



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



In the matter of:)
)
 1) ISCR Case No. 13-00255
)
 Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

05/01/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guidelines E (personal conduct), D (sexual behavior), and B (foreign influence). Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 9, 2012. On October 30, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) setting forth security concerns under Guidelines E, D, and B. DOD took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

¹ Applicant's first name was misspelled on the Statement of Reasons.

The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Applicant answered the SOR on December 31, 2013, and requested a hearing on January 7, 2014. The case was assigned to me on February 11, 2014.

On February 19, 2014, the Defense Office of Hearings and Appeals (DOHA) issued the Notice of Hearing in this case. The hearing was held as scheduled on March 10, 2014. At the hearing, Department Counsel offered exhibits (GE) 1 through 6 that were admitted into evidence without objection. The prehearing guidance sent to Applicant was attached to the record as hearing exhibit (HE) 1. The Government Exhibit List was attached as HE 2. In HE 3, Department Counsel requested administrative notice be taken of facts regarding Morocco. Applicant had no objection to the administrative notice request, and it was granted. During the hearing, Applicant testified, called no witnesses, and offered exhibits (AE) A through M that were admitted into evidence without objection. DOHA received the transcript (Tr.) of the hearing on March 26, 2014.

Findings of Fact

Applicant is a 41-year-old linguist who works for a defense contractor. He has worked for that contractor since June 2012. He graduated from high school in 1994 and earned an associate's degree in 1998. He has taken additional college courses to obtain a bachelor's degree, but has not yet received that degree. He is married and has a ten-year-old child. He stated that he held a security clearance from about 2007 to 2010 and from about 2012 to the time of the hearing.²

Three SOR allegations under Guideline E stated that Applicant was terminated from a job in June 2007 and later made statements about that termination (SOR ¶¶ 1.a - 1.c). The other Guideline E allegations asserted that Applicant had extra-marital affairs in Ecuador in 2002 and in France in 2007 (SOR ¶¶ 1.d and 1.e), that he was terminated from a security guard position for an unexcused absence in 2002 (SOR ¶ 1.f), and that he was terminated from another job for missing too much work in 2002 (SOR ¶ 1.g). The two extra-marital-affair allegations were cross-alleged under Guideline D (SOR ¶ 2.a). Under Guideline B, the SOR alleged that Applicant's parents, two brothers, sister, two sisters-in-law, and brother-in-law are citizens and residents of Morocco (SOR ¶¶ 3.a, 3.d, and 3.e), that he transferred \$40,000 to his parents in 2005 so they could purchase an apartment (SOR ¶ 3.b), and that he sent his parents about \$100-\$300 quarterly since about 2000 (SOR ¶ 3.c). In his answer, he admitted all of the Guideline E allegations except for SOR ¶ 1.d, did not respond to the Guideline D allegation, and admitted all of the Guideline B allegations.³

² Tr. 5-7, 47-52; GE 1, 2.

³ SOR and Applicant's Answer to the SOR.

SOR ¶¶ 1.a – 1.c

During a counter intelligence/force protection (CI/FP) screening interview in August 2007, Applicant reportedly stated that he was accused of stealing money from an employer and was fired from that job that he held from September 2006 to June 2007. The CI/FP investigator's report stated:

Candidate stated he would take extra cash that was left over from people pumping gas but it was only around one dollar each time. Candidate stated this was common at the gas station. Candidate stated he was really fired because he filed an equal opportunity complaint against his employer because he felt discriminated against because he is Middle Eastern. Candidate stated the complaint was dismissed.⁴

In his e-QIP dated June 4, 2012, Applicant listed that he worked in an assistant manager position at a retail store from September 2006 to July 2007. He did not disclose in the e-QIP that he was fired from that job or left it under unfavorable circumstances.⁵

During a CI/FP screening in June 2013, Applicant explained that he was terminated from a cashier's position for stealing \$10. He stated that he sold a \$500 winning scratch-off lottery ticket to a customer and was given a \$10 tip. He indicated that he was caught on a video camera putting the money in his pocket and was fired. The CI/FP investigator confronted him about the inconsistent statements he made in his prior CI/FP screening. The report merely indicated that he justified both explanations by saying it was common practice at the gas station. He again claimed the real reason he was fired was because he had filed Equal Employment Opportunity Commission (EEOC) complaints against the company.⁶

In an Office of Personnel Management interview on June 14, 2012, Applicant stated that he resigned from this position because he was working in a hostile environment. He stated that coworkers addressed him in a derogatory manner and supervisors did nothing to stop that behavior. He submitted complaints to the EEOC about that conduct. He stated that he took leave while the investigation was being conducted and advised his employer he would not return to work until something was done. He stated that his employer terminated the two employees against whom he submitted complaints. He indicated that the atmosphere at work improved for about two weeks until a supervisor accused him of pocketing tips. He stated that pocketing tips

⁴ GE 6.

⁵ GE 1.

⁶ GE 3.

was an accepted employee practice. He further stated that he resigned under unfavorable circumstances because of the way he was treated.⁷

At the hearing, Applicant testified that he did accept a \$10 or \$20 tip from a gentleman who purchased a \$500 winning lottery ticket. He claimed he never said that he pocketed cash left over from people pumping gas, but his former employer had made that allegation. Specifically, he said his employer claimed he was caught on camera taking cash from the register and he was fired. He said his employer was just looking for a reason to fire him because he had submitted the discrimination complaints.⁸

Applicant submitted an EEOC letter dated March 3, 2014, indicating he filed three discrimination complaints between December 2006 and July 2007. The first two complaints were closed in May 2007 and the third was closed in December 2007. The EEOC issued him letters advising that each complaint resulted in a finding of “no cause” to believe discrimination occurred and provided him with Notice of Right to Sue (NRTS). Each complaint file was destroyed in 2010.⁹

SOR ¶ 1.d and 2.a

During his CI/FP interview in August 2007, Applicant stated that he traveled to France in 2007 to meet a woman he met on the Internet and cheated on his wife there. He also stated that his wife did not know about this incident. He felt his infidelity could not be used against him, because if someone tried to exploit him, he would just tell his wife about it.¹⁰

The summary of Applicant’s OPM interview indicated that he traveled to France for two weeks in May 2007. It also stated his activities included sightseeing and visiting with his brother.¹¹

During his CI/FP interview of June 13, 2012, Applicant stated that he spent eight days with his brother in France and six days with a female lover in a Paris hotel. He met the woman through a Moroccan website. She was a citizen of Morocco and traveled to Paris to be with him. He acknowledged that they had a sexual relationship. He indicated that his wife never found out about this affair. He stated that he has not had any contact

⁷ Tr. 72-73; GE 2.

⁸ Tr. 54-60.

⁹ Tr. 58-60; AE F.

¹⁰ GE 6.

¹¹ GE 2.

with this woman since May 2007. He also indicated that he has had relationships with only two women since he has been married.¹²

In this Answer to the SOR, he again admitted this sexual relationship and stated that his wife now knows about it. He submitted a letter from his wife in which she acknowledged his infidelity. However, her letter did not specify if she was referring to Applicant's infidelity in 2002 (discussed below), in 2007, or in both instances.¹³

At the hearing, he again admitted to having a sexual relationship with a woman in April 2007 and said he regretted it. He has not seen or heard from this woman since that trip. At the time he arranged to meet this woman, he knew nothing about her. He also indicated, at the time of the trip, his wife believed he was going to Paris to visit his brother. He told his wife about this affair after his CI/FP interview in 2012.¹⁴

SOR ¶ 1.e and 2.a

During his CI/FP interview in August 2007, Applicant stated that he traveled to Ecuador in 2002 to meet an old girlfriend and cheated on his wife there. He also stated that his wife did not know about this incident.¹⁵

In his OPM interview on June 14, 2012, Applicant reportedly stated that he traveled to Ecuador for three days with a female friend. He met this friend at a community college, and they began having a close relationship. He stated that they were never intimate. He further indicated she wanted to be married before becoming intimate and told him that he had to marry her before becoming intimate. He stated the relationship with this friend ended and that his wife knew he traveled to Ecuador with her. The summary of the OPM interview noted that Applicant inadvertently excluded information about this trip on his e-QIP.¹⁶

During his CI/FP interview in June 2012, Applicant stated he went to Ecuador for three days to visit a classmate. He noted that his wife was then pregnant, and they fought often. Consequently, he "looked for romance outside the house." He told his wife that he was taking a vacation to Canada, but when he called home she saw his caller ID and knew he was in Ecuador.¹⁷

¹² GE 3.

