



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



In the matter of:)
)
) ISCR Case No. 12-03725
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2013

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated foreign influence, financial considerations, and personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 21, 2012, the Defense of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and F (financial considerations). The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on October 18, 2012, and requested a hearing before an administrative judge. The case was assigned to me on January 8, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January

9, 2013, scheduling the hearing for February 12, 2013. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on February 21, 2013.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Jordan. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. Applicant did not object, and I have taken administrative notice of the facts contained in HE I. The facts are summarized in the Findings of Fact, below.

Evidence

Government Exhibits (GE) 1 through 15 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding the following two allegations under Guideline E, personal conduct:

3.a. You falsified material facts in your security clearance application, certified by you on October 28, 2011, in response to Question 20A, foreign activities. You falsely indicated that your property in Jordan was sold in April 2010.

3.b. You falsified material facts in your bankruptcy filing in July 2010, by failing to disclose your property in Jordan.

The motion was granted over Applicant's objection.

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since October 2010. He had an interim security clearance in the mid-2000s, but it lapsed. He has a master's degree. He married in 1993 and divorced in 1997. He married again in 1999 and divorced in 2003. He has a 12-year-old child from his second marriage.¹

Applicant was born in Jordan to Jordanian parents. He came to the United States in the late 1980s to attend college and graduate school. He remained in the United States and married a U.S. citizen. He became a U.S. citizen in 1996. His second wife

¹ Tr. at 20-24, 29, 34-38; GE 1-5.

was also a U.S. citizen. Their child was born in the United States. Applicant renounced his Jordanian citizenship in 2004. He does not have a valid Jordanian passport.²

Applicant's parents are citizens and residents of Jordan. His parents are divorced. His father remarried. Applicant's stepmother is a Jordanian citizen and resident. Applicant's father is a retired businessman. His mother and stepmother are both housewives.³

Applicant has five siblings, two half-siblings, and three brothers-in-law who are citizens and residents of Jordan. He has another sibling who is a U.S. citizen and resident. Two other siblings are deceased. One of Applicant's half-siblings works for a public aviation company. One brother-in-law is a university professor. Another brother-in-law is a low-level Jordanian government employee. Applicant stated that he has minimal contact with his brothers-in-law. Another half-sibling is a Jordanian citizen and a resident of Qatar.⁴

Applicant had financial problems in the later 1990s, which he attributed to "underemployment or the lack of employment, divorce and graduate school expenses." He also had a failed business venture. He filed Chapter 7 bankruptcy in 1998, and his debts were discharged in 1999.⁵

Applicant worked for a defense contractor from about 2004 to 2006. He applied for a security clearance in March 2004. He was granted an interim clearance. He served as a linguist in Afghanistan from about March 2004 to August 2006. He continued to work for the contractor for several months after he returned to the United States. His clearance was being adjudicated at the time. He testified that he left the job because his ex-wife was ill for an extended period and he had to care for his child. He wrote in his Questionnaire for National Security Positions (SF 86), which he submitted on October 28, 2011, that he left his employment because he had a "[d]eath in the family."⁶

Applicant was unemployed for several years after he left his contractor position. Two of his siblings became very ill and one of them passed away. He provided extensive financial support to his family in Jordan. Applicant spent much of his time between 2007 and 2010 in Jordan. He cared for his parents and helped them with their grief. He supported himself with his savings and his profits from day-trading stocks. He bought a condominium in Jordan in about 2007 for about \$90,000. He sold the condominium in November 2011 for about \$90,000.⁷

² Tr. at 24, 36; Applicant's response to SOR; GE 1-3.

³ Tr. at 73-74; Applicant's response to SOR; GE 1-3.

⁴ Tr. at 74-85, 107, 114; Applicant's response to SOR; GE 1-3.

⁵ Tr. at 24, 36-37; Applicant's response to SOR; GE 6.

⁶ Tr. at 20-23, 39-44; Applicant's response to SOR; GE 1.

⁷ Tr. at 24-31, 40-48, 52-56, 66-67, 76-81, 87-88, 116-117; Applicant's response to SOR; GE 1.

Applicant started losing money on his day-trades in about 2008. He applied for a number of jobs in the United States, but was not hired until 2010. He traveled back and forth between the United States and Jordan for job interviews and for his background investigation. He frequently stayed in hotels when he was in the United States.⁸

Applicant filed Chapter 7 bankruptcy in July 2010. Under Schedule A, Real Property, Applicant was required to “list all real property in which the debtor has any legal, equitable, or future interest.” Applicant did not list his condominium in Jordan, instead he listed that he had no real property. There were no claims listed under Schedule D, Creditors Holding Secured Claims, or under Schedule E, Creditors Holding Unsecured Priority Claims. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed 23 debts totaling \$244,246. Included were credit card debts of \$23,899, \$22,892, \$9,625, \$42,214, and \$85,775. There were also debts for unpaid state income taxes (\$3,916), property taxes (\$2,677), personal property taxes (\$1,074, \$950, and \$575), DOD for overpayments (\$389 and \$389), and the Department of the Treasury (\$506). Applicant’s dischargeable debts were discharged in October 2010.⁹

Applicant’s delinquent taxes were not discharged in bankruptcy. He testified that he paid most of the taxes, except he owes his state about \$750, and he is paying \$100 per month toward that debt.¹⁰

Applicant testified that he did not list his condominium in Jordan on the bankruptcy petition because he did not know that he had to list foreign assets. He also stated that he may have told his bankruptcy attorney about the condominium, and the attorney may have told him that he did not have to report it. He stated that he did not think of the property as an asset because he owed a lot of money on the property. The property was not mortgaged, but he owed about \$30,000 to his father and about \$9,000 to his sister, and he planned to pay them with the proceeds from the sale of the condominium. Applicant did not list the debts to his father and his sister on the bankruptcy petition.¹¹ I did not find Applicant’s testimony credible. I find that he intentionally provided false information to the bankruptcy court on his bankruptcy petition.

Applicant submitted his SF 86 on October 28, 2011. Section 20A asked if Applicant had “**EVER** owned, or do you anticipate owning, or plan to purchase real estate in a foreign country?” (emphasis in original). Applicant listed that he owned a condominium in Jordan that was purchased in about January 2008, for about \$70,000, but he wrote that “[t]he property was sold in April 2010.”¹²

⁸ Tr. at 67-73.

⁹ Tr. at 32, 73; Applicant’s response to SOR; GE 7.

¹⁰ Tr. at 33-34.

¹¹ Tr. at 56-60, 88-89, 101-106.

¹² GE 1.

Applicant denied intentionally providing false information on the SF 86. He gave several reasons for the false information. He testified that he may have copied the information from a previous SF 86. He also stated that real estate transactions in Jordan are much different than those in the United States. He stated that he received about \$3,000 in April 2010 as a down payment on the sale of the condominium, with the remainder to be paid in six months. He stated that the \$3,000 constituted the start of the sale. The potential buyer did not close the deal in six months, and the time was extended. The deal fell through in about February 2010. Another buyer eventually agreed to purchase the condominium and the deal was finalized in November 2011.¹³ Applicant's explanation was not credible. I find that he intentionally provided false information on the SF 86.

Applicant travelled to Jordan in November 2011, in part to handle the sale of his condominium. He traveled there in 2012 for an operation.¹⁴

Jordan

Jordan is a constitutional monarchy with a developing economy and a modern infrastructure. Jordan has followed a pro-western foreign policy and has had close relations with the United States for six decades.

The Jordanian government respects human rights in some areas, but its overall record continues to reflect some problems. Problems include: torture, arbitrary arrest, prolonged detention, denial of due process, infringement on citizens' privacy rights, political detainees, and restrictions on freedom of speech, press, assembly, association, and movement.

The Jordanian government publicly condemned terrorist acts throughout the world, practiced strict security measures, passed new anti-terror legislation, and disrupted several terrorist plots. Despite Jordan's aggressive pursuit of terrorists, the threat of terrorism remains high in Jordan. Al-Qaida has focused terrorist activities against Jordan and U.S. interests in Jordan.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

¹³ Tr. at 61-65, 93-98, 114-115.

¹⁴ Tr. at 85-87.

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.”

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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

Section 7 of EO 10865 provides that adverse 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

The security concern for foreign influence is set out in AG ¶ 6:

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 guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's parents, stepmother, five siblings, two half-siblings, and three brothers-in-law are citizens and residents of Jordan. Another half-sibling is a Jordanian citizen and a resident of Qatar. Jordan has had close relations with the United States for many years, and it respects human rights in some areas. But it also continues to have human rights problems, and it has been victimized by terrorist attacks. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

SOR ¶¶ 1.h and 1.i allege information that is already addressed under SOR ¶ 1.g. Accordingly, SOR ¶¶ 1.h and 1.i are concluded for Applicant.

SOR ¶ 1.j alleges that between 2007 and 2010, Applicant spent more than two years in Jordan. That information is important when assessing the totality of Applicant's ties to Jordan, but it does not have independent security significance.¹⁵ Accordingly, SOR ¶ 1.j is concluded for Applicant.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

¹⁵ See ISCR Case No. 02-26978 (App. Bd. Sep. 21, 2005).

I considered the totality of Applicant's family ties to Jordan. There is a close relationship between the United States and Jordan. However, 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.¹⁶

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant came to the United States in the late 1980s to attend college and graduate school. He became a U.S. citizen in 1996, and he renounced his Jordanian citizenship in 2004. He has a U.S.-citizen child living in the United States. However, most of his remaining family members are in Jordan; he spent several years living in Jordan; and he purchased a condominium there. 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." Because of Applicant's close family ties to Jordan, I am unable to find any of the mitigating conditions to be fully applicable.

Guideline F, Financial Considerations

The security concern 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.

¹⁶ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. He filed bankruptcy in 1998 and 2010. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

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

Applicant attributed his financial problems in the 1990s to unemployment, underemployment, divorce, graduate school expenses, and a failed business. He was unemployed for several years in the late 2000s, but he apparently left his job voluntarily. He spent a few years in Jordan assisting his family, and he supported himself with savings and by day-trading stocks. His bankruptcy petition listed 23 unsecured debts totaling \$244,246. Most of his debts were discharged in bankruptcy, and he received financial counseling as a requirement of the bankruptcy. However, he was dishonest on the bankruptcy petition, and he has not paid all his back taxes.

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts.¹⁷ His financial issues are recent. I am

¹⁷ The Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some

unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶¶ 20(b) and 20(c) are partially applicable. I find that financial concerns remain despite the presence of some mitigation.

Guideline E, Personal Conduct

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant intentionally provided false information about his Jordanian condominium on his bankruptcy petition and on his SF 86. AG ¶¶ 16(a) and 16(b) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant did not correct his falsifications before being confronted with the facts. I found him to be less than completely forthcoming at the hearing. There are no applicable mitigating conditions.

Whole-Person Concept

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

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

I considered Applicant's work overseas and the dangers involved in that work. However, he has extensive family ties to Jordan; he has a history of financial problems; and he intentionally provided false information on his bankruptcy petition and on his SF 86.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated foreign influence, financial considerations, and personal conduct security concerns.

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
Subparagraphs 1.h-1.j:	For Applicant
Paragraph 2, Guideline F:	Against Applicant
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3, Guideline E:	Against Applicant
Subparagraphs 3.a-3.e:	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.

Edward W. Loughran
Administrative Judge