

KEYWORD: Financial; Foreign Influence; Personal Conduct

DIGEST: Applicant has mitigated the financial and personal conduct concerns, but has failed to mitigate the foreign influence concerns. Applicant's father, sister, and cousin are living in Afghanistan. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his relatives living in Afghanistan. Clearance is denied.

CASENO: 04-05882.h1

DATE: 12/14/2005

DATE: December 14, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05882

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has mitigated the financial and personal conduct concerns, but has failed to mitigate the foreign influence concerns. Applicant's father, sister, and cousin are living in Afghanistan. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his relatives living in Afghanistan. Clearance is denied.

**STATEMENT OF THE CASE**

On January 19, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were alleged under Guideline F (Financial Considerations), Guideline B (Foreign Influence), and Guideline E (Personal Conduct). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On February 10, 2005, Applicant answered the SOR and requested a hearing. On June 13, 2005, I was assigned the case. On June 22, 2005, a Notice of Hearing was issued scheduling the hearing which was held on June 28, 2005. On July 14, 2005, DOHA received a copy of the transcript (Tr.). The record was kept open to allow Applicant to submit documents. Several documents were received and admitted into the record as Applicant's Exhibit (App Ex) A.

**FINDINGS OF FACT**

In his response to the SOR, Applicant admits to the following: he has two disputed debts, one a telephone bill and the other debt following a vehicle repossession; he admits his father and sister are U.S. citizens living in Afghanistan, his mother is an Afghan citizen living in the U.S., he has a cousin who is a German citizen living in Germany, a cousin who is an Afghan citizen living in Afghanistan, and his in-laws live in Afghanistan. These admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 37-year-old interpreter who has prospects of working for a defense contractor, and is seeking to obtain a security clearance.

Applicant was born in Afghanistan. In February 1984, he came to the U.S. and has since attended high school and college in the U.S. In June 1996, he became a naturalized U.S. citizen. He considers himself more of an American than an Afghan (Tr. 69). Applicant's father and sister are U.S. citizens residing in Afghanistan. His father is attempting to regain real estate in Afghanistan, which is a lengthy process. Applicant emails his father and sister once or twice a week and calls his father once a month (Tr. 46). His sister has been married for 27 years and returned to Afghanistan with her husband. They too are attempting to regain property. They returned to Afghanistan as soon as the Taliban had been ousted. His sister is a homemaker. Applicant is unsure of his sister's husband's occupation. His father and sister are not on a short visit to Afghanistan, but are there for an extended time.

Applicant's mother is a citizen of Afghanistan living in the U.S. She has attempted to become a U.S. citizen, but was held back because of her English language skills. Applicant has a cousin who is a citizen of Afghanistan, living in Kazakhstan, who works for the Afghanistan government in the consulate's office. Applicant has another cousin who is a German citizen living in Germany. Applicant talks to this cousin in Germany by telephone every three to six months.

From April 2001 to September 2001, Applicant traveled to Pakistan for business. From November 2000 to January 2001, he was also in Pakistan on a trip to get married. His wife's family once resided in Pakistan, but now lives in Afghanistan. His father-in-law has a clerical job with the Afghanistan government (Tr. 55, 66). His mother-in-law is a homemaker. His wife calls her parents weekly.

Applicant had a medical bill (SOR 1.a \$991), which he has since paid. In 2001, he was informed the bill was past-due. He had been making payment on the debt when it was turned over to a collection agency (Tr. 73). He contacted the creditor, reached a settlement, and paid the debt.

In March 2000, a large telephone bill (SOR 1.b \$2,700) was turned over to a collection agency. Applicant disputes the amount owed (Tr. 33). His telephone bill was averaging \$200 per month when he received a monthly bill for more than \$3,000. In April 2000, after receiving the bill, Applicant closed his account. Applicant's May 2004 credit report (Gov Ex

2) lists a balance owed of \$2,700 with the last activity on this debt having occurred in April 2000. The credit report indicates this is a disputed debt. The debt does not appear on his June 2005 credit report. In an April 2004 interrogatory (Gov Ex 2) Applicant was asked about the three other debts listed in the SOR, but was not questioned about this telephone debt.

Applicant had two accounts with a bank (SOR 1.c \$2,679) which he has paid. His May 2004 credit report lists the accounts as being paid as agreed. There is no showing the accounts had ever been more than 180-days delinquent.

In late 1998 or early 1999, Applicant entered into a three-year car lease. During the first six months of the lease, the car was in the shop 30 times. It had engine problems, computer problems, and problems starting. Applicant met with the company's national service manager, but failed to receive satisfaction about the car problems. Applicant asked the lease company to keep the car or replace it with another car. In late 2000 or early 2001, he parked the car and told the lease company the car was not driveable and he would not make additional payments. The car was repossessed.

Following repossession, the car was sold leaving a delinquency of \$7,964 (SOR 1.d). Applicant disputes owing any obligation following the voluntary repossession. He says the creditor never contacted him concerning any deficiency. He also learned the car was resold to a purchaser in another state. Applicant's June 2005 credit report (App Ex A) lists a zero balance for this account. The debt does not appear on Applicant's May 2004 credit report (Gov Ex 2). Applicant was unaware of the protection offered by the state's Lemon Law until after the car had been repossessed. In his answer to the SOR, Applicant admitted the allegation, but stated the account was in dispute. He has made no payment on this debt.

In January 2003, Applicant completed his Security Clearance Application, Standard Form (SF) 86. Applicant failed to reveal his vehicle repossession in response to Question 27 b. He did not list the repossession because the matter is unresolved and disputed by Applicant (Tr. 57). Since the car was not driveable, he saw it as returning a worthless car and not a repossession.

In response to Question 28 a, which asked about financial delinquencies of more than 180 days, Applicant did not list any accounts because he had ongoing disputes with a couple creditors. When he completed his SF 86, he did not believe he was six months late on any account (Tr. 75). He also failed to list any accounts in response to Question 28b, which asked if he was "currently" more than 90 days delinquent on any debt. Applicant believes the creditors made faulty reporting to the credit bureau (Tr. 71).

Applicant's ex-wife opened an account in his name using his social security number. The account has been paid. Since he did not consider it his account and, therefore, did not list it as being overdue on his SF 86.

Applicant is current on his rent, credit card payments, and car payment.

## **POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline F (Financial Considerations), Guideline B (Foreign Influence), and Guideline E (Personal Conduct).

## **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. <sup>(2)</sup>

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national

interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

## CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant had four debts totaling more than \$14,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Applicant has paid two of the debts, SOR 1.a and 1.c. Mitigating Conditions (MC) 6 (E2.A6.1.2.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to these two debts. Applicant disputes he owes any amount following the repossession of his car. He had leased the car for three years when it developed numerous and frequent problems. Applicant asked the lease company to fix the car, replace the car, or take the car back. When the car was no longer driveable, Applicant told the lease company he would not make additional payments. The creditor came and got the car, but Applicant does not see this as a repossession, but as the creditor picking up a worthless vehicle. The debt does not appear on Applicant's May 2004 credit report and appears with a zero balance on his June 2005 credit report.

Applicant disputes the amount owed on a telephone bill. His monthly telephone bill was averaging \$200 per month when he received a bill for more than \$3,000. The debt appears on his May 2004 credit report, but not on his June 2005 credit report. The government is not a debt collector in this instance but is evaluating the security significance of unpaid bills. Since the two debts appears with a zero balance on his most current credit report it is unlikely Applicant would have to resort to engaging in illegal acts to generate funds to pay a zero balance. I find for Applicant as to financial considerations.

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under the Foreign Influence guideline, a security risk may exist when an individual's immediate family, or other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or pressure. The Government established Applicant's father and sister are U.S. citizens living in Afghanistan. DC 1 (E2.A2.1.2.1 *An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*) applies. His cousin is an Afghan citizen, living in Kazakhstan and working for the Afghan government. DC 3 (E2.A2.1.2.3 *Relatives, cohabitants, or associates who are connected with any foreign government*) also applies.

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the Administrative Judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced or is brought under control or used as a hostage by a foreign intelligence or security service.

Applicant's father and sister are U.S. citizens living in Afghanistan, not for a short visit, but for an extended time period. They have returned to attempt to regain their property. Being U.S. citizens has advantages and disadvantages in Afghanistan. Should a U.S. citizen be captured, the U.S. embassy and U.S. troops would have a greater interest in locating them. At the same time, being U.S. citizens may make them bigger targets for kidnaping or reprisal. At the present time, Afghanistan is somewhat stable. However, warlords and members of the Taliban, and Al Qeyada are still in Afghanistan.

It is presumed there is a close tie of affection between an individual and his father and sister, which is the case here. Applicant frequently emails his father and sister and calls his father monthly. Additionally, Applicant has a cousin who works for the Afghan government who is living in Kazakhstan.

The mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. (3) An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B. This mitigating condition "hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that applicant should not be placed in a position where he is forced to make such a choice." ISCR Case no. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005).

Nothing in Applicant's testimony suggested he was not a loyal American citizen and a credit to his adopted country.

However, in reviewing the record evidence as a whole, to decide if the facts and circumstances of Applicant's family ties pose an unacceptable security concern under Guideline B, I find having his father, sister, and cousin permanently living in Afghanistan to be an unacceptable risk. Accordingly, the allegation in subparagraph 2.a, 2.b, and 2.d of the SOR is concluded against Applicant.

Applicant's mother, an Afghan citizen living in the living in the U. S., does not represent a credible security risk to this nation since she is not in a position where she could be exploited by a foreign power such that Applicant would be forced to choose between his loyalty to his family and the U.S. MC 1. (E2.A2.1.3.1. 1 *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States.*) applies to his mother. I find for Applicant as to SOR 2 e.

Applicant talks with his cousin in Germany two to four times a year. This infrequent contact does not show strong ties of affection. Applicant's in-laws are living in Afghanistan. His wife has frequent contact with them, but there was no showing Applicant has frequent contact with them. MC 3 (E2.A2.1.3.3. *Contact and correspondence with foreign citizens are casual and infrequent*) applies. I find for Applicant as to SOR 2.c and 2. h.

Applicant traveled to Pakistan twice, once from November 2000 to January 2001 and a second time from April 2001 to September 2001. I find nothing about these trips to be a security concern. I find for Applicant as to SOR 2.f.

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information to multiple questions on his January 2003 SF 86 poses a serious potential risk to the nation's security precautions.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern.

Applicant knew he had disputed debts but did not know his accounts were delinquent. He did not see the return of the faulty car as a repossession. He had a serious problem with the car. It was in the shop 30 times in the first six months of the lease. When it was no longer driveable, he asked the lease company to replace the leased car or come and get their



car. Applicant failed to indicate he had ever been more than 180 days delinquent on any account in response to question 28 a, and failed to indicate he was currently more than 90 days delinquent on any debt at the time he completed his SF 86. Applicant disputed he owed any money following the surrender of his car and disputed the amount owed on his telephone bill.

In January 2003, Applicant completed his SF 86. The Government has shown Applicant's answer to questions 35, 38, and 39 were incorrect, but this does not prove Applicant deliberately failed to disclose information about his finances. Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning delinquencies is not deliberate if the person did not know of their existence.

Applicant was delinquent on a medical bill, the telephone bill, and two debts with a bank. He asserts he was never sent a bill following the repossession of his car. Applicant last made payment on the telephone bill in April 2000. That bill was more than 180 days overdue when he completed his SF 86 and also currently more than 90 days delinquent. However, Applicant considered this to be a disputed debt and did not believe he owed this debt. His monthly telephone bill averaged \$200 when he received a bill for more than \$3,000. There is no showing his two bank debts were ever more than 180 days delinquent. Nor does the record establish the length of delinquency on his medical bill.

Applicant's SF 86 contains inaccurate information on three questions. But these inaccuracies are not falsifications. I find for Applicant as to Personal Conduct, SOR subparagraph 3.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Paragraph 2 Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: For Applicant

Subparagraph 2.g: No Allegation Alleged

Subparagraph 2.h: For Applicant

Paragraph 3 Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: For Applicant

Subparagraph 3.c: For 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 a security clearance for Applicant. Clearance is denied.

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
3. ISCR Case No. 98-0419 (April 30, 1999) at p.5.