¹³ Applicant's Answer to the SOR.

¹⁴ Tr. 64-67, 69-70.

¹⁵ GE 6.

¹⁶ GE 2.

¹⁷ GE 3. The quotation marks are in the CI/FP report.

In his Answer to the SOR, Applicant admitted having a sexual relationship with a foreign national in Ecuador in 2002. At the hearing, he stated he stated that he went to Ecuador to visit his classmate who had lost her father. He indicated that they “did not have anything intimate.” He also stated, “I did tell the screener that I did not have any intimacy with her.” Before that trip, he told his wife that he was going to Canada, but she found out that he went to Ecuador.¹⁸

SOR ¶ 1.f

During his CI/FP interview in August 2007, Applicant reportedly stated that he was terminated from a security guard position he held from June to August 2002 because he took a week off work to have his wisdom tooth extracted. In his OPM interview of June 2012, Applicant reportedly stated that he was laid off from this security guard position.¹⁹ During his CI/FP interview in June 2012, Applicant reportedly stated:

Candidate quit this position at the same time he was terminated. He did not like the hours or the job and hated the position. He took off one week to have dental surgery and the company didn't want him to take off. He remembers coming back a week after he had surgery and returning his uniform at which time he quit his position. When he quit, he was told that he was terminated. Note, this position was not listed on his SF86 form and needed to be added.²⁰

In his Answer to the SOR, Applicant denied this allegation stating, “They have the wrong record. I was away only for one day with legitimate excuse and I have a doctor note.” At the hearing, he testified that, while working in this position, he had a dental emergency that required surgery. He did not show up to work for most of a whole week. He stated he provided his employer with the doctor's note, but was told he was terminated.²¹

SOR ¶ 1.g

From September 1999 to August 2000, Applicant was working for a handbag company. This was his first job in the United States. He was fired from that job because he missed too much work. He indicated that these absences occurred while he attempted to correct an error in the spelling of his name on his green card.²²

¹⁸ Tr. 61-63, 67-69, 71; GE 3.

¹⁹ GE 2.

²⁰ GE 3.

²¹ Tr. 60-61, 70; Applicant's Answer to the SOR.

²² Tr. 67-68, 70; GE 6.

SOR ¶¶ 3.a – 3.e

Applicant was born in Morocco. He won a visa lottery and immigrated to the United States in September 1999. He became a U.S. citizen in April 2006. He met his wife in New York. They married in August 2001. His wife was born in a third country and became a U.S. citizen after their marriage. They have a ten-year-old child who was born in the United States. They purchased a house with a mortgage in the United States in 2004. Their house is now valued at about \$240,000. He has a number of monetary accounts in the United States, including \$60,000 in a savings account, \$10,000 in a money market, \$2,000 in a checking account, and \$300,000 in a 401(k) account. He owns no property in Morocco.²³

Applicant's parents are citizens and residents of Morocco. His mother is 61-year-old housewife who cannot read or write. She never held any government positions. His father is a 70-year-old retired employee of the Moroccan government. He receives a pension for his government service as a general office worker. Applicant's parents live together, and he talks to them weekly on the telephone. He visited them in October 2012 and December 2013. In about February 2005, he gave his parents \$40,000 to purchase an apartment. The apartment is now valued at about \$90,000. He potentially could inherit a share of this property, but he could also waive his right to that inheritance. Since about 2000, he has sent his parents about \$100 to \$200 a quarter for their support.²⁴

Applicant has three brothers and a sister. His two younger brothers and sister are citizens and residents of Morocco. His oldest brother is 39 years old and works for a car manufacturer in France. He speaks to his older brother about once or twice a month and has seen him twice since immigrating to the United States. His oldest brother is a citizen of Morocco, but may become a French citizen in the near future. Applicant second oldest brother is a 36-year-old self-employed truck driver. His second oldest brother lives with his parents and Applicant speaks to him about monthly. Applicant's youngest brother is 33 years old and works for a company as a truck driver. He speaks to his youngest brother about once a month. Applicant's sister is a 26-year-old housewife. He speaks to her about once every two weeks. His sister applied for visas to come the United States on three occasions, but those requests were denied.²⁵

In his Answer to the SOR, Applicant admitted he had two sisters-in-law and brother-in-law who were citizens and residents of Morocco. One of those sisters-in-laws was married to his youngest brother, but they are now divorced and Applicant no longer has any contact with her. His remaining sister-in-law, who is married to his second

²³ Tr. 30-31, 47-52; GE 2, 3.

²⁴ Tr. 26-32; GE 1, 2, 3, 4, 6; Applicant's Answer to the SOR.

²⁵ Tr. 32-40; GE 1, 2, 4; AE E. Applicant's oldest brother apparently resides in France, but at the hearing Applicant may have mistakenly indicated this brother resided in Morocco.

oldest brother, is a 26-year-old housewife. She lives with Applicant's parents. His brother-in-law is married to his sister and is a 30-year-old engineer.²⁶

Besides his trips Morocco in 2012 and 2013 mentioned above, Applicant traveled there in 2001, 2002, twice in 2004, 2005, 2006, 2008, 2009, and 2011. The purpose of these trips was to visit family.²⁷

Character Evidence

From September 2007 to November 2011, Applicant served as a translator in Iraq for the U.S. military. During that assignment, he broke his leg and had to return to United States for treatment. As part of his duties, he accompanied personnel on numerous missions in dangerous areas. He assisted in communicating sensitive information to the Iraqi Army, police, and local citizens. A U.S. Marshal, who worked with Applicant in Iraq, stated that he considered Applicant to be the most trustworthy and reliable interpreter that he ever worked with. Military personnel described his performance as exemplary and indicated he was a trusted member of their team. He was awarded a number of certificates of appreciation for his contributions.²⁸

A former employer indicated that Applicant was an extremely reliable and hardworking employee. He was always on time to perform his duties and willing assisted other in doing their duties.²⁹

The CI/FP screeners who conducted the interviews in 2007 and 2012 both concluded that Applicant was a potential security risk.³⁰

Morocco

Morocco is a constitutional monarchy with a bicameral parliament and an independent judiciary. The king, who inherited the throne in 1999, is the dominant authority in Morocco's political system.

There is a potential for terrorist violence against U.S. interests and citizens in Morocco. The terrorist threat in Morocco stems largely from numerous small, independent, violent extremist cells that are isolated from each other and limited in both capabilities and international connections. In May 2003, suicide bombers attacked five

²⁶ Tr. 40-45; GE 2.

²⁷ Tr. 45-46; GE 2, 5.

²⁸ Tr. 52-54; GE 2; AE A, B, G-M.

²⁹ AE D.

³⁰ GE 3, 6.

Western and Jewish targets in Casablanca, killing themselves and 33 others, and injuring more than 100. In 2012, al-Qa'ida in the Islamic Maghreb expanded its efforts to recruit Moroccans for combat in other countries and called for attacks on U.S. ambassadors in Morocco and the region.

Morocco and the United States work closely on counterterrorism efforts. Morocco has a comprehensive counterterrorism program of vigilant security measures, regional and international cooperation, and counter-radicalism policies. Morocco has a three-pillar strategy to counter violent extremism: (1) a law-and-order approach, working closely with the United States and other international and regional partners to strengthen its security and counterterrorism capabilities; (2) accelerated education and development initiatives for youth and expanded legal rights and empowerment of women; and (3) a national strategy to confirm and institutionalize Morocco's widespread adherence to the Maliki school of Islam. Moroccan officials regularly report that they have disrupted terrorist cells plotting attacks against the government, foreigners, and tourist sites.

