



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



In the matter of:)
)
) ISCR Case No. 16-03852
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guidelines B (foreign influence), E (personal conduct), and H (drug involvement and substance misuse). Eligibility for access to classified information is granted.

Statement of the Case

On February 15, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B. Applicant responded to the SOR on April 19, 2017, and requested a hearing before an administrative judge. Department Counsel amended the SOR on an indeterminate date adding allegations under Guidelines E and H. Applicant responded to the amended SOR on July 31, 2017.

The case was assigned to me on December 21, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 26, 2018, scheduling the hearing for February 20, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection.

Applicant testified, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on February 28, 2018.

Findings of Fact

Applicant is a 41-year-old employee of a defense contractor. He has worked for his current employer at different locations since 2000. He is applying for a security clearance for the first time. He has a bachelor's degree, which was awarded in 1999. He is married with an infant child.¹

Applicant smoked marijuana when he was in college. He smoked marijuana infrequently after college. He used marijuana on two or three occasions in Djibouti in 2012 and once in Japan in 2013 in violation of those countries' laws.²

Applicant has not used marijuana since 2013. He has matured, and he now has a wife and child. He has rare contact with his old high school friends who use marijuana. He knows that he could lose his security clearance if he uses illegal drugs again. He credibly testified that he will not do so. He signed a statement of intent not to use any illegal drugs in the future, with an acknowledgement that any future illegal drug use would be grounds to revoke his national security eligibility.³

Applicant did not report his marijuana use on his Questionnaire for National Security Positions (SF 86), which he submitted in October 2015. He denied intentionally falsifying the SF 86. He credibly testified that the marijuana use had slipped his mind, until he was later reminded by his wife and a friend. He fully discussed his marijuana use when he was interviewed for his background investigation in February 2016.⁴

Applicant is a native-born U.S. citizen. He met his wife while he was working in Djibouti. She is a dual citizen of Djibouti and the Netherlands. Her father is a citizen of Djibouti. He is a former member of the Djibouti parliament. He left parliament because of health reasons. He is receiving medical treatment in a European country.⁵

Applicant and his wife were married in a religious ceremony and a civil wedding. His father-in-law provided a Muslim name for Applicant to the qadi (judge) in order for them to have an Islamic wedding. Applicant's actual name is listed on all marriage documents, both religious and civil.⁶

¹ Tr. at 17-18; GE 1, 2.

² Tr. at 18-20; Applicant's response to amended SOR; GE 2-4.

³ Tr. at 20, 23-25; Applicant's response to amended SOR; GE 2.

⁴ Tr. at 13-14, 20-23; Applicant's response to amended SOR; GE 1, 2.

⁵ Tr. at 12-16; Applicant's response to SOR; GE 2.

⁶ Applicant's response to amended SOR; GE 2.

Republic of Djibouti

The Republic of Djibouti has a parliament and executive branch led by the President, who is elected every five years. The National Assembly is the country's legislature, consisting of 65 members, also elected every five years.

Djibouti is strategically located in the Horn of Africa and is a key U.S. partner on security, regional stability, and humanitarian efforts across the region. The Djiboutian government is supportive of U.S. interests and proactively promotes countering violent extremism. Djibouti hosts the only enduring U.S. military presence in Africa at Camp Lemonnier, established by formal agreement in 2003. A bilateral agreement with the government of Djibouti also provides the United States with access to Djibouti's port facilities and airport.⁷

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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,

⁷ GE 5.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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 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. The following 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 father-in-law is a citizen of Djibouti. He is a former member of the Djibouti parliament. That creates a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), and 7(e) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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; and

(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.

I considered the totality of Applicant's ties to Djibouti. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Djibouti is a republic. It is a key U.S. partner on security, regional stability, and humanitarian efforts across the region. The Djiboutian government is supportive of U.S. interests and proactively promotes countering violent extremism. Djibouti hosts the only enduring U.S. military presence in Africa. Applicant's father-in-law left parliament because of health reasons. He is receiving treatment in a European country. Applicant is a native-born U.S. citizen.

I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Djiboutian

government. I further find that there is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following is potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant possessed and smoked marijuana on two or three occasions in Djibouti in 2012 and once in Japan in 2013 in violation of those countries' laws. The above disqualifying conditions are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant has not smoked marijuana since 2013, a period of about five years. He has matured, and he now has a wife and child. He has rare contact with his old high school friends who use marijuana. He knows that he could lose his security clearance if he uses illegal drugs again. He credibly testified that he will not do so. He signed a statement of intent not to use any illegal drugs in the future, with an acknowledgement that any future illegal drug use would be grounds to revoke his national security eligibility. I find that Applicant has abstained from illegal drug use for an appropriate period, and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;

(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:

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

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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

(2) while in another country, engaging in any activity that is illegal in that country.

SOR ¶ 3.a alleges that Applicant intentionally falsified his SF 86 when he failed to report his marijuana use. Having considered all the evidence, including Applicant's testimony and demeanor, I conclude that he did not intentionally provide false information on the SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 3.a is concluded for Applicant.

Applicant's illegal marijuana use in Djibouti and Japan is cross-alleged under Guideline E in SOR ¶ 3.b. Those actions reflect questionable judgment and an unwillingness to comply with rules and regulations. They also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

SOR ¶ 3.c alleges that Applicant "falsified material facts in order to obtain [his] Djibouti marriage certificate by providing a Djibouti judge a false Muslim name to gain

the judge's signature on [his] marriage certificate." Applicant's father-in-law provided a Muslim name for Applicant to the qadi in order for them to have an Islamic wedding, but Applicant's actual name is listed on all marriage documents, both religious and civil. It appears that all parties were aware that Applicant was not Muslim, and it was done to comply with the formal requirements of his wife's religion. This is not unusual in mixed-religions weddings. Any concerns raised by this action is mitigated. SOR ¶ 3.a is concluded for Applicant.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant has not used illegal drugs since 2013. The discussion above under drug involvement and substance misuse applies equally here. I find that the conduct is unlikely to recur; it does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment; and it no longer serves as a basis for coercion, exploitation, or duress. AG ¶¶ 17(c), 17(d), and 17(e) are applicable.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B, E, and H in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under Guidelines B, E, and H.

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:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline H:	For Applicant
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline E:	For Applicant
Subparagraphs 3.a-3.c:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge