



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



In the matter of:)	
)	
[Redacted])	ISCR Case No.14-00546
)	
Applicant for Security Clearance)	

Appearances

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

08/15/2014

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines. F (Financial Considerations), E (Personal Conduct), and B (Foreign Influence). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 8, 2013. On March 19, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, E, and B. 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on March 27, 2014; answered it on April 16, 2014; and requested a decision on the record without a hearing before an administrative judge. Department Counsel requested a hearing on May 2, 2014, and the case was assigned to me on May 15, 2014. The Defense Office of Hearings and Appeals (DOHA)

issued a notice of hearing on May 27, 2014, scheduling the hearing for July 10, 2014. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Department Counsel submitted a demonstrative exhibit summarizing the evidence, which is attached to the record as Hearing Exhibit (HX) I. Department Counsel also requested that I take administrative notice of relevant facts about Peru. The request to take administrative notice is attached to the record as HX II. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Applicant testified and submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. I kept the record open until July 18, 2014. He timely submitted AX K through M, which also were admitted without objection. Department Counsel's comments regarding AX K through M are attached to the record as HX III. DOHA received the transcript (Tr.) on July 18, 2014.

Findings of Fact

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a through 1.t. He admitted incorrectly answering the questions on his SCA, alleged in SOR ¶¶ 2.a-2.c, but he denied intentionally falsifying his answers. He admitted SOR ¶¶ 3.a-3.c. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 34-year-old electrician who has been offered employment by a federal contractor, contingent upon his receipt of a security clearance. (GX 1 at 12.) On his SCA, Applicant stated that he has never held a security clearance. However, during a personal subject interview (PSI) in September 2013 and in his answer to the SOR, he stated that he received a security clearance in 2008. At the hearing, he testified that his clearance expired in 2013. (Tr. 6.)

Applicant was born in Peru, came to the United States in August 1993, and became a U.S. citizen in December 2004. (GX 1 at 7; AX A.) His mother is deceased. His father is a citizen of Peru residing in the United States. His stepmother was born in Peru, but she is a naturalized U.S. citizen residing in the United States. Three of his sisters are natives of Peru, who are naturalized U.S. citizens residing in the United States. One sister is a native-born U.S. citizen and resides in the United States. (GX 1 at 21-36.) He has two stepbrothers who are citizens and residents of the United States. (Tr. 40.) Applicant has aunts and uncles in Peru but he has virtually no contact with them. One of his uncles is a police officer in Peru. (Tr. 40-42.)

Applicant married a native of Peru residing in the United States in July 2006. They divorced in October 2008. They had one child, who is a citizen and resident of the United States. (AX B.)

Applicant married his current wife, also a native of Peru, in November 2009. His wife has been an airline flight attendant for ten years. She lives in Peru with their two children, who are dual citizens of Peru and the United States. (AX C and D.) His wife's

parents are citizens and residents of Peru. Her father is a retired police officer. (Tr. 42-43.) Applicant has monthly telephonic contact with his wife's parents. (GX 4 at 8.) He has daily telephonic contact with his wife and visits her regularly. (GX 4 at 5; Tr. 39, 56.)

Applicant has applied for a visa for his wife to immigrate to the United States. (AX E through J.) He testified that his wife and children were scheduled to arrive in the United States in early August, in time to begin school in September. (Tr. 11-12, 44.) While he was employed, he regularly sent about \$900 per month to his wife. He has been sending her about \$120 per month during his unemployment. (AX M.)

Applicant worked on overseas construction projects for federal contractors in Iraq from November 2007 to April 2008, Jordan from January to May 2009, Afghanistan from August to November 2009, Iraq in May and June 2011, and South Korea from June to October 2011 and January to February 2012. Between overseas projects, he worked in the United States. He was unemployed from September 2010 to May 2011 and July 2012 to June 2013. He worked as a temporary employee for two months before being laid off in August 2013. (Tr. 46-48.) He has been unemployed since August 2013. (GX 2 at 2-4.) Two former coworkers submitted letters describing him as dependable, reliable, and a hard worker. (AX K and L.)

Applicant's income was at its highest in 2009 and from May 2011 to June 2013, when he was making from \$55,000 to \$60,000 per year. (Tr. 46.) He now collects unemployment, lives with his father for monthly rent of about \$400, and drives his sister's car. (Tr. 49-50.)

Applicant admitted the 20 delinquent debts, totaling about \$32,187, alleged in the SOR. The oldest debts became delinquent in March and October 2008, and the most recent became delinquent in October 2012. In his answer, he stated that he intended to contact his creditors and begin making payments. As of the date of the hearing, none of the debts had been resolved. He made one \$60 payment on the unsatisfied \$4,150 judgment alleged in SOR ¶ 1.a, but he had taken no action on any of the other delinquent debts alleged in the SOR. (Tr. 50-54.)

In addition to the debts alleged in the SOR, Applicant owes about \$4,000 in federal taxes. The debt arose because he and his ex-wife both claimed their son as a dependent. (Tr. 57.) He has a child-support arrearage of about \$8,000. (Tr. 58.)

In his SCA, Applicant answered "No" to the question asking if he had any judgments entered against him during the last seven years, and he did not disclose the judgments alleged in SOR ¶ 1.a and 1.b. He also answered "No" to the question asking if he had any bills or debts turned over to a collection agency during the last seven years, and he did not disclose the accounts alleged in SOR ¶¶ 1.c and 1.e through 1.t. Finally, he answered "No" to the question whether he had any accounts or credit cards suspended, charged off, or cancelled for nonpayment, and he did not disclose the account alleged in SOR ¶ 1.d.

At the hearing, Applicant denied knowing that two judgments had been entered against him for delinquent debts when he submitted his SCA. However, he admitted knowing that he had delinquent debts and that collection letters were being sent to his father's home while he was deployed overseas, and that some of his credit card accounts were charged off or cancelled. (Tr. 59-60.) Based on his responses at the hearing, I conclude that he did not intentionally falsify his answer to the question about judgments entered against him, but he intentionally failed to disclose that he had debts turned over to collection agencies and had credit card accounts cancelled, charged off, or suspended for nonpayment.

I have taken administrative notice that Peru is a constitutional, multi-party republic. The United States established diplomatic relations with Peru in 1827, following Peru's independence from Spain. Peru is a key U.S. partner in Latin America, and the two countries have strong, positive, and cooperative relations. In the past decade, Peru has experienced consistent economic growth, poverty reduction, and broad support for democracy. Recent national elections were widely seen as free and fair.

I have also taken administrative notice that Peru has human rights problems including violence against women and children, trafficking in persons, and government corruption that undermines law enforcement. Peru is the world's top potential producer of cocaine and the second-largest cultivator of coca. The Shining Path terrorist organization is active in Peru and has expressed its intention to target U.S. interests. Shining Path violence has been mainly against Peruvian security services. Violent crime is common in Lima and other large cities.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

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 about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “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. Thus, a decision to deny a security clearance is merely an indication the applicant 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 therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[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 F, Financial Considerations

The SOR alleges 20 delinquent debts totaling about \$32,187 (SOR ¶ 1.a-1.t). The concern under this guideline is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially

overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations.") The following mitigating conditions are potentially applicable:

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;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of these mitigating conditions are established. Applicant's debts are numerous, ongoing, and were not incurred under conditions making them unlikely to recur. Applicant's periods of unemployment were conditions beyond his control, but he did not act responsibly. He did not contact his creditors. Instead, he ignored his debts rather than trying to resolve them. He has not obtained financial counseling, and his financial situation is not under control. He has not disputed any of the debts.