Morocco's most significant human rights problems are lack of citizens' right to change the constitutional provisions establishing a monarchical government, corruption in all branches of government, and widespread disregard for the rule of law by security forces. The State Department reports that use of excessive force by the police to quell peaceful protests, torture, and other abuses. Other areas of concern include infringement on freedom of speech and press, lack of freedom of assembly, and restrictions on the right to practice one's religion. Crime in Morocco is a serious concern, particularly with respect to aggressive panhandling, pick-pocketing, purse-snatching, thefts from occupied vehicles stopped in traffic, and harassment of women.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information "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).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative

judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available evidence information 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. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time or resources; 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

SOR ¶ 1.b alleged that Applicant was terminated from the retail position in 2007 after he filed discrimination complaints. This allegation is true, but does not raise any security concerns. SOR ¶ 1.c is essentially a duplicate of SOR ¶ 1.a. I find in favor of Applicant on SOR ¶¶ 1.b and 1.c.

Shortly after being fired from his retail position in 2007, Applicant told a CI/FP screener that he was terminated for stealing money from his employer. He was caught on a video camera putting money in his pocket. During that first CI/FP screening, he reportedly stated that he took extra cash that was left over from people pumping gas. Years later, he stated that he was terminated from that position because he accepted a \$10 tip after selling a customer a \$500 winning lottery ticket. In both CI/FP interviews, he claimed he was terminated from the job in retaliation for submitting discrimination complaints. From a review of the record, sufficient evidence was presented to establish that Applicant was fired from that position for stealing money from his employer in 2007. He was also terminated from jobs in 2000 and 2002 for missing work. AG ¶¶ 16(c), 16(d), and 16(e) apply to SOR ¶¶ 1.a, 1.f, and 1.g.

During the CI/FP interviews in 2007, Applicant stated that he cheated on his wife in 2002 and 2007. These extra-marital affairs occurred when he traveled to Ecuador to meet a woman in 2002 and traveled to France to meet another woman in 2007. In both instances, he lied to his wife about aspects of those trips. While he still admits that he had sex with the woman on the 2007 trip, he now claims that he did not have sex with the woman on the 2002 trip. I did not find this change credible. He also submitted a letter from his wife in which she acknowledged his infidelity. From her letter, however, it cannot be determined whether she is referring to one of these incidents or both. Given his latest change in the account of his 2002 trip, it would appear that she is just referring to the 2007 extra-marital affair that he still admits. Based on the record evidence, I find that he still remains still vulnerable to exploitation for his extra-marital affair in 2002. AG ¶¶ 16(c), 16(d), and 16(e) apply to SOR ¶¶ 1.d and 1.e.

AG ¶ 17 lists four personal conduct mitigating conditions that are potentially applicable:

- (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.

Applicant has engaged in questionable conduct on a number of occasions. Such conduct cannot be categorized as minor. When viewed as a whole, Applicant's personal

conduct continues to raise questions about his reliability, trustworthiness, and good judgment. Based on the evidence presented, I cannot conclude that such questionable conduct is in the past and is unlikely to recur. None of the mitigating conditions fully applies.

Guideline D, Sexual Behavior

AG ¶ 12 expresses the security concern pertaining to sexual behavior:

Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence, coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in this Guideline may be raised solely on the sexual orientation of the individual.

AG ¶ 13 sets for the four sexual behavior disqualifying conditions:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) a pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

Record evidence did not establish sexual behavior that constituted a criminal offense; that showed a pattern of compulsive, self-destructive, or high risk behavior; or that may be symptomatic of a personality disorder. AG ¶¶ 13(a) and 13(b) do not apply.

As discussed under Guideline E, the evidence does establish that Applicant had extra-marital affairs in 2002 and 2007. He now denies the 2002 extra-marital affair, which potentially makes him vulnerable to coercion or exploitation for that affair. These affairs also reflect a lack of discretion and judgment. AG ¶¶ 13(c) and 13(d) apply.

Four sexual behavior mitigating conditions are listed under AG ¶ 14:

- (a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;

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

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress; and

(d) the sexual behavior is strictly private, consensual, and discreet.

