



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



In the matter of:)
)
) ISCR Case No. 08-11876
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

March 29, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to mitigate the government’s security concerns under Guideline B, Foreign Influence, Guideline E, Personal Conduct, Guideline F, Financial Considerations, and a “whole person” analysis. His eligibility for a security clearance is denied.

Applicant completed a security clearance application (SF-86) on August 23, 2006. On August 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence, Guideline E, Personal Conduct, and Guideline F, Financial Considerations. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

(January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant's answer to the SOR was signed and notarized on September 10, 2009. He requested a decision on the record in lieu of a hearing. The government compiled its File of Relevant Material (FORM) on October 13, 2009. The FORM contained documents identified as Items 1 through 11. Additionally, in the FORM, the government requested that I take administrative notice of certain facts about the Republic of Iraq and provided, for reference, six official U.S. Government source documents containing those facts. By letter dated October 13, 2009, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and objections within 30 days of receipt. Applicant received the file on October 31, 2009. His response was due on November 30, 2009. Applicant did not submit any additional information within the required time period. On February 17, 2010, the case was assigned to me for a decision.

Findings of Fact

The SOR contains seven allegations that raise security concerns under Guideline B, Foreign Influence (SOR ¶¶ 1.a. through 1.g.), one allegation that raises a security concern under Guideline E, Personal Conduct (SOR ¶ 2.a.), and 19 allegations that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 3.a. through 3.s.) In his Answer to the SOR, Applicant admitted the seven Guideline B allegations. He admitted the Guideline E allegation, and he admitted seven Guideline F allegations (SOR ¶¶ 2.a., 2.b., 2.c., 2.e., 2.h., 2.m., and 2.p.). He denied 12 Guideline F allegations (SOR ¶¶ 2.d., 2.f., 2.g., 2.i., 2.j., 2.k., 2.l., 2.n., 2.o., 2.q., 2.r., and 2.s.). Applicant's admissions are entered herein as findings of fact. (Item 1; Item 4.)

Applicant is 43 years old, married, and the father of three young children. He was born and raised in Iraq. As a young man, he opposed the regime of Saddam Hussein and was imprisoned. At the end of Desert Storm in 1991, he joined in an uprising against the Saddam regime and, for several weeks, was part of the leadership that took over and managed an Iraqi city until it was recaptured by Saddam's military forces. Soon thereafter, he and four of his siblings left Iraq. After two years in a refugee camp in Saudi Arabia, Applicant and his siblings immigrated to the United States. He became a U.S. citizen in 1999. Since 2006, he has been employed as an Arab linguist/cultural advisor, and he seeks a security clearance. (Item 5; Item 6 at 5.)

In 2000, Applicant traveled to Syria, where he married his wife. His wife is a citizen of Iraq and has U.S. permanent resident alien status. He was introduced to his wife by a person who is now a high official in the government of Iraq. The official is married to Applicant's wife's cousin. Applicant and the Iraqi official are good friends. Applicant contacted the official when he visited Iraq for several months in 2006. The official has dined at Applicant's home when he has visited the United States. Applicant

received a letter of congratulations from the official when he assumed his present job as a linguist/cultural advisor. (Item 6 at 10-11.)

Applicant's mother-in-law and three of his brothers are citizens and residents of Iraq. Applicant's wife speaks with her mother by telephone about once a month. (Item 6 at 11-14.)

Applicant's father, who is deceased, was active in Iraqi political life, and he opposed Saddam Hussein's Ba'athist Party. When Applicant was unemployed in 2006, he traveled to Iraq to visit his family. While in Iraq, he relied for his support on his own savings. He was invited to speak about democracy. He gave several speeches to various community groups in which he described democracy and the freedoms that existed in the United States. He also spoke on the telephone about reforming the government of Iraq with his friend who holds a high position in the Iraqi government. (Item 6 at 8,11.)

Applicant was first hired as an Arab linguist contractor in 2004. He served in Iraq. One of the majors in his command allowed him to carry a firearm, unofficially, for protection. When the command changed, another major confronted Applicant and advised him that he was not authorized to carry a weapon. Applicant protested and reported that other linguists also carried weapons. He asked the major to reconsider his decision. The major did not change his mind, and it was established that Applicant's possession of a firearm was in breach of his contract as a linguist. His command requested his immediate removal and replacement. In November 2005, Applicant resigned from his job and returned to the United States. (Item 6 at 7; Item 7 at 1-2.)

Applicant was interviewed by an authorized investigator from the Office of Personnel Management in August 2008. The investigator discussed with Applicant financial delinquencies identified on his credit report of August 8, 2008. Applicant told the investigator he would contact some of his creditors to determine the status of the debts, and, if he owed the debts, he would pay them. In his answer to the SOR, Applicant admitted responsibility for seven delinquent debts that totaled approximately \$13,875. Applicant also denied 12 delinquent debts that totaled approximately \$15,215. The debts were established on Applicant's credit reports of September 19, 2006, August 8, 2008, January 12, 2009, and July 9, 2009. He failed to provide documentation to establish payment, settlement, or dispute of any of the delinquent debts alleged on the SOR. (Item 4; Item 6 at 15-17; Item 8; Item 9; Item 10; Item 11.)

When he was interviewed by the authorized investigator, Applicant reported a net monthly income of \$10,300. He also reported the following: household expenses: \$1,639; debt payments: \$1,733; net monthly remainder: \$6,928. Nothing in the record supports a conclusion that Applicant has received financial counseling. (Item 6 at 16-17.)

I take administrative notice of facts about the Republic of Iraq. The facts in the following summary were provided by Department Counsel to Applicant and to me. The

facts were derived from official U.S. Government documents provided as attachments to the FORM:

In 2003, a U.S.-led coalition removed Saddam Hussein and his Ba'athist regime from power. In March 2006, Iraq's new government took office after being freely elected by the Iraqi people. However, despite recent improvements in the security environment, Iraq remains dangerous, volatile, and unpredictable. Remnants of the former Ba'ath regime, transnational terrorists, criminal elements and numerous insurgent groups remain active throughout Iraq. Terrorism committed by illegal armed groups receiving weapons and training from Iran continued to endanger the security and stability of Iraq. Foreign terrorists from North Africa and other Middle Eastern countries continued to flow into Iraq, predominantly through Syria. Al-Qaeda in Iraq (AQI) still possessed the means to launch high-profile attacks against Iraqi civilians and infrastructure.

The State Department continues to warn U.S. citizens of the dangers inherent in travel to Iraq and recommends against all but essential travel in country given the fluid security situation. Furthermore, the State Department has noted the following threats to security: "Attacks against military and civilian targets through[out] Iraq continue, including in the International (or 'Green Zone'). Foreign nationals and the facilities as well as Government officials and buildings are targeted. Such attacks can occur at any time."

In addition, to terrorist attacks, sectarian violence occurs often. Moreover, the U.S. Embassy in Baghdad, Iraq has posted a travel notice that states[:] "The State Department continues to strongly warn U.S. citizens against travel to Iraq, which remains very dangerous."

There are U.S.-substantiated reports of human rights abuses, including a "climate of violence; misappropriation of official authority by sectarian, criminal and insurgent groups; arbitrary deprivation of life; disappearances; torture and other cruel, inhuman or degrading treatment or punishment." The Iraqi government's effectiveness in adhering to the rule of law has been hampered by on-going violence, corruption, sectarian bias, and the lack of civilian oversight and accountability. Treatment of detainees under government authority has been generally poor. The judiciary is weak, and judicial independence impaired by threats and killings by insurgent, sectarian, tribal, and criminal elements. Security threats hinder the ability of citizens to access the courts, and witness intimidation continues.¹

¹The facts recited in this summary are derived from the following source documents: U.S. Department of State, *Background Note: Iraq*, February 2008; U.S. Department of State, *Country Specific Information: Iraq*, October 22, 2008; U.S. Department of State, *Travel Warning: Iraq*, June 13, 2008; U.S. Embassy, Baghdad, Iraq, *Information for Travelers*, printout dated May 21, 2009; U.S. Department of State, *Country*

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no 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 an applicant’s 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 and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion in seeking to obtain a favorable security decision.

Reports on Terrorism 2008, Chapter 2; *Country Reports: Middle East and North Africa Overview*, April 30, 2009 (pages 1, 5, 6, excerpts concerning Iraq (3 pages); U.S. Department of State, *2008 Country Reports on Human Rights Practices: Iraq*, February 25, 2009 (37 pages.) The verb tenses in the summary are as in the original.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

Under Guideline B, Foreign Influence, “[f]oreign 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.” AG ¶ 6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

The United States strongly supports Iraq’s advancement toward a democratic free society. Despite remarkable advances in achieving this new governmental status, Iraq remains a dangerous and volatile country. Many groups, including former Ba’athist Iraqis, transnational terrorists, criminals, and insurgents, have migrated to Iraq with an intent to destroy or destabilize the current U.S.-backed government.

In 2006, Applicant traveled to Iraq to visit his three brothers who are citizens of Iraq. While there, he appeared in several public fora and delivered lectures about freedom and the democratic process, thereby exposing himself and his family to retaliation and danger.

Applicant counts an Iraqi high government official as a personal friend. The official introduced Applicant to the woman who became Applicant’s wife. Applicant’s wife’s cousin is the wife of the official, making Applicant and the official extended family members. The official sent Applicant a congratulatory letter when he acquired his most recent job as a contractor linguist and cultural advisor.

Applicant's wife, a citizen of Iraq and a U.S. permanent resident alien, resides with him in the United States. Her mother is a citizen and resident of Iraq. Applicant's wife is close to her mother, and she communicates with her mother monthly by telephone.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. The facts in this case raise security concerns under disqualifying conditions AG ¶¶ 7(a), 7(b), and 7(d). AG ¶ 7(a) reads: "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) reads: "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." AG ¶ 7(d) reads: "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."

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply.

Applicant's relationships with his wife and his brothers in Iraq are neither casual nor infrequent, but are based on long-standing family ties of affection and obligation. Moreover, his wife's relationship with her mother, who is a citizen and resident of Iraq, is familial and based on strong ties of obligation and affection. Applicant's friend is a high government official in Iraq and is aware of his work as a contractor linguist and cultural advisor. The individual has dined in Applicant's home when he visited in the United States. Applicant's long-standing relationships are with individuals with strong political and familial ties to Iraq. His friend, who is also an extended family member by marriage, is in a high position in the Iraqi government, making it possible that Applicant could experience a conflict of interest or be placed in a position of having to choose between the interests of a foreign individual or government and the interests of the United States. These facts raise ongoing security concerns which Applicant failed to rebut or mitigate. I therefore conclude that AG ¶¶ 8(a), 8(b), and 8(c) do not apply in mitigation to Applicant's case.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

Personal Conduct

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

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.

In 2005, when he was employed as a contractor linguist in Iraq, Applicant was told by the responsible military officer in his command that he was not permitted to carry a firearm, even though a previous responsible military officer had unofficially allowed him to carry a weapon. Applicant was unwilling to comply with the second officer's refusal to permit him to carry a weapon. He advised the officer that other linguists carried weapons for self protection. He asked the officer to reconsider his position on the matter. It was determined by U.S. military authorities that Applicant was in violation of his contract when he possessed and carried a weapon. Applicant resigned his position and returned to the United States.

Applicant's personal conduct raises security concerns under AG ¶ 16(d)(3). AG ¶ 16(d)(3) reads: "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 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 . . . a pattern of dishonesty or rule violations."

I have carefully reviewed the facts in this case and the several mitigating conditions under Guideline E. Nearly five years ago, Applicant carried a weapon openly for self-protection in a difficult situation when he was serving as a translator in Iraq. He did this with the permission of the military officer in charge of his unit. Later, when another officer took command of the unit, he was told he could not carry a weapon. Applicant made an honorable choice, resigned his position, and returned to the United States. I conclude that AG 17(c) applies to the facts of this case. AG 17 (c) reads as follows: "the offense is so minor, or so much time has passed, 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."

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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.

The guideline notes conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. In ISCR Case No. 08-12184 at 7(App. Bd. Jan. 7, 2010), DOHA's Appeal Board stated:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The record evidence establishes that Applicant accumulated substantial delinquent debt and did not pay his creditors. This evidence is sufficient to raise these disqualifying conditions.

Several mitigating conditions could apply to Applicant's case. If the financially delinquent 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," then AG ¶ 20(a) might apply. If "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," then AG ¶ 20(b) might apply. If "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," then AG ¶ 20(c) might apply. If "the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts," then AG ¶ 20(d) might apply. Finally, if "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," then AG ¶ 20(e) might apply.

Applicant admitted responsibility for seven delinquent debts that totaled approximately \$13,875. Applicant also denied 12 delinquent debts that totaled approximately \$15,215. The debts were established on Applicant's credit reports of September 19, 2006, August 8, 2008, January 12, 2009, and July 9, 2009.

When he was interviewed by the authorized investigator, Applicant reported a net monthly income of \$10,300. He also reported the following: household expenses: \$1,639; debt payments: \$1,733; net monthly remainder: \$6,928. The record does not support a conclusion that Applicant has received financial counseling, and Applicant failed to provide documentation to establish payment, settlement, or dispute of any of the delinquent debts alleged on the SOR. I conclude that none of the Guideline F mitigating conditions apply to the facts of this case.

Whole Person Concept

Under the whole person concept, an 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is to be commended for serving as a contract linguist and cultural advisor in Iraq. He put himself in harm's way working alongside U.S. Armed Forces on numerous occasions. He made significant contributions to national security, fully aware of the risks to himself and his family.

However, a careful review of his family relationships in Iraq and his friendship with a high Iraqi government official raise security concerns about his vulnerability to conflict of interest, foreign exploitation, inducement, and coercion. At the present time, Iraq remains dangerous, volatile, and subject to unpredictable terrorist attacks. Despite aggressive governmental action by the United States and Iraq, terrorist attacks have targeted Iraqi citizens as well as U.S. Armed Forces, contractors, and other civilians.

The record establishes that Applicant acquired significant delinquent debt and failed to meet his burden to show that the debts were satisfied or did not belong to him. Applicant's unresolved financial delinquencies also raise security concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that while Applicant mitigated security concerns under the personal conduct adjudicative guideline, he failed to mitigate the security concerns arising under the foreign influence and financial considerations adjudicative guidelines.

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: AGAINST APPLICANT

 Subparagraphs 1.a. - 1.g.: Against Applicant

Paragraph 2: Guideline E: FOR APPLICANT

 Subparagraph 2.a.: For Applicant

Paragraph 3, Guideline F: AGAINST APPLICANT

 Subparagraphs 3.a. - 3.s.: Against Applicant

Conclusion

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

Joan Caton Anthony
Administrative Judge