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified his answers to three financial questions on his SCA (SOR ¶¶ 2.a-2.c). The concern under this guideline is set out in AG ¶ 15:

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 relevant disqualifying condition in this case is AG ¶ 16(a) ("deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . ."). When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant's admissions at the hearing are sufficient to establish that he intentionally and falsely answered "No" to the questions about debts turned over to collection agencies and credit card accounts that were suspended, charged off, or cancelled for nonpayment. However, because the information he received about his delinquent debts while he was working overseas was frequently routed through his father, I found his testimony that he was unaware of the two judgments plausible and credible. Thus, I conclude that he did not intentionally and falsely answer "No" to the question about judgments entered against him. However, based on his false answers to two of the three financial questions, I conclude that AG ¶ 16(a) is established.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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.

AG ¶ 17(a) is not established, because Applicant did not acknowledge or disclose the delinquent debts until he was confronted with the evidence during his PSI, six weeks after submitting his SCA. Even when he acknowledged the delinquent debts, he claimed that he did not disclose them on his SCA because he had forgotten about them.

AG ¶ 17(c) is not fully established. Applicant's falsifications were not minor because they undermined the integrity of the security clearance process. His falsifications were arguably infrequent because only one SCA was involved, but they did not occur under unique circumstances making them unlikely to recur.

Guideline B, Foreign Influence

The SOR alleges that Applicant's wife (SOR ¶ 3.a), two children (SOR ¶ 3.b), and parents-in-law (SOR ¶ 3.c) are citizens and residents of Peru. Applicant's admissions establish SOR ¶¶ 3.a and 3.c. However, SOR ¶ 3.b is only partially established, because the documentary evidence submitted by Applicant establishes that his children are dual citizens of Peru and the United States.

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

The following disqualifying conditions under this guideline are relevant to this case:

AG ¶ 7(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;

AG ¶ 7(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; and

AG ¶ 7(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.

AG ¶¶ 7(a) and (d) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). There is also a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002); see also ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011).

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

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.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). 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 family members are vulnerable 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. 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).

Peru is a friendly country, but the presence of Applicant’s family members in Peru, where they are vulnerable to the violence associated with drug trafficking and the Shining Path terrorist group is sufficient to establish the heightened risk in AG ¶¶ 7(a) and 7(d) and the potential conflict of interest in AG ¶ 7(b). Although Applicant’s wife lives apart from him in Peru, they visit each other frequently and share living quarters during their visits.

Three mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 8(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; and

AG ¶ 8(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.

AG ¶ 8(a) is not established. Applicant's wife, children, and in-laws live in a country where drug trafficking is rampant, governmental corruption is a serious problem, his uncle is a police officer, and his father-in-law is a retired police officer. Terrorist groups actively seek to disrupt U.S. interests, and they specifically target security forces, include the police.

AG ¶ 8(b) is established. Applicant has not rebutted the presumption that he has ties of obligation to his wife's immediate family members, and his sense of loyalty or obligation to them is more than "minimal." However, he has deep and longstanding relationships and loyalties in the United States. He has lived in the United States for 21 years and has been a U.S citizen for ten years. His father, stepmother, siblings, and stepbrothers all live in the United States. All his immediate family members except his wife and father are U.S. citizens. His children are U.S. citizens, and his wife intends to immigrate to the United States.

AG ¶ 8(c) is established for Applicant's aunts and uncles in Peru. However, he has not rebutted the presumption that his monthly contact with his wife's parents is not casual.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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.

I have incorporated my comments under Guideline F, E, 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 is undoubtedly a loyal American and a devoted husband and father. He has held a security clearance in the past, and he has worked for many years as an employee of federal contractors. However, his inattention to his financial responsibilities and his lack of candor during the security clearance process raise serious doubts about his trustworthiness, reliability, and judgment.

After weighing the disqualifying and mitigating conditions under Guidelines F, E, and B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on his foreign family connections, but he has not mitigated the security concerns based on his financial irresponsibility and lack of candor on his SCA. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.t: **Against Applicant**

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraph 2.a: **For Applicant**

Subparagraphs 2.b-2.c: **Against Applicant**

Paragraph 3, Guideline B (Foreign Influence): **FOR APPLICANT**

Subparagraphs 3.a-3.c: **For Applicant**

Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge