



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



In the matter of: )  
)  
) ISCR Case No. 12-00038  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert Kilmartin, Esq., Department Counsel  
For Applicant: *Pro Se*

April 28, 2017

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 51-year-old employee of a defense contractor. He has a history of financial delinquencies, including delinquent debts owed to eight creditors in the approximate amount of \$37,847. While Applicant has either resolved or is making payments on five of his debts, he failed to establish that three others are being addressed. Applicant has not mitigated the Financial Considerations security concerns because he has failed to show he acted responsibly with respect to these outstanding debts. He mitigated the Foreign Influence security concerns created by his mother, two sisters, and three brothers, who are all citizens and residents of Vietnam. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 5, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline B, Foreign Influence. 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) effective for cases after September 1, 2006. (Item 1.)

Applicant responded to the SOR (Answer) on January 11, 2015 and February 2, 2015. (Item 1.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government's written case on April 21, 2016. A complete copy of the File of Relevant Material (FORM), containing five Items, was received by Applicant on April 27, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted documents marked Applicant Exhibits (AE) A through K in response to the FORM within the 30-day period that ended May 27, 2016. Department Counsel had no objection to AE A through AE K, and they are admitted into the record. DOHA assigned the case to me on December 13, 2016.

### **Procedural Rulings**

In the FORM, the Government requested I take administrative notice of certain facts relating to Vietnam. Department Counsel provided a five-page summary of the facts, supported by five Government documents pertaining to Vietnam, identified as Item 6. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted the SOR allegations in subparagraphs 2.a and 2.b. He failed to explicitly admit or deny SOR subparagraph 1.a through 1.h, and as a result, they will be treated as denials. (Item 1.) After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact.

Applicant is 51 years old. He was born in Vietnam and immigrated to the United States. He attended a U.S. high school. He became a U.S. citizen in 1981. He earned an associate's degree in 1984 from a U.S. college. He was employed by a federal contractor from February 2011 until he was laid off in February 2013. He is married to a U.S. citizen, and has two children who are U. S. citizens. (Item 2.)

Under Guideline F, the SOR alleges Applicant is indebted to eight creditors in the approximate amount of \$37,847. His debts are as follows.

Applicant is delinquent on his \$257,199 primary mortgage in the amount of \$10,420, as alleged in SOR subparagraph 1.a. He presented documentation showing he made payments of \$2,085 to this creditor on December 26, 2014, January 20, 2015, and May 14, 2016. He indicated in a letter that he was trying to bring this account current. However, he failed to establish a regular payment history and document that he brought this debt current. It remains unresolved. (Item 1; AE A; AE B.)

Applicant was delinquent on a \$17,986 second mortgage in the amount of \$2,295, as alleged in SOR subparagraph 1.b. He presented a letter from this creditor, dated March 15, 2015, which reflected this debt was paid in full on March 11, 2016. It is resolved. (Item 1; AE C.)

Applicant was indebted on a charged-off credit card in the amount of \$20,632, as alleged in SOR subparagraph 1.c. He presented a letter from this creditor, dated March 9, 2013, which reflected this debt was paid in full. It is resolved. (Item 1; AE D.)

Applicant was delinquent on an \$11,935 vehicle loan in the amount of \$618, as alleged in SOR subparagraph 1.d. Applicant presented a copy of a receipt for a check in the amount of \$710, dated April 29, 2016, and an account statement that shows Applicant's loan was current as of March 30, 2016, with an unpaid balance of \$7,422.50 remaining on the loan. Applicant is current on this debt. (Item 1; AE E; AE F.)

Applicant is indebted on a charged-off account in the amount of \$2,654, as alleged in SOR subparagraph 1.e. He produced a written payment agreement with this creditor, which shows he agreed to make monthly payments of \$100. He produced documentation that shows he made one \$100 payment on May 14, 2016. This debt is being resolved. (AE H.)

Applicant is indebted on a charged-off account in the amount of \$530, as alleged in SOR subparagraph 1.f. Applicant produced no documentation that corresponds with this account. It is unresolved. (Item 5.)

Applicant is indebted on a charged-off account in the amount of \$409, as alleged in SOR subparagraph 1.g. Applicant produced a letter from a collection agent on this account, which offered to settle this debt for a payment of \$229.06. He failed to produce documentation to show he made any payments to the creditor under this agreement. (AE K.)

Applicant was indebted on a charged-off account in the amount of \$289, as alleged in SOR subparagraph 1.h. Applicant presented a receipt dated May 20, 2016, which shows Applicant paid this debt. It is resolved. (AE J.)

Applicant attributed his delinquencies to a reduction of hours at his previous employer, his wife's unemployment, and his current unemployment. He also noted that he was aiding his daughter with her university expenses. (AE A.) Applicant provided no recent household budget showing monthly household expenses, although an April 2013 personal financial statement showed his expenses exceeded his income by more than \$1,000 per month. (Item 3.) He did not provide a copy of his current earnings statement. Without updated information, I am unable to assess his current financial status, and his ability or willingness to repay his remaining delinquent debt and avoid future delinquencies. The record lacks any evidence of credit or financial counseling.

Under Guideline B, the SOR alleges Applicant's mother, two sisters, and three brothers are citizens and residents of Vietnam. Applicant's mother is unemployed. He

communicates with her on a monthly basis by phone and sees her yearly, when she visits the United States. One of Applicant's sisters is a waitress, and the other is a construction helper. Applicant's brothers are unemployed. Applicant has not seen his siblings in person since 1997. He communicates with them approximately once per month. None of his relatives in Vietnam is employed by the Vietnamese government. His family members in Vietnam are not aware he has applied for a security clearance. (Item 3.)

Vietnam is an authoritarian state ruled by the Communist Party of Vietnam. The Vietnamese Government arbitrarily arrests and detains individuals for political activities. The Government limits freedom of speech, religion, and the press. U.S. citizens have been detained after traveling in the area of closed borders with China, Cambodia, and Laos. By Vietnamese law, anyone born to at least one Vietnamese-citizen parent is considered to be a Vietnamese citizen. (Item 6.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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 AG ¶ 2(a), describing 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.

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 clearance 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 protect or 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 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 F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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 several conditions that could raise a security concern 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 had a history of financial delinquencies that he had been unable to resolve, including delinquent debts to eight creditors in the approximate amount of \$37,847, as alleged in the SOR. The Government established the disqualifying conditions in AG ¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five Financial Considerations mitigating conditions under AG ¶ 20 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;

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

(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.

Applicant has not acted responsibly, or in a timely manner, to attempt to resolve his remaining delinquent debt. His debt is current and on-going as demonstrated by the unresolved debts in SOR subparagraphs 1.a, 1.f, and 1.g. Applicant's conduct does not warrant application of AG ¶ 20(a).

Applicant's debts, which were identified in the SOR, may have been due, in part, to his unemployment and underemployment and his wife's unemployment. However, he also made the decision to pay for his daughter's university education, instead of his primary mortgage and other debts. Further, he failed to demonstrate responsible behavior toward those accounts that remain unresolved. AG ¶ 20(b) is only partially mitigating.

Applicant provided no evidence of the depth or duration of any financial counseling. There are no clear indications that his delinquent debts in subparagraphs 1.a, 1.f, and 1.g are being resolved or are under control. Mitigation under AG ¶ 20(c) has not been established.

Applicant resolved the debts in subparagraphs 1.b, 1.c, and 1.h, and is making payments toward the resolution of the debts in subparagraphs 1.d and 1.e. Mitigation under AG ¶ 20(d) applies in part to the debts identified in subparagraphs 1.b, 1.c, 1.d, 1.e, and 1.h.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of any dispute or provide evidence of actions to resolve the issue. Applicant has not provided evidence of any formal dispute or a basis for one. Mitigation under AG ¶ 20(e) has not been established.

## **Guideline B, Foreign Influence**

The security concern relating to the guideline 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. Two 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 mother and five siblings are Vietnamese citizens and reside in the Vietnam. Due to his ties to his family, and the threats present in Vietnam as set out in Item 6, a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion is present. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

- (a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships

and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and

(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.

Applicant maintains relationships with his mother and siblings, who are citizens and residents of Vietnam. His contact with his mother is the most frequent. The Appeal Board has held that there is a rebuttable presumption that ties with immediate family are not casual.<sup>1</sup> The evidence shows that Applicant maintains his relationship with his mother during the year through phone calls and her annual visits. He also maintains regular contact with his siblings, although that contact is not as frequent as it is with his mother. While none of Applicant's foreign family members are aware of his request for a security clearance, given these facts and Applicant's close ties to his foreign family members, I cannot confidently conclude that Applicant could not be placed in a position of having to choose between the interests of foreign individuals and the interests of the United States. AG ¶ 8 (a) and (c) do not apply.

Applicant has established deep and longstanding relationships in the United States. He spent a formative part of his youth in the U.S and attended college here. He chose to stay in the United States after finishing his education. He became a U.S. citizen. He is married to an American citizen. His children are U.S. citizens. Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(b) is mitigating.

### **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.

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<sup>1</sup> ISCR Case No. 00-0484 at 4-5 (App. Bd. Feb. 1, 2002).



I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F 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. The Foreign Influence concerns related to Applicant's mother and siblings, who are citizens and residents in Vietnam, are mitigated. However, Applicant has not acted in a trustworthy manner when it comes to addressing his financial delinquencies. There is insufficient evidence to demonstrate that recurrence of financial irresponsibility is unlikely. The potential for pressure, coercion, or duress remains undiminished.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations 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 F:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	For Applicant
Subparagraphs 1.c:	For Applicant
Subparagraphs 1.d:	For Applicant
Subparagraphs 1.e:	For Applicant
Subparagraphs 1.f:	Against Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

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

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Jennifer I. Goldstein  
Administrative Judge