Applicant's extra-marital affairs occurred when he was about 29 and 34 years old. For the reasons stated under the mitigating conditions for Guideline E, none of the Guideline D mitigating conditions fully apply.

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 potentially applicable conditions that could raise a security concern and two 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.

When foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered.³¹ There is a

³¹ ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

rebuttable presumption that contacts with an immediate family member in a foreign country are not casual.³²

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk of greater than the normal risk inherent in having a family member or friend living under a foreign government or owning property in a foreign country. It is not necessary for the Government to prove affirmatively that a country specifically targets U.S. citizens in order to raise Guideline B security concerns.³³ Furthermore, factors such as family members’ obscurity or the failure of foreign authorities to contact them in the past do not provide a meaningful measure of whether an applicant’s circumstances pose a security risk.³⁴

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.”³⁵

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.”³⁶ Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s foreign contacts are vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.³⁷

Applicant’s parents, two brothers, sister, brother-in-law and sister-in-law are citizens and residents of Morocco. Applicant’s father is a retired government employee and receives a pension from the government. Applicant maintains regular contact with

³² ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

³³ ISCR Case No. 08-09211 (App. Bd. Jan. 21, 2010).

³⁴ ISCR Case No. 07-13696 at 5 (App. Bd. Feb 9, 2009).

³⁵ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

³⁶ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

³⁷ See generally, ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided.)

his immediate family in Morocco. Due to the threat of terrorism and the potential for human rights abuses in Morocco, the presence of Applicant's family members in that country creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Those foreign family members also create a potential conflict of interest with his obligation to protect sensitive information. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 provides conditions that could mitigate foreign influence security concerns. Two are potentially applicable in this case.

(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.

Applicant came to the United States 15 years ago and became a U.S. citizen eight years ago. He met his wife in the United States. She is now a U.S. citizen. They have a 10-year-old child who was born in the United States. Excluding his wife and child, most of Applicant's immediate family members are citizens and residents of Morocco. His father is a retired employee of the Moroccan government. Because of the nature of his close family contacts in Morocco as well as the terrorist threats and human rights abuses there, AG ¶ 8(a) does not apply.

Applicant has a home and substantial financial accounts in the United States. He owns no property in Morocco, but did purchase an apartment for his parents there. His foreign contacts in Morocco cannot be categorized as "minimal." On the contrary, many of his deep and longstanding relationships remain in Morocco. Considering the extent of his relationships in Morocco, I find that insufficient evidence has been provided to conclude that Applicant would resolve any potential conflict of interest in favor of U.S. interests. AG ¶ 8(b) does not apply.

In cases of this nature, an additional analysis is necessary because the Appeal Board has stated:

As a general rule, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. However, the Board has recognized an exception to that

general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.³⁸

Applicant's performance of duties in support of U.S. forces in Iraq has been laudable, but does not rise to the level that would mitigate the security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case and examined all of Applicant's alleged conduct as a whole. I have incorporated my comments under Guidelines E, D, and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has worked with the U.S. military as a translator. He received praise from military personnel his contributions to the U.S forces. Nonetheless, doubt remains about his trustworthiness. His inconsistent statements about his termination from a retail

³⁸ ISCR Cases No. 06-25928 at 4 (App. Bd. Apr 9, 2008) (internal citations omitted). See also ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) citing ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May, 30, 2006); and ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006).

position in 2007 and about his relationship with a woman he met in Ecuador in 2002 are troubling. These and other inconsistencies in the record have caused me to give little weight to his testimony. He admitted lying to his wife about his trip to Ecuador in 2002. It is unclear whether his wife knows the full extent of his relationship with the woman he met on that trip. These matters weigh against him. In short, he has failed to meet his burden of mitigating the security concerns raised under each guideline.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the security concerns under the personal conduct, sexual behavior, and foreign influence guidelines.

Formal Findings

Formal findings 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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1.c:	For Applicant
Subparagraphs 1.d – 1.g:	Against Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline B:	AGAINST APPLICANT
Subparagraphs 3.a – 3.e:	Against Applicant

Decision

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

James F. Duffy
Administrative Judge