



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



In the matter of:)
)
) ISCR Case No. 15-08883
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

October 6, 2017

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On June 13, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and F.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

On June 23, 2016, Applicant submitted a written reply to the SOR, and requested a decision on the record. (RSOR.) Applicant's Counsel subsequently requested that the case be decided after a hearing before an administrative judge. The case was assigned to me on February 15, 2017. The Defense Office of Hearings and Appeals (DOHA)

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

issued a notice of hearing on February 27, 2017, scheduling the hearing for April 4, 2017. The hearing was convened as scheduled.

At the hearing, the Government offered Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf and presented Exhibits A through DD, which were also admitted without objection. The record was left open until April 21, 2017, for receipt of documentation. Documents were submitted and were incorrectly marked as Applicant's Exhibits DD and EE, but have now have been correctly marked and entered into evidence without objection as Applicant's Exhibits EE and FF.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to Colombia. Department Counsel provided a summary of the facts, supported by Exhibit 4. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 46 years old, and he was born in the United States. Applicant was married and divorced twice from his first wife. He has been married to his current wife since 2011, and they have one child, who is a United States citizen. He earned a Bachelor's degree in Occupational Education in 2009. Applicant served in the United States Air Force on active duty from 1989 to May 2011, when he received an Honorable Discharge. He has been employed by a United States defense contractor as a Logistics Supervisor for six years in Columbia. Applicant seeks a DoD security clearance in connection with his employment in the defense sector for a new position where he would be employed in the United States. (Tr at 24-28, 49.)

Guideline B - Foreign Influence

The SOR lists three allegations regarding Foreign Influence, under Adjudicative Guideline B:

1.a. It is alleged in the SOR that Applicant's wife is a citizen and resident of Colombia. Applicant admitted this allegation in his RSOR. At the hearing, Applicant testified that he met his current wife while he was in the military and deployed in Colombia. They became married in March 2011. Applicant thereafter returned to the United States and retired from military service in May 2011. Applicant then gained employment with his current employer, when he again was stationed in Columbia. Applicant testified that his wife lives with him in Colombia and is a Colombian citizen,

but she has gained her permanent United States residency. Applicant further stated that his wife is currently unemployed, but she was never employed by the Colombian Government. (Tr at 45-49.)

1.b. It is alleged in the SOR that Applicant's step-daughter is a citizen and resident of Colombia. Applicant admitted this allegation in his RSOR. Applicant testified that his step-daughter lives with him and his wife in Colombia. She is attending college, and studying to be a school teacher. Their goal is that she complete her education and then they will sponsor her to move to the United States where she hopes to teach. She has never been employed by the Colombian Government. (Tr at 49-51.)

1.c. It is alleged in the SOR that Applicant's mother-in-law is a citizen and resident of Colombia. Applicant admitted this allegation in his RSOR. He testified that he sees his mother-in-law two times a year, and other than that, he has no communication with her. (Tr at 51-52.)

Applicant testified that his entire life he has been loyal to the United States, as has been shown by his 21 years of service to the United States Air Force. Applicant further testified that his mother and six brothers and sisters are United States citizens and residents. (Tr at 54, 74-75 .)

Guideline F, Financial Considerations

The SOR lists ten allegations (1.a. through 1.j.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. All of the SOR allegations will be discussed below in the order they were listed on the SOR:

2.a. This overdue debt is cited in the SOR for a judgment filed against him in 2012 in the amount of \$4,991. Applicant admitted this debt in his RSOR. At the hearing, Applicant reiterated that this debt and all of the following debts have been paid: he stated that 2.a., 2.c., 2.e., 2.f., 2.h., 2.j., and 2.i. have been paid. (Tr at 37-38.)

2.b. This overdue debt is cited in the SOR for a judgment filed against him in 2011 in the amount of \$2,169. Applicant admitted this debt in his RSOR. At the hearing, he testified that he has been making payments on this debt. (Tr at 32-33.) Exhibits E and R establish that this debt is being resolved. Applicant submitted post-hearing Exhibit EE showing that this debt has been resolved.

2.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$6,986. Applicant admitted this debt in his RSOR. As reviewed above, Applicant testified that this debt has been paid. (Tr at 37-38.)

2.d. This overdue debt is cited in the SOR for a delinquent account in the amount of \$3,651. Applicant admitted this debt in his RSOR. At the hearing, he testified that he has been making payments on this debt. (Tr at 39-40.) Exhibits G and S establish that this debt is being resolved.

2.e. This overdue debt is cited in the SOR for a delinquent account in the amount of \$2,634. Applicant admitted this debt in his RSOR. Applicant testified that this debt has been paid. (Tr at 37-38.)

2.f. This overdue debt is cited in the SOR for a delinquent account in the amount of \$7,316. Applicant testified that this debt has been paid. (Tr at 37-38.)

2.g. This overdue debt is cited in the SOR for a delinquent account in the amount of \$3,431. Applicant admitted this debt in his RSOR. At the hearing, he testified that he has been making payments on this debt. (Tr at 40.) Exhibit U establishes that this debt is being resolved. Applicant submitted post-hearing Exhibit FF showing that this debt has been resolved.

2.h. This overdue debt is cited in the SOR for a delinquent account in the amount of \$364. Applicant admitted this debt in his RSOR. Applicant testified that this debt has been paid. (Tr at 37-38.)

2.i. This overdue debt is cited in the SOR for a medical account in the amount of \$157. Applicant admitted this debt in his RSOR. Applicant testified that this debt has been paid. (Tr at 37-38.)

2.j. This overdue debt is cited in the SOR for a medical account in the amount of \$86. Applicant admitted this debt in his RSOR. Applicant testified that this debt has been paid. (Tr at 37-38.)

Applicant explained that his two marriages and divorces to and from his first wife caused a great deal of his financial difficulties. He stated that because his ex-wife did not meet her responsibilities according to the divorce decree, not only was he was forced to pay for two mortgages, and support himself, but all the debts listed on the SOR that his wife was ordered to pay, he ultimately had to resolve himself. He did not become aware that his wife was not paying her court ordered debts until the investigation began for his security clearance. He indicated that if he had learned earlier that the debts were not being resolved, he would have addressed them earlier. (Tr at 31-37, 42, 58.)

Applicant testified that he is current with all of his present debts, and after all of his expenses, he is left with a monthly remainder of approximately \$2,500. He has also taken an online course to financial planning course. (Tr at 42-44.)

Mitigation

Applicant submitted a number of documents in mitigation. They include: documents showing that the debts discussed above have been settled or resolved; a Personal Financial Statement showing Applicant's positive monthly remainder; Applicant's DD Form 214 showing his positive military history, including his Honorable Discharge; and nine very positive character letters; and a packet of other supporting documents. (Exhibits A through DD.)

Current Status of Columbia

For nearly 50 years, Colombia has experienced conflict with illegal armed groups, including Marxist guerrillas and transnational criminal and narcotics trafficking organizations. Two Colombian groups have been designated as Foreign Terrorist Organizations. In its most recent Travel Warning for Colombia the United States Department of State warns U.S. citizens about the dangers of travel to Colombia, and specifically the potential for violence by terrorist groups and armed criminal gangs called "BACRIMS." Terrorists and other criminal organizations continues to kidnap and hold persons of all nationalities and occupations for ransom. No one is immune from kidnapping on the basis of occupation, nationality, or other factors.

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies 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.

Section 7 of Executive Order (EO) 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern 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 notes several conditions that could raise security concerns under AG ¶ 7. Because of Applicant's spouse's connection to Columbia, Disqualifying conditions (a), (b), and (d) 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;

(c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country;

(d) counterintelligence information, whether classified or unclassified, that indicates the individual's access to classified information or eligibility for a sensitive position may involve unacceptable risk to national security;

(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;

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence entity;

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and

(i) conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

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

(a) the nature of the 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 United States;

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

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Because during Applicant's entire life he has been loyal to the United States, as has been shown by his 21 years of service to the United States Air Force, and because Applicant's mother and six brothers and sisters are United States citizens and residents. I find that mitigating factor AG ¶ 8(b) is applicable and controlling in this case under Guideline B.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 personnel 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Applicant has had several delinquent debts for several years. The evidence is sufficient to raise disqualifying conditions (a) and (c), in this case:

(a) inability to satisfy debts;

(b) unwillingness to satisfy debts regardless of the ability to do so;

(c) a history of not meeting financial obligations;

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;

(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;

(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;

(g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;

(h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and

(i) concealing gambling losses, family conflict, or other problems caused by gambling.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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, 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;

(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;

(f) the affluence resulted from a legal source of income; 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 attributed his delinquencies to his two divorces from his first wife, and unbeknownst to him, her failure to pay the debts she was ordered from the divorce to pay. These are circumstances beyond his control. He has established that he acted reasonably or responsibly with respect to his debts. Once he became aware of these delinquent debts, he began paying all of his debts, and it now appears that he has only one delinquent debt outstanding, for which he is making regular payments. I find that he has demonstrated that he addressed his debts in a responsible and timely manner. Full mitigation under AG ¶ 20(b) has been established.

Further, there are clear indications that his financial problems have been resolved and are under control. Mitigation under AG ¶ 20(d) has also been established.

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.

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

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis. Overall, the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Influence and Financial Considerations security concerns under the whole-person concept.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant
Subparagraph 2.h:	For Applicant
Subparagraph 2.i:	For Applicant
Subparagraph 2.j:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge