



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



In the matter of:)
)
) ISCR Case: 15-04804
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esquire, Department Counsel
For Applicant: *Pro se*

06/19/2017

Decision

WHITE, David M., Administrative Judge:

Applicant failed to file required Federal income returns, or pay various taxes, between 2008 and 2014. His residence with a person he knew to be engaged in criminal activity, false answers on his clearance application, and pattern of traffic-related offenses indicate poor judgment and untrustworthiness. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On September 10, 2014, Applicant submitted a security clearance application (SF-86). On March 15, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations), Guideline E (Personal Conduct),¹ and Guideline B (Foreign Influence). (Item 1.) The action was taken under

¹ The drafter of the SOR inadvertently included two allegations identified as ¶ 2.g. This typographical error was corrected by Department Counsel by designating the second of those allegations ¶ 2.h after having received and reviewed Applicants answer to the SOR. Applicant admitted both allegations were true.

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 after September 1, 2006.

Applicant answered the SOR on April 8, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On May 13, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on May 16, 2016, and received by him on May 20, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant did not respond to the FORM within the 30-day period, did not object to its contents, and did not request additional time to submit a response. DOHA assigned the case to me on March 20, 2017. Items 1 through 3 are admitted into evidence. Item 4 is an unsworn and unauthenticated summary of Applicant's October 2014 interview prepared by an investigator for the Office of Personnel Management (OPM). It is admitted for the limited purposes of correcting erroneous SF-86 biographical information about Applicant, and evaluation of any mitigating evidence that is not cumulative with other record evidence. Directive ¶ E3.1.20 prohibits its admission into evidence against Applicant's interests in the absence of an authenticating witness. Item 5 is a request for administrative notice of certain facts about Thailand. It is included in the record, and I take administrative notice of the facts set forth on pages 3 and 4 thereof.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as promulgated in Appendix A of SEAD 4. I considered the previous adjudicative guidelines (effective September 1, 2006), as well as the new AG (effective June 8, 2017), in adjudicating Applicant's national security eligibility. This decision is issued pursuant to, and cites, the new AG, but my decision would be the same under either set of guidelines.

Findings of Fact

Applicant is 40 years old. He has never married and has no children. He earned a bachelor's degree in 1998, and has worked as a systems engineer for a defense contractor since August 2011. He has no prior Federal employment or military service, but held a security clearance during his employment with a different defense contractor from 2003 to 2008. (Item 3; Item 4.)

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 2.a, 2.b, 2.f through 2.h, and 3.1.² He admitted the remaining allegations in part, with explanations for his partial denials as described below. Applicant's admissions are incorporated into the following findings. (Item 2.)

Applicant failed to file his Federal income tax returns for tax years 2008 through 2013, as required by law. He admitted that he has not yet filed any of those tax returns, or paid his resulting delinquent tax debt to the Internal Revenue Service (IRS). On his 2014 SF-86, he estimated that about \$125,000 in back taxes were involved over those six years. He offered no exculpatory explanation for having failed to meet these income tax obligations, saying that he "just never did." (Item 2; Item 3 at § 26.)

Applicant admitted that he failed to timely pay various county, city, and school district property taxes that came due between 2012 and 2014. He claimed, in his answer to the SOR, that all of those delinquent local taxes were paid in January and February 2016. However, he did not provide documentation to substantiate having made those payments or the current status of those accounts. (Item 2.)

Applicant voluntarily left his employment with a defense contractor in August 2008 because he was tired of the uninteresting work. He was then unemployed, or earned minimal incidental income, during his voluntary temporary retirement that ended in August 2011 when he accepted an offer to join his current employer. (Item 3.)

For a number of years, Applicant has been in a close and continuing relationship with a person who is a citizen of Thailand. (Item 2.) This person has been a permanent resident of the United States since 2003. (Item 4.) In 2011 this person was living with Applicant, and he was aware that she was engaged in criminal activity. She was arrested, convicted, and sentenced to probation for state law violations in 2012. She was subsequently arrested and charged with a Federal felony in 2013. In October 2014 she was convicted of the Federal felony, and sentenced to time served while awaiting trial and supervised probation. After her releases from state and Federal custody, she resumed living with Applicant, where she still resides without paying rent. While she was in Federal prison, Applicant provided her between \$3,000 and \$4,000 in financial support. He has also purchased a car for her use, for which she pays him \$200 per month. He denied providing her "complete financial support," as alleged in the SOR, and said that she pays her own personal expenses such as food. (Item 2.)

Applicant did not disclose this relationship with a foreign national on his 2014 SF-86. He claimed that he truthfully answered, "No," in response to the Section 19 question about foreign contacts, although he admittedly has a close and continuing relationship with the foreign person, because he denies that they are "bound by affection, influence, common interests, and/or obligation," as the question inquires. He acknowledged that

² SOR ¶ 3.1 is another apparent typographical error by the drafter of the SOR. It should be ¶ 3.a, but was not corrected before the case was submitted for decision and the error creates no confusion so I will not change the erroneous designation.

his, “No” answer to the question in section 20A that asked if he had ever provided financial support for any foreign national was incorrect, but denied that it was deliberate. (Item 2; Item 3.)

Applicant admitted to committing various traffic-related offenses in March 2012, July 2011, and June 2007, as alleged in SOR ¶¶ 2.f through 2.h. These included speeding, insurance and licensing violations, and an arrest warrant issued for failure to appear in relation to the 2011 offenses. (Item 1; Item 2.)

Applicant offered no evidence of financial counseling, the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

The facts that the Government submitted about Thailand, of which I took administrative notice, are incorporated by reference. They have no apparent connection to the Thai citizen with whom Applicant resides; and do not establish any heightened risk of terrorism, espionage, or targeting of U.S. citizens to obtain protected information. Nothing in this record indicates that the Thai citizen involved in this case has had any connection to any person or organization in Thailand since she became a permanent U.S. resident in 2003.

Policies

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

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 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant failed to file his Federal income tax returns for tax years 2008 through 2013 as required, and his resulting tax debt to the IRS remains unpaid. He also admitted that he failed to pay various county, city, and school district property taxes in a timely fashion. These facts establish security concerns under the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial irresponsibility:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant asserted that he paid his delinquent local property taxes in early 2016, but provided no evidence to corroborate this claim despite being offered an additional 30 days after his receipt of the FORM to do so. Resulting mitigation of this history of not meeting those financial obligations is minimal. He offered no evidence of financial

counseling or other efforts to resolve his ongoing Federal income tax issues, which began in 2008. None of these financial issues arose from conditions that were beyond Applicant's control. The record does not establish substantial mitigation of financial security concerns under the provisions of AG ¶¶ 20(a) through 20(d) or 20(g).

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

AG ¶ 16 describes three 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 national security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(d) 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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (3) a pattern of dishonesty or rule violations; and

(g) association with persons involved in criminal activity.

Applicant is an educated and experienced individual who has previously applied for and been granted a security clearance. He admitted that his denial of providing financial support for the Thai woman while she either lived with him or was in prison was false, but denied that this falsification was deliberate. He claimed that his denial of close and continuing contact with the same woman, who had lived with him rent-free for years, and continues to do so, was accurate because they were not bound by affection, influence, common interests, and/or obligation. Without further explanation, neither of these assertions is credible. In combination, Applicant's two certified, "No" answers,

which were affirmative denials rather than simple omissions concerning these facts, are compelling evidence of his deliberate omission, concealment, and falsification of relevant facts on his 2014 SF-86. The evidence establishes significant security concerns under AG ¶ 16(a) as to these allegations.

Applicant admitted that he knew as early as 2011 that the woman who was living with him was engaged in criminal activity. That knowledge was confirmed by her 2012 local and 2014 Federal convictions for related crimes. He admitted that she nevertheless continues to live in close and continuing contact with him. Applicant also committed a series of offenses involving failure to comply with various driving laws and regulation between 2007 and 2012. This evidence establishes substantial security concerns under AG ¶¶ 16(d)(3) and 16(g).

AG ¶ 17 includes four conditions that could mitigate security concerns arising from Applicant's personal conduct:

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

(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; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant did not provide evidence that would support mitigation under any of the foregoing conditions.

Guideline B: Foreign Influence

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or

induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

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

(a) contact, regardless of method, 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;

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

(e) shared 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.

Applicant admitted that he resides with a citizen of Thailand. That woman has been a lawful permanent U.S. resident since 2003. The Government presented no evidence suggesting that a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion might arise from Applicant's ongoing contact or living arrangement with her. Nor was any potential for conflict of interest demonstrated given the total absence of any indication that she has had contact with anyone with Thai connections in the past 14 years. No security concerns under any Foreign Influence disqualifying conditions were raised by the evidence in this case, so discussion of mitigating conditions is unnecessary.

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(d):

(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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who has established a history of disregard for multiple obligations to comply with tax or traffic laws and regulations over the past nine years. He continues living with and providing financial support to a convicted Federal felon, of whose criminal activity he was aware. He demonstrated no progress toward resolution of substantial Federal income tax delinquencies. Overall, the record evidence leaves me with substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guidelines for financial considerations and personal conduct.

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 through 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.h:	Against Applicant
Paragraph 3, Guideline B:	FOR APPLICANT
Subparagraph 3.1:	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 access to classified information or eligibility to hold a sensitive position. National security eligibility is denied.

DAVID M. WHITE
Administrative Judge