finalized SCA (GE 5) before he signed it.

Applicant disclosed in his May 2008 SCA (GE 4) both 2001 trips to Egypt. In May 2009 and January 2012, Applicant completed Counterintelligence and Security Screening Questionnaires (GE 6 and GE 7), in which he disclosed his 2001 trips to Egypt. Applicant's more recent SCAs (from April 2009 (GE 3) forward) did not require disclosure of travel to foreign countries beyond the preceding seven years.

The SOR alleges that Applicant falsified his April 2009 SCA (SOR ¶ 2.d), his December 2011 SCA (SOR ¶ 2.g), and his November 2012 SCA (SOR ¶ 2.j) when he disclosed in response to Section 26 (Financial Record) that he had filed for Chapter 7 bankruptcy protection in 2005, but deliberately minimized the true value of his liabilities by claiming that they were $12,000, when in fact his bankruptcy liabilities were over $94,000.

Similarly, SOR ¶¶ 2.e and 2.h alleged that Applicant made false statements to government investigators during interviews in May 2009 and in January 2012 (respectively) when he deliberately minimized his 2005 bankruptcy liabilities by falsely stating that they totaled $12,000, when in fact his bankruptcy liabilities totaled over $94,000.

Applicant claimed he made an honest mistake when he stated in his 2009, 2011 and 2012 SCAs, and to the investigators in 2009 and 2012, that his 2005 bankruptcy liabilities totaled $12,000. He claimed that at the time he submitted his SCAs, he believed his credit debt totaled around $12,000 and that is the amount he disclosed. He also claimed he never read or was provided a copy of his bankruptcy filing, and that he was never aware of the total of his bankruptcy liabilities.

The SOR alleges that Applicant falsified his December 2011 SCA (SOR ¶ 2.f) and his November 2012 SCA (SOR ¶ 2.i) when he stated in response to Section 12 (Where You Went to School) that he attended an Egyptian university from 1986 to 1990

and received a bachelor's degree. At his hearing, Applicant claimed that he believed he had earned an associate's degree from an Egyptian university after two years of studies. In his handwritten SCA submitted in 2005-2006 (AE HH), Applicant stated that he attended an Egyptian university from 1986 to 1990, and that he received an associate's degree in May 1990.

At his hearing, Applicant claimed he attended an Egyptian university part-time from 1986 to 1992, because he was working for his father. In response to questions during cross-examination, Applicant claimed he attended an Egyptian university full-time for a period, and completed 40-50 college credits. Applicant's documentary evidence shows that he attended an Egyptian university from 1990 to 1991, and was awarded a "career certificate" for completing studies for one year. He attended the same university from 1991 to 1992, and he was awarded another "career certificate" for completing studies for one year. (GE 16) Applicant failed to present any documentary evidence to show that he attended an Egyptian university from 1986 to 1990, or that he received an associate's degree in May 1990. He presented no documentary evidence to show he was ever awarded an associate's degree or a bachelor's degree from any Egyptian universities.

Applicant submitted numerous statements from U.S. personnel who served with him in imminent danger areas. He is considered to be competent, dependable, and a dedicated professional. In their opinion, Appellant is trustworthy, and played a crucial role in the efficiency and success of the operations in which he participated. He is considered to be committed to the United States, and displayed courage and determination under enemy fire. His references would welcome the opportunity to serve with Applicant again. Additionally, Applicant submitted Army training certificates, a certificate of appreciation from a foreign commander working with U.S. personnel, an Army Commendation Medal for meritorious service performed in Iraq, and a civilian performance evaluation indicating he exceeded expectations.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

> [I]f the individual has divided loyalties or foreign financial interests, [he or she] 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.

Applicant's mother-in-law, 64, retired from her job for an agency in the government of Belarus and is entitled to a $200 pension. She is a citizen of Belarus, but has been residing in the United States for close to three years. She is a legal resident alien in the United States. According to Applicant's wife, her mother intends to apply for U.S. citizenship, she is not interested in her Belarusian pension, and she does not intend to return to Belarus. She is living with Applicant, helping raise her granddaughter, and she is being financially supported by Applicant and his wife. Applicant's brother-in-law is a citizen and resident of Belarus. Applicant has limited contact with his brother-in-law.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

> (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.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.[2]

Applicant, directly or through his wife, has frequent contacts and a close relationship of affection and obligation with his in-laws. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Belarusian agents, criminals, or terrorists operating in Belarus may exploit the opportunity to obtain sensitive or classified information about the United States. With its negative human rights record, its government's illegal arms sales, and its relations with state sponsors of terrorism, it is conceivable that Applicant or his wife's family members could be subject to coercion. (*See*, Administrative Notice Support Documents)

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

> (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.;

[2] *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant left Egypt in 1995, at age 25, to be with his U.S.-born wife and her family in the United States. He has lived in the United States for close to 20 years. He became a naturalized U.S. citizen in 2000, and renounced his Egyptian citizenship in 2005. He served three years in the U.S. Army. After his honorable discharge, he has worked well for government contractors in support of deployed U.S. personnel. In the service, and while working for government contractors, Applicant risked his life while deployed with U.S. personnel in imminent danger areas.

Applicant has a strong affection and sense of obligation to his wife, two daughters, and his brother, all of whom are living in the United States. Because his mother-in-law is living in the United States, the security concerns are less. It is unlikely that the government of Belarus will be able to use her to manipulate or coerce Applicant. However, his brother-in-law may be at risk for foreign influence or exploitation.

Considering the evidence as a whole, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives, friends, and associates who are Belarusian citizens and living in Belarus] could create a risk for foreign influence or exploitation." AG ¶ 8(a) has limited applicability and does not mitigate the foreign influence concerns.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his wife and her family and friends living in Belarus. Although there is no evidence that Belarusian government agents, criminal elements, or terrorists have approached or threatened Applicant or his wife's family living in Belarus, because of his work for the United States he is

nevertheless potentially vulnerable to threats and coercion made against his wife's family living in Belarus.

I find that Applicant has "deep and longstanding relationships and loyalties in the U.S." He served in the Army and has worked for government contractors since 2009. Applicant's wife and his two daughters are U.S. citizens living in the United States. His mother-in-law is a U.S. resident. Applicant's financial interests are in the United States. He credibly testified that his loyalty is to the United States. He was deployed to Iraq in support of U.S. personnel in that country. Additionally, as a government contractor employee, he provided valuable services to U.S. personnel deployed to dangerous areas. Applicant's actions show that "[he] can be expected to resolve any conflict of interest in favor of the U.S. interest."

In sum, Applicant's connections to his mother-in-law, and his brother-in-law living in Belarus, are outweighed by his connections to his sibling, family members, and friends living in the United States. He has established deep and longstanding relationships and loyalties in the United States. Furthermore, his military service and work for Government contractors under dangerous circumstances have established that he can be expected to resolve any conflict of interest in favor of the United States. The mitigating information taken together is sufficient to fully overcome the foreign influence security concerns under Guideline B.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

> 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.

The personal conduct security concerns are based on the following alleged falsifications:

1. Applicant's failure to disclose on his 2006 and 2008 SCAs that he was a dual citizen of Egypt and the United States from about 2000 to 2005 (SOR ¶¶ 2.a and 2.c).

Applicant disclosed on both SCAs that he was born, educated, and married in Egypt. He also disclosed that his immediate family members were citizens and residents of Egypt, and that he became a naturalized U.S. citizen in July 2000. He also believed he had renounced his Egyptian citizenship when he became a U.S. citizen in 2000. In light of the evidence as a whole, I find that Applicant's omission was not deliberate or made with the intent to mislead the Government. Moreover, he had otherwise provided sufficient information for the Government to conclude that he had been a dual citizen of Egypt and the United States for a period.

2. Applicant's failure to disclose on his 2006 SCA that he traveled to Egypt twice in 2001. (SOR ¶ 2.b)

In 2005-2006, Applicant provided the Government agency a handwritten SCA (AE HH) in which he disclosed his two 2001 trips to Egypt. Apparently, that information was omitted when the agency transcribed the handwritten SCA into the computerized SCA version. (GE 5) Applicant disclosed in his May 2008 SCA (GE 4) both 2001 trips to Egypt. Additionally, in May 2009 and January 2012, Applicant completed Counterintelligence and Security Screening Questionnaires (GE 6 and GE 7), in which he disclosed his 2001 trips to Egypt. In light of the evidence as a whole, I find that Applicant's omission was not deliberate or made with the intent to mislead the Government.

3. Applicant's deliberately minimized the true value of his 2005 bankruptcy liabilities on his 2009, 2011, and 2012 SCAs, and to Government investigators, when he stated that his liabilities were $12,000 when in fact his bankruptcy liabilities totaled over $94,000. (SOR ¶¶ 2.d, 2.e, 2.g, 2.h, and 2.j)

Applicant claimed he did not intend to minimize his liabilities, to falsify his SCAs, or to make any false statements. He claimed that he believed his credit liabilities were around $12,000, and because that was the figure he remembered that was what he stated. Applicant's claims of honest mistake lack credibility. He was aware of his own delinquent debts because he incurred them, and because he was receiving the creditors' delinquent notices. He gathered all of his delinquent credit information and provided it to his bankruptcy attorney for him to prepare the bankruptcy documents and file the petition. Applicant also appeared in court in front of a bankruptcy judge with his attorney. Among his bankruptcy petition liabilities, Applicant listed a $50,000 promissory note to his first wife's parents, and 10 credit accounts totaling over $39,600. I find that he deliberately falsified his SCAs and made false statements to investigators when he minimized his 2005 bankruptcy liabilities.

4. Applicant's statements in his 2011 and 2012 SCAs (SOR ¶¶ 2.f and 2.i) claiming that he attended an Egyptian university from 1986 to 1990, and received a bachelor's degree.

Applicant's documentary evidence shows he attended an Egyptian university from 1990 to 1991 and received a "career certificate" for that year. He attended the same Egyptian university from 1991 to 1992 and received another "career certificate." Applicant presented no documentary evidence to show he attended any Egyptian university from 1986 to 1990, or that he was awarded an associate's or a bachelor's degree in 1990 or thereafter. At his hearing, Applicant made several contradictory statements attempting to explain the period he attended the Egyptian university, and the certificates he received. I find that he deliberately falsified his SCAs when he misrepresented the years he attended college and stated he was awarded an Egyptian college degree.

5. In April 2010, Applicant was terminated from his job with a government contractor because he allegedly violated a company policy prohibiting harassment in the workplace. (SOR ¶ 2.k)

Applicant admitted that he was terminated, but denied any misconduct. Considering the record as a whole, particularly the email exchanges between the alleged victim and Applicant after the alleged incident happened, I find that the record evidence is insufficient to establish that Applicant violated company policy by harassing a female coworker.

Applicant's falsifications trigger the applicability of the following disqualifying conditions under AG ¶ 16:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and
>
> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
>
> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
>
> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

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

Considering the evidence as a whole, I find that none of the mitigating conditions fully apply. Applicant made no effort to correct his false statements as outlined in SOR ¶¶ 2.d-2.j. His false statements were relevant and material to the security clearance process. Applicant's falsifications raise serious questions about his reliability, trustworthiness, judgment, willingness to comply with rules and regulations, and ultimately on his ability to protect classified information.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

I have incorporated my comments under Guidelines B and E in my whole-person analysis. I considered Applicant's service in the Army and his good work for government contractors while deployed to imminent danger areas in support of U.S. interests. I find that Applicant's favorable evidence is sufficient to mitigate the Guideline B concerns raised by his contacts with Belarusian family members.

Notwithstanding, Applicant failed to mitigate the personal conduct security concerns. He made false statements on issues relevant and material to the security clearance process. I have carefully assessed Applicant's demeanor and sincerity at his hearing, and I find his explanations concerning the falsifications in SOR ¶¶ 2.d-2.j are not credible. I have carefully applied the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not carried his burden of persuasion and the personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a- 1.c:	For Applicant
Paragraph 2 Guideline E:	AGAINST APPLICANT

Subparagraphs 2.a-2.c, and 2.k:	For Applicant
Subparagraphs 2.d-2.j:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA
Administrative Judge