



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07248

Appearances

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

02/22/2017

Decision

DAM, Shari, Administrative Judge:

Applicant was born in Iraq. His immediate family members are residents and citizens of Iraq. He was terminated from an employment position in Iraq, and subsequently falsified information about it during an investigation. Security concerns raised under the foreign influence, personal conduct, and criminal conduct guidelines are not mitigated. Eligibility for access to classified information is denied.

History of the Case

On May 12, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), alleging security concerns under the guidelines for foreign influence, personal conduct, and criminal conduct. 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 (AG) effective after September 1, 2006.

Applicant answered the SOR in writing on May 31, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on October 6, 2016, and issued a Notice of Hearing on October 19, 2016. The hearing convened on November 15, 2016, as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into

evidence. Applicant testified and offered Applicant Exhibit (AE) A through FF into evidence. All exhibits were admitted without objections. DOHA received the hearing transcript (Tr.) on November 23, 2016. The record remained open until December 16, 2016, to give Applicant an opportunity to submit additional evidence. Applicant did not provide any additional exhibits.

Procedural Rulings

Department Counsel requested administrative notice of facts concerning Iraq. (HE 1.) Applicant did not object to the request, and Department Counsel's request was granted. (Tr. 16.) In a timely post-hearing submission, Department Counsel provided the five supporting documents mentioned in the Department's Administrative Notice request. Those documents show detail and context for the facts contained in said request. Applicant acknowledged receipt of those documents and filed no objection to those documents. They are admitted as attachments of HE 1. Applicant's email is marked as HE 2.

Findings of Fact

Applicant admitted the facts alleged in Paragraphs 1 and 2 of the SOR. He denied the allegation contained in Paragraph 3 the SOR. (Answer.) Those admissions are incorporated into these findings.

Applicant is 35 years old and divorced since 2014. He was born in Iraq and attended high school there. He earned a bachelor's degree from an Iraqi university in September 2003. After graduating from college, he began working for the U.S. forces in Iraq. He worked with them until September 2008, when he immigrated to the United States on a special immigration visa and received a resident green card. (Tr. 16-19.) In June 2009, he married a U.S. citizen. He became a U.S. citizen in July 2010. He and his wife separated in February 2011 and subsequently divorced. (Tr. 22; GE 1.)

In November 2009, Applicant joined the U.S. Army Reserves as a linguist. After finishing basic training, he deployed to the Middle East. He remained in the Army on active duty until February 2011, when he was medically discharged at the paygrade E-4. He later returned to Iraq and worked for a private American security company until February 2013, when he returned to the United States.

After finding an employment position with a defense contractor (DOD-C) and obtaining an interim security clearance, he returned to Iraq.¹ He worked there between May and June 2013. Upon arrival in Iraq, he received a U.S. Mission Iraq badge (blue badge), which gave him access to classified areas on base. At the end of June 2013 Applicant's employer notified him that his clearance was suspended, and he was terminated from his position. He did not relinquish his blue badge upon his termination. He was then sent back to the United States. He remained in the U.S. for a short time,

¹ Applicant submitted his first security clearance application (SCA) (GE 2) in May 2009. He submitted a second SCA (GE 1) in April 2013.

and then returned to Iraq to live with his family for a couple months. (Tr. 19-25; GE 3, 5; AE B.)

After returning to the United States, Applicant was unemployed for two months before obtaining a position with a Department of State contractor (DOS-C). He received a moderate risk public trust clearance. In September 2013, DOS-C sent him to Iraq to work at the U.S. embassy. While there, he was issued a DOS “yellow” badge, which was a lower level access badge than the blue badge.² He worked for DOS-C until March 2014, when his employer terminated him after an investigation, further described below. Upon being terminated, Applicant flew from Iraq to another country for a vacation and then returned to Iraq to live with his family. He stayed in Iraq for a year and worked for a local company.

In February 2015, Applicant returned to United States, stayed until March 2015, and went back to Iraq for a month. He returned to the United States in April 2015, and then left for Iraq in May 2015 and stayed another month. In June 2015, he returned to the United States. In July 2015, Applicant obtained a position with a British firm and returned to Iraq. He currently works for that firm in Iraq and resides there with his family.³ Prior to arriving in the United States for this hearing, he had not been in the United States since July 2015. (Tr. 26-34.)

Applicant does not have any family members in the United States, other than his former wife. He does not own any real property in the United States, but does have a small U.S. bank account. He has an inactive bank account in Iraq. He receives his salary in cash. (Tr. 34-36.)

Applicant’s mother, father, and twin brothers are citizens and residents of Iraq. His mother is a homemaker and his father retired from a position with an Iraqi ministry in 2006. His brothers live with their parents. One is in college and the other works for a gym. He saw his parents a month ago when they visited him in the Green Zone. He sees them every three or four months, and usually contacts them by email or Skype. He has other relatives in Iraq, but does not have much contact with them. He helps his family financially. Last year he gave them about \$8,000 for an emergency. (Tr. 36-40.)

As stated, after an investigation, Applicant was terminated in March 2014 by DOS-C for multiple and repeated violations of U.S. Mission Iraq policies. The investigative report found the following:

- (1) Applicant made false statements to DOS investigators regarding his efforts to access areas without proper authorization while working for DOD;

²According to Applicant, a blue badge required a security clearance and gave a holder access to access to all areas on the base, including classified buildings. A yellow badge gave a holder access to all general areas, but not classified areas.

³Department Counsel confirmed that another DOD contractor is sponsoring Applicant for a security clearance.

- (2) Applicant misused and wrongfully possessed a blue badge, after his secret security clearance was suspended, and he was terminated by DOD-C;
- (3) Applicant left the compound for personal business without a protective security escort while working for DOD; and
- (4) Applicant took photographs without authorization while working for DOD. (GE 5.)

During the above investigation, Applicant told an investigator that he did not return the blue badge to his employer, DOD-C, after being terminated in June 2013 because he thought he needed it to leave the base's heliport in order to get to the main airport. He also said his employer did not have a checkout policy. When asked why he did not return the blue badge when he started his position with DOS-C, Applicant said he forgot to return it, and then said he did not know where to return it. Applicant initially denied that he ever used the blue badge after he was terminated in June 2013, but later admitted to the investigator that he used it a few times. He said he used it to enter the PX and commissary. The investigator then confronted him with proof that Applicant used it 12 times, between July 24, 2013, and August 20, 2013, while he was living in Iraq, but not working for a contractor. The evidence also revealed that he used it to access an area that required a clearance. (GE 5; AE B.)

In his Answer, Applicant said that he did not intend to mislead the investigator of the above report during his interview. Applicant testified that he kept the blue badge because it gave him more status than the yellow badge. (Tr. 63.)

Applicant acknowledged that he left the compound three times a week to eat at a restaurant a short distance from the compound. He did not request protective services because the restaurant was quite close to the compound. (Answer.) He admitted he took a selfie picture, which had a base helipad in the background. He said he did not realize that the helipad was in the background when he took the picture. (Answer.) Applicant stated that he was "profoundly sorry" for all of his mistakes and regrets his behaviors. (Tr. 72.)

Applicant submitted numerous awards, certificates, and letters of recommendation from military personnel with whom he worked in Iraq before he immigrated to the United States. The letters attest to his abilities, hard work, and contributions to the U.S. mission in Iraq. (AE E through DD.)

Iraq

I take administrative notice of the following facts: In 2003, The United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq's new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against

terrorists, the threat of terrorism in Iraq remains high. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (HE I: Attachments.)

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, 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. According to AG ¶¶ 2(a) and 2(c), 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that, "[t]he 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 access to classified information 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 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.

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 B, Foreign Influence

The security concerns under this guideline are set out in AG ¶ 6 as follows:

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 three conditions that could raise a security concern and may be disqualifying 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;⁴

(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 desire to help a foreign person, group, or country by providing information; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Iraq has significant internal anti-western terrorism threats that operate openly and contrary to U.S. interests. Accordingly, Applicant's substantial and close family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).

⁴The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant was born and raised in Iraq. All of his immediate relatives are citizens and residents of Iraq. Since immigrating to the United States in 2008, Applicant has returned to Iraq while working for a private American company. He resided in Iraq for a year while working for a local company there. He currently works with a British contractor and resides in Iraq. While residing in Iraq, he has provided significant financial assistance to his family for emergencies. His father is a former employee of the Iraqi ministry. He has an entirely legitimate, serious interest in the welfare of his family members in Iraq, creating the potential for conflict of interest under AG ¶ 7(b).

Since becoming a U.S. citizen, Applicant has resided in Iraq with his family for months between periods of employment. At one point, he lived and worked in the civilian community there for a year. The evidence raises a disqualifying condition under AG ¶ 7(c).

The Government met its burden of production by raising the above disqualifying conditions and shifting the burden to Applicant to prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the security concerns raised under this guideline:

(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.;

(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; 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.

In light of the significant presence of terrorism in Iraq, Applicant did not demonstrate that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States, due to his ongoing familial relationships there. His communication and contacts with his family are neither casual nor infrequent. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8(a) and 8(c).

AG ¶ 8(b) has limited application. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has established some connections to the United States. In 2008, he immigrated to the United States from Iraq and became a U.S. citizen in 2010. He served in the U.S. Army

from 2009 to 2011. He has resided in the United States at times. Although these facts demonstrate some connections to the United States, his deep and longstanding relationships are in Iraq, as demonstrated by his close familial loyalty to his immediate family there, and long periods of time when he primarily resides there. He does not have any immediate family in the United States.

Guideline E, Personal Conduct

The security concerns pertaining to the personal conduct guideline are set out in AG ¶ 15:

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.

The Government alleged in SOR ¶ 2.a that Applicant was terminated from a position in Iraq based on violating U.S. Mission Iraq rules and policies and deliberately making false statements to an investigator about his conduct. AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

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

(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 person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations.

Applicant deliberately made false statements to an investigator when he inquired about Applicant's efforts to access unauthorized areas after he was terminated from a position in June 2013. Applicant admitted that he misused and wrongfully possessed a blue badge after being terminated. He acknowledged that while working on base he left the compound for personal reasons and without a protective security escort, against regulations. He admitted that he took an unauthorized picture. The evidence established disqualifying conditions under AG ¶ 16(b) and AG ¶ 16(d)(3).

AG ¶ 17 includes two conditions that could mitigate 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
- (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.

Applicant did not make a prompt or good-faith effort to correct the falsification before being confronted with the facts by the investigator. Applicant's falsifications and rule violations were not minor and cast doubt on his reliability, trustworthiness, and good judgment. Neither mitigating condition applies.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes a condition that could raise a security concern and may be disqualifying:

- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant made false statements to an investigator and misused an access badge issued by the DOD. The evidence established the above disqualifying condition.

AG ¶ 32 provides two conditions that could mitigate security concerns raised under this guideline:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's misconduct, while working in Iraq in 2013 and his subsequent intentional denial of it, do not constitute such unusual circumstances that similar conduct is unlikely to recur. To the contrary, he knowingly breached employment rules and policies when he failed to return a security badge upon termination, and instead continued to use it. His false statements to an investigator about his conduct cast doubt on his reliability, trustworthiness, or good judgment. While he appears to be genuinely remorseful about his misconduct, there is insufficient evidence of successful rehabilitation.

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an intelligent and articulate 35-year-old man. Prior to immigrating to the United States, Applicant commendably assisted U.S. Forces in Iraq for a couple years. After immigrating to the United States, he enlisted in the U.S. Army and honorably served from 2009 to 2011, again in Iraq. These are factors in favor of granting Applicant a security clearance.

However, the factors that weigh against granting Applicant a security clearance outweigh the above facts. Applicant was born and raised in Iraq. He graduated from an Iraqi university. His parents and brothers are citizens and residents of Iraq; he does not have immediate family members in the United States. Between jobs or military service, he has resided in Iraq with his family for long periods, attesting to his strong familial ties. The most significant factor weighing heavily against Applicant was his failure to comply with U.S. Mission Iraq rules and policies during employment, and subsequent to termination. Coupled with those breaches was his decision to minimize his misbehavior during an interview with an investigator. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his foreign influence, personal conduct, and criminal conduct.

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 and 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	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.

Shari Dam
Administrative Judge