



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



In the matter of:)	
)	
)	ISCR Case No. 13-00938
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

05/22/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On March 13, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on April 27, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated January 22, 2015¹. Applicant received the FORM on February 28, 2015. Applicant timely submitted

¹The Government submitted nine items for the record.

a response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Russia. The request and the attached documents are included in the record as HE 1. The facts administratively noticed are set out in the Findings of Fact.

Findings of Fact

In his answer to the SOR, Applicant denied the SOR allegations under Guidelines B, E, and F and provided explanations.

Applicant is 50 years old. He graduated from high school in 1984, and he attended college, but did not receive a degree. He received a technical degree in 2005. Applicant has served in the Army inactive reserve from 2005 to the present. Applicant is divorced from his first wife and has four children. He has been employed with his current employer since 2010 and lives abroad. (Item 3)

After Applicant's first divorce in 2010, when he was working and living in South Korea, he dated a Russian citizen who lived in South Korea. They married in January 2011, and divorced in August 2011. Applicant cites the reason for divorce as a suspicion that his wife had borrowed money (when they were separated) from someone who he believed had potential ties with the black market. He later learned that it was a mistaken notion. However, he reported it on his security clearance application. (Item 5)

After their divorce, Applicant continued to co-habit with his second wife for a period of time, including a vacation of one month in 2012. Applicant states that he is trained to report perceived or real threats. He has not seen nor spoken to her since 2013. He does not know how to contact her. He has no intention of having any contact with her. (Response to FORM)

Applicant disclosed on his 2011 security clearance application details concerning his Russian ex-wife. He also noted that his Russian ex-wife had borrowed money to purchase a café. He did not have any knowledge of details about the investment. They kept business details separate from their marriage.

During his 2012 investigative interview Applicant acknowledged that he filed for divorce when he thought that his marriage to his Russian wife would jeopardize his security clearance. He reported his wife's actions regarding the above mentioned money issues. The interview notes that Applicant told his Russian wife that he lived under strict rules due to his security clearance. Applicant stated that in November 2012, he no longer cohabited with his ex-wife and lived alone. (Item 5)

Applicant remarried last May and has reported that information to his security officers.

Financial

The SOR alleges five delinquent debts, including collection accounts totaling about \$6,000. (Item 5) It also alleges failure to file federal income tax returns for tax years 2010 and 2011.

Applicant incurred delinquent debts as a result of his 2010 divorce. Before his divorce he had no financial difficulties. He also attributes his failure to file his federal income tax returns for 2010 and 2011 to his 2010 divorce.

Applicant admitted that he did not file his federal income tax returns for tax years 2010 and 2011 as required. (SOR 3.a) He partially bases the delay on the fact that living in South Korea for the last four years, he could not sit down with an English speaking CPA. He projected that he would not owe money. He believed he would receive a refund. He stated that he chose to file late, but correctly, rather than file incorrectly, but on time. (Answer to FORM)

He submitted excerpts of tax filings for the years 2010 and 2011, dated April 6, 2014. (Item 2) He also attached the receipt for mailing and receipts from HR Block.

As to the debt alleged in SOR 3.b for \$46, Applicant cannot confirm or deny its accuracy. It appears on his credit report.

Applicant submitted receipts for the debts in SOR 3.d (\$269); 3.e (\$250) and 3.f (\$250). The receipts confirm that these accounts are now paid in full.

Applicant submitted a sheet for the debt in SOR 3.c to show that he has been paying on the debt. The original amount was \$5,257. The receipt that he provided was dated and showed the remaining balance was \$3,655. He intends to continue payments, but he did not provide any more documentation in response to the FORM.

A recent credit report shows two additional delinquent accounts. (Item 6) The debts have been delinquent since 2012 and 2013. There is no evidence of payment or a payment plan.

Administrative Notice

Russian intelligence services continue to target U.S. and allied personnel by accessing sensitive computer network information. As of 2014, the leading state intelligence threats to U.S. interests continue to be Russian and China. The Director of National Intelligence explains that Russia has sophisticated foreign intelligence entities and will continue to employ human and cyber means to collect national security information. Russia seeks data on advanced weapons systems and proprietary information from U.S. companies and research institutions that deal with energy, finance, the media, defense, and dual use technology.

Beyond collection activities and espionage directed at the United States, Russia has provided various military and missile technologies to other countries of security concern, including China, Iran, Syria, and Venezuela. Putin's return to the presidency in 2012 is unlikely to bring immediate, substantive reversals in Russia's approach to the United States. Continuing concerns about U.S. missile defense plans will reinforce Russia's reluctance to engage in further nuclear arms reductions, and Russia is unlikely to support additional sanctions against Iran.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

decisions entail a certain degree of legally permissible extrapolation of 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;

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

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation;

(f) failure to report, when required, association with a foreign national;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and,

(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant married a Russian citizen while living in South Korea. Applicant held a security clearance at the time. Applicant suspected that his Russian wife might have criminal business dealings with entities or persons in Russia. They separated and divorced in August 2011. He later learned that his notion was not correct. He reported his marriage to the security officials. He later cohabited with her for a limited time while on vacation. He spent limited time with her after the divorce on vacation. AG ¶¶ 8(a), (b), and (d) apply.

AG ¶ 8 provides conditions that could mitigate security concerns:

(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.;

(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 divorced his Russian wife in August 2011. He no longer maintains contact with her. He has no intention of seeing her again and he does not consider her a friend. He has remarried. He followed procedure and contacted his security personnel when he had a suspicion about her business dealings. He has mitigated the foreign influence security concerns. All of the mitigating conditions apply except 8(d) and (f).

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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

(d) credible adverse information in an adjudicative issue area 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.

In this case, the facts relate to foreign influence and not personal conduct. The government has not established a case under personal conduct. The issue is resolved under personal conduct for the same reasons it is mitigated under the foreign influence guideline.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that he had delinquent debts. He also failed to timely file his 2010 and 2011 federal tax returns. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. FC DC AG¶¶ 19(g) (failure to file taxes as required or the fraudulent filing of same) also applies. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant still has unresolved debts. While he attributes his delinquent debts and late filing of taxes to his divorce, he provided no nexus with regard to the failure to file his taxes until 2014. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant cited to his divorce but I find that he failed to act responsibly. He has known about the debts and tax issues since at least 2011, however, he just filed

his 2010 and 2011 tax returns in 2014. He provided receipts for some small accounts, but I cannot find that he acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant's statements that he is making progress are supported by documentary evidence. FC MC AG ¶ 20(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 is under control) partially applies.

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 the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a 50 year old employee, holding a security clearance. He lives in South Korea. Applicant divorced his first wife in 2010. After that divorce, he dated and later married a Russian citizen living in South Korea. He reported this to his security office and it is reflected on his 2011 security clearance application. He also reported issues of possible suspicious business dealings that his Russian wife may have had. Applicant divorced his Russian wife in 2011. He no longer has any contact with her; nor does he have any desire to do so. He has remarried.

Applicant did not timely file his federal tax returns for the tax years 2010 and 2011. He stated that this was partially due to his 2010 divorce and the fact that he was living abroad. He submitted excerpts from his tax returns that he filed in April 2014. There is no evidence that he had an extension of time for the filing. The tax returns were past-due by three and two years respectively. This is not responsible behavior. He has paid other debts and produced some evidence that he has a payment plan for one debt. He did not provide sufficient information concerning the payment plan with the

account that he stated that he is repaying. He submitted some documentation for the small accounts. Recent credit reports show that Applicant has other delinquent debts.

Applicant did not persuade me that he refuted or mitigated the Government's case concerning the financial considerations security concerns. Any doubts must be resolved in the Government's favor.

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
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E :	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	For Applicant
Subparagraph 3.d:	For Applicant
Subparagraph 3.e:	For Applicant
Subparagraph 3.f:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge