



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03172

Appearances

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

September 27, 2018

Decision

ROSS, Wilford H., Administrative Judge:

On January 24, 2015, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On November 21, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence) and Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (Answer) on January 24, 2017, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) On April 7, 2017, Department Counsel submitted the Department's written case. A

complete copy of the file of relevant material (FORM), consisting of Items 1 to 7, was provided to Applicant, who received the file on April 18, 2017.¹

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not file objections or submit additional information. The case was assigned to me on October 1, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

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* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions² 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 implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

Procedural Ruling

In Item 7 of the FORM the Government requested I take administrative notice of certain facts relating to the People's Republic of China (China). Department Counsel provided a nine page summary of the facts, supported by relevant excerpts from eleven Government documents pertaining to China. 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, and not subject to reasonable dispute. Applicant did not file an objection to my taking official notice. The facts so noticed are set out in the Findings of Fact.

¹ Department Counsel submitted seven Items in support of the SOR allegations. Item 4 is inadmissible. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on June 10, 2016. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation (ROI) summary is inadmissible in the Government's case in chief in the absence of an authenticating witness. See Executive Order 10865 § 5. In light of Applicant's admissions, Item 4 is also cumulative. Applicant is not legally trained and might not have understood Department Counsel's FORM footnote 1, which described the potential admissibility of Item 4. I therefor reviewed it for any potentially mitigating information that Applicant might have thought would be considered. Any such mitigating information will be discussed later in this Decision.

² SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

Findings of Fact

Applicant is 51 and recently married for the fourth time. He has four children from previous marriages. He has a master's degree. Applicant served in the US Army from 1985 to 1993 and received an Honorable Discharge. He seeks to obtain national security eligibility for access to classified information in connection with prospective employment in the defense industry. (Item 3 at Sections 12, 13A, 15, 17; Item 4 at 3.)

Paragraph 1 (Guideline B, Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts that may result in divided allegiance or subject him to foreign manipulation, pressure or coercion. Applicant admitted the three allegations in this paragraph.

1.a. Applicant is a native-born American citizen. His current wife, however, is a citizen of China. They have lived together since December 2014, and married on November 6, 2015. She is a lawful permanent resident of the United States, and is employed. Applicant provided no additional specific information about her. (Item 3 at Section 17; Item 4 at 4.)

1.b. Applicant admitted that his mother-in-law is a citizen and resident of China. He stated he had in-person contact with his mother-in-law every two years, and weekly contact on Facetime over the internet. Applicant provided no additional specific information about her. (Item 3 at Section 19; Item 4 at 4.)

1.c. Applicant admitted that his father-in-law is a citizen and resident of China. He has had in-person contact with his father-in-law one time, and monthly contact on Facetime over the internet. Applicant provided no additional specific information about him. (Item 3 at Section 19; Item 4 at 4.)

Applicant stated to an investigator from the Office of Personnel Management (OPM) that he could not be subject to coercion or pressure because of his foreign contacts. (Item 4 at 4-5.)

China

I take administrative notice of the facts set forth in the Administrative Notice documents concerning China, which are incorporated herein by reference.

China is a large and economically powerful country, with a population of over a billion people and an economy growing at about 10% per year. China has an authoritarian government, dominated by the Chinese Communist Party. It has a poor record with respect to human rights, suppresses political dissent, and engages in

arbitrary arrests and detentions, forced confessions, torture, and mistreatment of prisoners.

China is one of the most aggressive countries in seeking sensitive and protected U.S. technology and economic intelligence. It targets the United States with active intelligence gathering programs, both legal and illegal. As a result, it is a growing threat to U.S. national security.

Paragraph 2 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR alleged that Applicant owed \$79,116 in overdue debts, of which \$77,788 are delinquent student loans. The existence and amounts of these debts is supported by credit reports dated April 17, 2015; and September 13, 2016. (Items 5 and 6.) The existence of the debts is also supported by admissions of Applicant. (Item 2; Item 3 at Section 26.) The status of the debts as of the time the record closed is as follows:

1.a. Applicant admitted owing a past-due student loan in the amount of \$15,997. Applicant stated in his Answer (Item 2) that he was making minimal payments on this debt. No further information was provided. This debt is not resolved.

1.b. Applicant admitted owing a past-due student loan in the amount of \$14,795. Applicant stated in his Answer (Item 2) that he was making minimal payments on this debt. No further information was provided. This debt is not resolved.

1.c. Applicant admitted owing a past-due student loan in the amount of \$12,794. Applicant stated in his Answer (Item 2) that he was making minimal payments on this debt. No further information was provided. This debt is not resolved.

1.d. Applicant admitted owing a past-due student loan in the amount of \$10,692. Applicant stated in his Answer (Item 2) that he was making minimal payments on this debt. No further information was provided. This debt is not resolved.

1.e. Applicant admitted owing a past-due student loan in the amount of \$6,302. Applicant stated in his Answer (Item 2) that he was making minimal payments on this debt. No further information was provided. This debt is not resolved.

1.f. Applicant admitted owing a past-due student loan in the amount of \$5,859. Applicant stated in his Answer (Item 2) that he was making minimal payments on this debt. No further information was provided. This debt is not resolved.

1.g. Applicant admitted owing a past-due student loan in the amount of \$5,516. Applicant stated in his Answer (Item 2) that he was making minimal payments on this debt. No further information was provided. This debt is not resolved.

1.h. Applicant admitted owing a past-due student loan in the amount of \$4,623. Applicant stated in his Answer (Item 2) that he was making minimal payments on this debt. No further information was provided. This debt is not resolved.

1.i. Applicant admitted owing a past-due student loan in the amount of \$1,210. Applicant stated in his Answer (Item 2) that he was making minimal payments on this debt. No further information was provided. This debt is not resolved.

1.j. Applicant denied that he owed a pet hospital \$375 for a collection account. He stated in his Answer (Item 2), "Paid and will dispute." This debt continues to appear on his most recent credit report, which is dated more than a year after his Answer. The credit report does not provide any support for a dispute. (Item 6.) No further information was provided. This debt is not resolved.

1.k. Applicant admitted that he owed a past-due medical bill in the amount of \$370. He stated in his Answer (Item 2), "I admit and owe, will pay." This debt continues to appear on his most recent credit report, which is dated more than a year after his Answer. (Item 6.) No further information was provided. This debt is not resolved.

1.l. Applicant denied that he owed a past-due medical bill in the amount of \$173. He stated in his Answer (Item 2) that he had paid the bill on November 16, 2015. This debt does not appear on his most recent credit report, which is dated more than a year after his Answer. (Item 6.) Given the state of the record, I find that the Government has not proved Applicant still owed this debt at the time the record closed. This allegation is found for Applicant.

1.m. Applicant denied that he owed a past-due medical bill in the amount of \$133. He stated in his Answer (Item 2) that he had paid the bill on November 16, 2015. This debt does not appear on his most recent credit report, which is dated more than a year after his Answer. (Item 6.) Given the state of the record, I find that the Government has not proved Applicant still owed this debt at the time the record closed. This allegation is found for Applicant.

1.n. Applicant denied that he owed a past-due medical bill in the amount of \$113. He stated in his Answer (Item 2) that he had paid the bill on November 18, 2015. This debt does not appear on his most recent credit report, which is dated more than a year after his Answer. (Item 6.) Given the state of the record, I find that the Government has not proved Applicant still owed this debt at the time the record closed. This allegation is found for Applicant.

1.o. Applicant denied that he owed a past-due medical bill in the amount of \$91. He stated in his Answer (Item 2) that he had paid the bill on November 18, 2015. This debt does not appear on his most recent credit report, which is dated more than a year after his Answer. (Item 6.) Given the state of the record, I find that the Government has not proved Applicant still owed this debt at the time the record closed. This allegation is found for Applicant.

1.p. Applicant denied that he owed a past-due medical bill in the amount of \$73. He stated in his Answer (Item 2) that he had paid the bill on November 16, 2015. This debt does not appear on his most recent credit report, which is dated more than a year after his Answer. (Item 6.) Given the state of the record, I find that the Government has not proved Applicant still owed this debt at the time the record closed. This allegation is found for Applicant.

Applicant elected not to respond to the FORM. He submitted no financial information, such as a budget, from which to make a determination that he is now financially stable. Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 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, the administrative judge applies 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(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, "Any 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.

According to 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 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.

Finally, as emphasized in Section 7 of EO 10865, “Any 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (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. 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's wife is a citizen of China. Her parents are Chinese citizens and continue to live there. China is known to be aggressive in attempting to obtain American technology. Accordingly, Applicant's family connections to that country have the potential to generate a conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).³ The evidence is sufficient to raise these disqualifying conditions.

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

- (a) the nature of the 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

³ The 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).

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.

Applicant has substantial contacts with China through his wife. Applicant elected not to submit any evidence that would tend to support a finding that he was not subject to conflicts, pressure, or coercion because of those contacts. None of the mitigating conditions were established under the facts of this case. Paragraph 1 is found against Applicant.

Paragraph 2 (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 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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant, based on documentary evidence, had 16 delinquent accounts that he could not or chose not to resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

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

(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; and

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

As stated, the Government failed to establish that Applicant still owed the debts set forth in subparagraphs 1. l, m, n, o, and p. Those allegations are found for Applicant.

The evidence does not establish that any of the above mitigating conditions apply to Applicant with regard to the remaining debts. He failed to submit any evidence that would tend to support any of them. There is no basis for me to find that Applicant has mitigated the security concerns of his financial situation. Paragraph 2 is found against Applicant.

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 national security eligibility and 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. Overall, the record evidence as described above leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guidelines for Foreign Influence and Financial Considerations.

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 B: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Paragraph 2, Guideline F: | AGAINST APPLICANT |
| Subparagraph 2.a: | Against Applicant |
| Subparagraph 2.b: | Against Applicant |
| Subparagraph 2.c: | Against Applicant |
| Subparagraph 2.d: | Against Applicant |
| Subparagraph 2.e: | Against Applicant |
| Subparagraph 2.f: | Against Applicant |
| Subparagraph 2.g: | Against Applicant |
| Subparagraph 2.h: | Against Applicant |
| Subparagraph 2.i: | Against Applicant |
| Subparagraph 2.j: | Against Applicant |
| Subparagraph 2.k: | Against Applicant |
| Subparagraph 2.l: | For Applicant |
| Subparagraph 2.m: | For Applicant |
| Subparagraph 2.n: | For Applicant |
| Subparagraph 2.o: | For Applicant |
| Subparagraph 2.p: | 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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge