



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 12-05894

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

03/06/2017

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial security concerns raised as a result of delinquent debts, unpaid sales taxes, and court ordered restitution. He failed to mitigate personal conduct security concerns related to his failure to disclose requested information in a security clearance application, and other issues involving his conduct. He mitigated the security concerns raised under foreign influence. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 12, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, Guideline E, Personal Conduct, and Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on September 28, 2016, and requested a hearing before an administrative judge. On October 27, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me, and issued a Notice of Hearing that same day. The case was heard on November 17, 2016, as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 16 into evidence. Applicant testified and offered Applicant Exhibits (AE) 1 through 15 into evidence. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on November 29, 2016. The record remained open until December 20, 2016, to give Applicant an opportunity to submit additional evidence. No additional documents were submitted.

### **Request for Administrative Notice**

Department Counsel submitted Hearing Exhibit (HE) 1, which is a written request that I take administrative notice of certain facts about Iraq. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.<sup>1</sup> (Tr. 11.) The facts are summarized in the Findings of Fact, below.

### **Procedural Ruling**

Department Counsel moved to amend SOR ¶ 2.a to change “1.g through 1.i” to “1.h through 1.j.” Applicant did not object to the amendment. The motion was granted. (Tr. 10.)

### **Findings of Fact**

Applicant denied all allegations contained in the SOR, except ¶ 2.k, which he admitted with an explanation.

Applicant is 57 years old and married for 31 years. Applicant and his wife were born in Iraq. He earned a bachelor’s degree from an Iraqi university. He immigrated to the United States in 1981. His wife arrived before he did. They married in 1986. She is a U.S. citizen. They have three children, all born in the United States. Applicant became a U.S. citizen in 1993. (Tr. 30-31; GE 1, 2.)

Applicant’s parents were citizens and residents of Iraq before their death. He has three brothers and a sister, who were born in Iraq. They are U.S. citizens and residents. (Tr. 28-30.)

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<sup>1</sup>Department Counsel provided Applicant with the supporting documents on December 1, 2016, via email. He did not file an objection to any of the documents.

Applicant owned a grocery store from 1993 to 1995. From 1995 to 2002, he worked as a part-time interpreter for a company (Company 1). From 1997 to 2005, he worked full-time for an immigration court as an interpreter. He was terminated from this position for allegations of intimidating an immigration applicant, and was subsequently disqualified from working for the court in the future. From April 2005 to October 2005, he worked full-time training soldiers before they deployed. From May 2007 to July 2007, he worked part-time for a company (Company 2) at a military base. From September 2007 to February 2008, he worked full-time as a linguist for a federal contractor (Company 3) in Iraq. He involuntarily forfeited his contract because he accompanied an officer to another country without obtaining permission to leave Iraq. He has been unemployed for three or four years. He does some volunteer translation work for attorneys, and works periodically as a telephonic interpreter. (Tr. 36, 84; GE 1, 2, 3, 4, 6.<sup>2</sup>)

Applicant has submitted four security clearance applications (SCA). He submitted his first SCA in 2002. He subsequently learned that he was denied a security clearance because he was not truthful about events in his life. He said he was too embarrassed to disclose information about a previous Operating While Intoxicated (OWI) arrest. (Tr. 33, 85.) He submitted a second SCA prior to his deployment to Iraq in 2007. He subsequently received an interim clearance. (Tr. 63.) In 2010, he submitted a third SCA. In 2015, he submitted a fourth SCA, which is the basis for this hearing.<sup>3</sup> (GE 1, 2, 4.)

### Financial

Applicant has a history of financial problems that began prior to his filing a Chapter 7 bankruptcy in 2010. He explained that he was not working and did not have enough money to pay his mortgage and other bills, which included delinquent credit card accounts, and medical bills for which he did not have insurance. He continues to have delinquent debts today. (Tr. 39-40; GE 4.)

Based on credit bureau reports (CBR) from April 2016, April 2015, and December 2010, the SOR alleged 6 delinquent debts, a 2010 Chapter 7 bankruptcy, a felony involving fraud, unpaid state sales taxes, and a failure to disclose earned income. The delinquent debts began in 2009 and continue to date. (GE 6, 7, 8.) The status of those 10 allegations is as follows:

1. (SOR ¶ 1.a) Applicant filed a Chapter 7 bankruptcy in January 2010, which was dismissed in May 2010. Applicant said he requested dismissal of the case after he obtained a job. The court documents listed an unpaid state sales tax liability of \$19,767 from 1995, and about \$12,000 in delinquent debts. (Tr. 39; GE 9.) The status of said sales tax remains unresolved.

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<sup>2</sup> These exhibits contain information pertinent to Applicant's employment history. The dates throughout the documents are not consistent. My summary of dates and employers is an approximate chronology of said history.

<sup>3</sup> This 2015 SCA did not disclose that he had been investigated for a clearance in 2007 or earlier.

2. (SOR ¶ 1.b) The \$9,346 judgment entered in October 2010 was not Applicant's debt, as confirmed by a letter from his attorney. (Tr. 40; AE 2, 3.) It is resolved.
3. (SOR ¶ 1.c) The \$4,431 judgment entered in October 2010 is owed to Applicant's former attorney for fees related to his representation of Applicant before a state revenue department in a case involving unpaid sales taxes for 1994 and 1995. Applicant has not paid the judgment because he said he does not owe it to his attorney. (Tr. 43-45.) It is unresolved.
4. (SOR ¶ 1.d) The \$693 medical debt from 2009 is unresolved. Applicant submitted a paid receipt for a bill, which does not reference this debt. (Tr. 26-47; GE 7.) It is unresolved.
5. (SOR ¶ 1.e) The \$1,460 debt is owed to a bank for a credit card. Applicant asserted that it is not his debt and he disputed it with the credit bureaus. He supplied no proof confirming his position. (Tr. 47-48; GE 7.) It is unresolved.
6. (SOR ¶ 1.f) In October 2015, Applicant paid and resolved the \$4,392 debt, owed to a credit card company. (Tr. 49; Answer.) It is resolved.
7. (SOR ¶ 1.g) Applicant asserted that he paid the \$3,429 debt owed to a credit card company in 1989. However, the December 2010 CBR listed the last activity as 2008. (Tr. 50-51; GE 8.) It is unresolved.
8. (SOR ¶ 1.h) In 1998, a U.S. agency arrested and charged Applicant with Federal Program Fraud, a felony. In December 1998, he signed an Agreement for Pretrial Diversion (Agreement), in connection with false statements he made in order to obtain a \$75,000 loan from the Small Business Administration for a grocery store he owned. According to the Agreement, the prosecution on the felony was deferred for 12 months. Applicant was required to start, on January 15, 1999, making restitution through monthly payments of \$20 on the \$75,000 loan. The payments were to increase when Applicant secured employment. Applicant denied that he was responsible for that amount of money. He said that the court ordered him to repay \$1,500, and placed him on probation for 12 months. He said he satisfied the court-imposed conditions. He agreed to submit documentation verifying his assertion, post-hearing. He did not do so. Applicant admitted that from 1997 to 2002 he had a gambling problem. (Tr. 52-56; GE 3, 10.) This allegation is unresolved.
9. (SOR ¶ 1.i) Applicant has not paid the \$16,269 lien owed to a state for sales taxes on the grocery store he owned. He presented a September 2009 document from the state indicating that the tax lien expired, but made no mention of it having been paid. Based on that letter, Applicant asserted he does not owe the taxes and stated he paid them. He presented no proof of

payment. An investigative report from June 2015 notes that the taxes are unpaid. (Tr. 57-58; GE 14; AE 1.) This allegation is not resolved.

10. (SOR ¶ 1.j) This paragraph alleged that Applicant's wife failed to report income she earned from tips in her cosmetology work. Applicant denied that allegation and testified that his accountant told him that her additional income was offset by expenses not reported. Hence, he did not need to report the tips. (Tr. 59-60.) During a May 2015 interview with a government investigator, Applicant told the investigator that his wife did not report tips. He believed they were non-reportable but had not confirmed it with his accountant at that time. (GE 3.) This allegation is unresolved.

### Personal Conduct

(SOR ¶ 2.a) The SOR alleged that Applicant's arrest and charge for making false statements to a federal loan program in 1998 to 1999, and his failure to report income, as alleged in ¶ 1.h through ¶ 1.j, raised personal conduct security concerns.

Under this guideline, the SOR also alleged eight instances in which Applicant deliberately failed to disclose information in his 2015 SCA, related to specific areas of inquiry. (GE 1.) The allegations are as follows:

(SOR ¶ 2.b) Applicant did not report the delinquent debts alleged in SOR ¶¶ 1.d, 1.e, and 1.f. He reported the 2010 bankruptcy. Applicant said the SCA was too long and he was in a hurry to finish it. He thought the SCA went to his potential employer, who did not care about those details. He acknowledged that his financial issues were embarrassing, as were other facts in his background. (Tr. 60-62, 66.)

(SOR ¶ 2.c) Applicant failed to disclose that he and his brother traveled to Iraq in September 2010, in order to negotiate a deal to sell Brazilian sugar to Iraq. They were there until the end of October 2010. Applicant stated that his brother is a businessperson, who is paralyzed and uses a wheelchair. Applicant strongly asserted that he went on the trip to assist his brother in personal hygienic matters. He also drove him to places, helped him with a wheelchair, and took him to meetings. Applicant had dinner with his brother and others after a meeting, but stated that he did not discuss business with anyone. He denied having any participation in business meetings. He testified that he did not disclose this information because no business materialized as a consequence of this visit. He denied that he was trying to hide information from the Government. (Tr. 68-70.)

(SOR ¶ 2.d) Applicant failed to disclose that he and his brother researched the possibility of acquiring and shipping vehicles to Iraq for a profit. Applicant denied that he was involved in any discussions regarding selling vehicles to buyers in Iraq. He said another person spoke to his brother about the potential opportunity in Iraq. Applicant stated he did not disclose this information because nothing materialized after communications related to this topic. (Tr. 73-74.)

(SOR ¶ 2.e) Applicant failed to disclose that he and his brother attended a meeting in a U.S. city about using his brother's business to provide industrial equipment to an Iraqi company. Applicant said he took his brother to a meeting with Iraqi nationals, who became U.S. citizens, about an opportunity in the oil business in Iraq. Applicant denied attending the meeting, although he had two business cards from people attending that meeting. He did not disclose this interaction or communications with foreign nationals because a business proposal did not materialize. (Tr. 72-74.)

(SOR ¶ 2.f) Applicant failed to disclose the civil judgments filed against him in 2010 as alleged in SOR ¶¶ 1.b and 1.c. He said he did not disclose them because they were resolved. (Tr. 74-75.)

(SOR ¶ 2.g) Applicant failed to disclose his arrest and charge involving the federal program fraud, as alleged in SOR ¶ 1.h. Applicant said he did not disclose the felony because he forgot about it and was in a hurry to finish the 2015 SCA. (Tr. 75-76.)

(SOR ¶ 2.h) Applicant failed to disclose his conviction for domestic violence in 1990. He said he did not disclose this conviction because he was rushing to complete the SCA and he does not think of himself as a violent person. (Tr. 77-78.) During a May 2015 interview, Applicant was asked why he did not disclose this case. He told the investigator that he did not list the incident because he was embarrassed about it. He admitted that he intentionally answered no, but said he intended to disclose it during a background interview. (GE 3.)

(SOR ¶ 2.i) Applicant failed to disclose his arrest for operating a vehicle while impaired (OWI) and for failure to report an accident in December 2000. Applicant said he did not realize he was arrested for an OWI the night of the accident. He admitted that he had consumed alcohol before the arrest and took a field sobriety test at the time of the arrest, but he did not consider it an alcohol-related incident. He said alcohol was not a "big factor in that accident." (Tr. 80.) His lawyer told him to plead guilty to failing to report an accident. (Tr. 79-81.)

(SOR ¶ 2.j) Applicant admitted he was terminated from Company 3 in January 2008 for leaving Iraq without authorization, but denied any wrongdoing. Applicant said he was assigned to personally assist a colonel when he arrived in Iraq. When the colonel traveled to a nearby country, Applicant accompanied him. After returning to Iraq, his employer informed him that he forfeited his contract and sent him home. Applicant disputed the circumstances underlying the termination and believed that he had been authorized to leave the country because he was assigned to work with the colonel. (Tr. 82-84.) According to his employer, Applicant was told on two occasions that the colonel was not in Applicant's chain-of-command, and that Applicant had been assigned to work with a different person. The employer had informed Applicant that he would need permission to leave the base before traveling to another country, which Applicant did not secure. (GE 16.)

(SOR ¶ 2.k) In July 2005, Applicant was terminated from his employment, as a contracted interpreter, and disqualified from working for the immigration court in the future. He allegedly intimidated an immigrant during the translation process. Applicant denied the basis for the termination. He did not disclose this information on the 2015 SCA. (Tr. 84; GE 3.)

Applicant repeatedly stated that he did not intentionally mislead the Government when he completed the 2015 SCA. He said he did not read the questions carefully, and rushed to finish it. (Tr. 74, 78, 88.)

### Foreign Influence

The United States Department of State warns that U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. It is recommended that they avoid all but essential travel to Iraq. The threat to U.S. Government personnel in Iraq is serious and requires them to live and work under strict security guidelines.

The Islamic State of Iraq and the Levant (ISIL) controls a significant portion of Iraq's territory. Within areas of ISIL control, the Iraqi government has little or no ability to control and ensure public safety. Anti-U.S. sectarian militias may threaten U.S. citizens and western companies throughout Iraq. Violence and attacks by improvised explosive devices (IED) occur frequently in many areas of the country. There are numerous methods of attack including human and vehicle-borne IEDs, mines, mortars, and rockets. Such attacks take place in public venues.

Iraq continues to witness a surge in terrorist attacks, primarily as a result of ISIL. It continues to be the greatest terrorist threat globally, maintaining formidable forces in Iraq, including a large number of foreign terrorist fighters. Despite Iraq's efforts to combat ISIL, there remains a security vacuum in parts of the country.

Human rights violations are predominantly carried out by ISIL. These include attacks on civilians, especially members of other religious and ethnic minorities, women and children. The acts of violence committed by ISIL included killings by suicide bombers, IEDs, execution-style shootings, public beheadings, and other forms of execution. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the Iraqi government's authority and worsened human rights protections.

(SOR ¶ 3.a) The SOR alleged that Applicant considered, researched, and/or supported his brother and his business in obtaining or attempting to obtain business contacts or contracts with Iraq and Iraqi businesses. Applicant denied this allegation and said that he was not involved in any business dealings for his brother. He said he only provided personal assistance.

## Character References

Applicant submitted a letter of recommendation from a project manager for the company that hired Applicant in July 2005 to train soldiers before their deployment. The manager said Applicant was a valued member of his team. (AE 9.) The colonel, with whom Applicant traveled to a nearby country, highly complimented Applicant on his translation skills. (AE 8.) Applicant also submitted four certificates of appreciation for his work with the U.S. Army. (AE 11, 12, 13, 14.)

## **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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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, these guidelines are applied 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining 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 Executive Order 10865 provides that an adverse decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18:

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

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>4</sup>

AG ¶ 19 sets out three disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Applicant has a history of not satisfying debts that began in 2009 and continues to the present. The debts include unpaid sales taxes, and restitution for a federal crime involving fraudulent loan statements. The evidence is sufficient to raise these disqualifying conditions.

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<sup>4</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth conditions that could potentially mitigate financial security concerns:

(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's financial problems are ongoing. Hence, AG ¶ 20(a) does not apply. Applicant established partial mitigation under AG ¶ 20(b), as there is some evidence that Applicant's financial delinquencies were attributable to a lack of income during some periods, which may have been circumstances beyond his control. There is insufficient evidence demonstrating that he attempted to responsibly manage the delinquent debts during those periods, which is necessary to establish full mitigation under this condition.

Applicant has not participated in financial or credit counseling. He did not submit a budget. There is insufficient evidence to conclude that his financial problems are under control. AG ¶ 20(c) does not apply. He presented evidence that he made a good-faith effort to resolve the debts alleged in SOR ¶¶ 1.b and 1.f. He established mitigation under AG ¶ 20(d), as to those two debts. Although he stated that he resolved several other debts, he never submitted proof confirming those assertions, including the largest debt of \$73,000 owed for restitution for a 1998 criminal act, and the 1995 unpaid sales taxes. Applicant disputes several debts, but failed to provide evidence that he has reasonable bases to dispute their legitimacy. AG ¶ 20(e) does not apply.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 two conditions that could raise a security concern and may be disqualifying in this case:

(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

(e) 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:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

Applicant denied that he intentionally omitted information from his 2015 SCA regarding: delinquent debts; interactions with foreign nationals about his brother's business; attempts to solicit or arrange foreign business transactions; civil judgments; a felony; a conviction for domestic violence; and an alcohol-related offense, an OWI.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred.<sup>5</sup>

After listening to Applicant, observing his demeanor, and reviewing all circumstances involved in the numerous falsification allegations, I find that Applicant's denial of any intention to mislead the Government when he completed the 2015 SCA is not credible. His admissions that he was embarrassed over some items in his history is, in all probability, the honest underlying reason for his non-disclosures, compounded by his concerns about obtaining a position. In particular, his denial that he was involved in securing or helping his brother secure business in Iraq is not credible. He was in close contact with his brother during the periods alleged, including dinner in one instance. It strains credulity to believe that Applicant was not aware of or participating in some aspect of the business discussions alleged. Additionally, he knew that he did not obtain a position that he previously applied for, because he lied on the application. The scope of Applicant's omissions about so many incidents is significant and concerning. The evidence established the disqualifying condition under AG ¶ 16(a), as to SOR ¶¶ 2.b through 2.i.

Applicant engaged in personal misconduct when he submitted fraudulent statements in order to obtain monies through a federal loan program. He failed to demonstrate that he paid outstanding state sales taxes, but rather argued that he was not required to pay them because the tax lien expired. He is an intelligent man, and his explanation for not reporting income, namely that his accountant told him it was not necessary to report tips as income, is unreasonable. Applicant has exhibited a pattern of dishonesty, rule violations, and a failure to fulfill legal obligations. The evidence established the disqualifying condition under AG ¶ 16(d)(3), as to SOR ¶¶ 1.h through 1.j.

Applicant was terminated from positions working with an immigration court, and a federal contractor, for violating rules. The evidence established the disqualifying condition under AG ¶ 16(d)(3), as to SOR ¶¶ 2.j and 2.k.

AG ¶ 17 includes two conditions that could mitigate the security concerns arising under this guideline:

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

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<sup>5</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

(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.

There is insufficient evidence to establish either mitigating condition. Applicant did not make a prompt effort to correct his omissions before being confronted with the facts about items he had failed to disclose. His numerous omissions, pattern of dishonesty, and rule violations are not minor infractions and occurred less than two years ago. They did not happen under unique circumstances, and were not shown to be unlikely to recur. Applicant's behavior casts doubt on his trustworthiness and good judgment.

## **Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes a condition that could raise a security concern and may be disqualifying:

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

AG ¶ 7(a) requires evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's ties or connections to a foreign country must be considered.

In 2010, Applicant traveled with his brother to Iraq. During that trip, they explored business opportunities with a private Iraqi company. They subsequently researched possible business contracts with the Iraqi government. These activities and the terrorist threats present in Iraq, as set out in HE I, create a heightened risk of foreign

exploitation, inducement, manipulation, pressure, and coercion. There is enough evidence to raise the above disqualifying condition.

AG ¶ 8 provides a condition that could mitigate security concerns arising under this guideline:

(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.

There is sufficient evidence to establish the above mitigating condition. Applicant's pursuits with people in Iraq or its government never materialized into a business endeavor or a contract. Hence, communications or contacts with foreign nationals or organizations have ceased.

### **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). They include the following:

(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) 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 include 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 facts and circumstances surrounding this case. Applicant is an educated 57-year-old man, who was born in Iraq, and became a proud U.S. citizen in 1993. His wife and children are U.S. citizens. He has used his linguistic abilities to support U.S. troops in the United States and Iraq. He submitted letters of recommendation from officers with whom he worked in Iraq between late 2007 and early 2008. These are some positive factors in his favor.

However, substantial evidence of questionable behavior and judgment preclude the granting of Applicant's security clearance. First, there are ongoing concerns related to his finances and delinquent debts, which he has not adequately addressed, including

unpaid state sales taxes and court-ordered restitution. Although he was given an opportunity to submit evidence to corroborate his statements about the status of the alleged debts, he did not do so. He has not established a reliable record of managing his finances. Second, he has a history of being untruthful, starting in 1998 or 1999, when he submitted fraudulent statement to the federal government in order to secure a \$75,000 small business loan. In 2002, he was denied a security clearance for not disclosing requested information. Third, when he completed his 2015 SCA, he continued to withhold information about his employment record. He was terminated from his work with the immigration court in 2005 for misconduct; and in 2008, he forfeited his contractual work with the U.S. Army for violating rules.

Overall, the record evidence leaves me with serious questions as to Applicant's eligibility and suitability for a security clearance. Based on the record evidence, I conclude Applicant mitigated the foreign influence security concerns, but failed to mitigate the security concerns arising under the financial considerations and personal conduct guidelines.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraphs 1.c through 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g through 1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.k:	Against Applicant
Paragraph 3, Guideline B:	FOR APPLICANT
Subparagraph 3.a:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge