



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



In the matter of:)	
)	
)	ISCR Case No. 17-01013
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

10/15/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant established that circumstances beyond his control contributed in part to his financial problems and that he has been acting responsibly under the circumstances. He resolved most of the financial concerns before the issuance of the Statement of Reasons (SOR). He also mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 7, 2016, seeking to continue the clearance required for his position with a federal contractor. He was interviewed by a government background investigator on June 3, 2016. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued him an SOR on June 16, 2017, alleging security concerns under Guideline F (Financial Considerations) and Guideline B (Foreign Influence). Applicant answered the SOR on September 13, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on April 13, 2018, and issued a notice of hearing on June 11, 2018, setting a video teleconference (VTC) hearing for June 27, 2018. At

the hearing, the Government offered five exhibits (GE 1 through 5). Applicant testified and submitted three exhibits. (AE 1 through 3) AE 3 was received post-hearing. GE 5 (a request for me to take administrative notice of facts about Tunisia) was marked and made part of the record, but it is not evidence. All exhibits were admitted without objection, except as noted above. DOHA received the hearing transcript (Tr.) on July 6, 2018.

Request for Administrative Notice

Department Counsel and Applicant requested that I take administrative notice of certain facts about Tunisia. Without objection, I have taken administrative notice of the facts contained in their requests. The facts are summarized in the written requests and documents, and will not be repeated verbatim in this decision. Of particular note is that Tunisia has problems dealing with the terrorist threats within its borders, has been victimized by terrorism, and has human rights problems.

Findings of Fact

In his Answer, Applicant admitted all of the SOR allegations, except for SOR ¶ 2.c, which he denied in part. He admitted that his brother-in-law is a resident-citizen of Tunisia, but denied that his brother-in-law is a member of the Tunisian parliament. His admissions to the SOR and at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 57-year-old employee of a federal contractor. He graduated from high school in 1979, and received a bachelor's degree in August 2008. He married his first wife in 1982, and divorced in 2007. He has three children of this marriage ages 35, 32, and 25. He married his current spouse in 2009, and they have a seven-year-old child.

After high school, Applicant enlisted in the U.S. Air Force in 1980, where he honorably served 20 years on active duty until he retired with the rank of E-7. Applicant started working for federal contractors in 2003, and has been consistently employed by federal contractors to present. In July 2017, Applicant's current employer, a federal contractor, hired him to continue his work abroad in support of deployed U.S. military personnel. He has held a secret clearance continuously since about 2001. There is no evidence showing that his clearance was ever suspended, or of any security concerns, except for those in the current SOR.

On his 2016 SCA, Applicant disclosed that he married a Tunisian citizen in 2009, and they have a seven-year-old son. They met while she was working as a school teacher in the Middle East country where Applicant was working and residing at the time. Applicant's wife's parents, siblings, and other close family members are resident-citizens of Tunisia.

In Section 20A (Foreign Activities) of his 2016 SCA, Applicant disclosed that in 2005, he purchased \$2,500 worth of stock in a telecommunications company in Tunisia. He also stated his future plan to purchase real estate in Tunisia in the year 2035. Additionally, Applicant revealed that he failed to pay his 2013 federal taxes because of lack of funds and he was in the process of making payment arrangements with the IRS.

The background investigation addressed Applicant's financial problems and the foreign influence concerns. The SOR alleged Applicant failed to file federal income tax returns for tax years 2007 through 2012. (SOR ¶ 1.a) The evidence shows that Applicant failed to timely file his federal income tax returns for tax years 2008 through 2016. (Because his failure to file tax returns for tax years 2013 through 2016 was not alleged in the SOR, it cannot be used for disqualification purposes. It may be considered by me in assessing Applicant's credibility, in the application of mitigating conditions, and in the whole-person analysis.)

Applicant's IRS documents show that: (1) he timely filed his 2007 income tax return in April 2008; (2) for tax year 2008, the IRS filed a substitute income tax return in January 2011, and Applicant filed his income tax return in 2012; (3) for tax year 2009, the IRS filed a substitute income tax return in August 2011, and Applicant filed in June 2012; (4) for tax year 2010, Applicant filed his income tax return in October 2013; (5) for tax year 2011, Applicant filed his income tax return in October 2013; (6) for tax year 2012, he filed in February 2014; (7) for tax year 2013, the income tax return was filed in November 2014; (8) for tax year 2014, he filed in December 2015, and Applicant was assessed late filing penalties; (9) for tax year 2015, he filed in November 2016; (10) for tax year 2016, he timely filed in March 2017; and (11) for tax year 2017, he timely filed in July 2018. Shortly after filing his late income tax returns, Applicant paid any taxes owed resulting from his late filings. He currently owes no back taxes to the IRS.

SOR ¶ 1.b alleged a \$1,222 debt to a telecommunications provider. Applicant settled and paid the debt in April 2017. (AE 3) SOR ¶ 1.c alleged Applicant was \$2,000 late paying his \$162,000 mortgage. Applicant explained that he had two periods of unemployment of about three to four months each, between 2000 and 2003 that resulted in a financial hardship and he was unable to bring the mortgage current. He relinquished the property to his ex-wife through a Special Warranty Deed executed in June 2007. In return, his ex-wife agreed to indemnify and hold harmless Applicant from paying the note and any performance of the obligations specified in the documents securing payment of the note. (AE 3) The creditor foreclosed on the property in 2012. The creditor stopped any collection actions against Applicant after Applicant provided the creditor with the Special Warranty Deed and copy of the divorce decree. Subsequently, the creditor went out of business. In 2017, Applicant requested the credit bureaus to remove the debt from his records. Applicant's June 2018 credit report does not reflect Applicant owes any mortgage, mortgage payments, or debts related to any mortgages. (AE 3)

Applicant's tax problems started after his 2007 divorce. He had difficulty communicating with his ex-wife and he was deployed most of the year living and

working overseas. He only returned to the United States once a year. Applicant acknowledged he exercised poor judgment by not seeking assistance from the IRS, or by promptly seeking an accountant to help him with his tax problems. In 2011, Applicant retained the services of a certified public accounting firm (CPA) to help him prepare and file his income tax returns. His only motivation to resolve his tax problems was his knowledge that it was his obligation to do so.

Applicant acknowledged that he should have been more diligent filing his income tax returns and paying his taxes. However, he believes that he is more mature now and worked hard to resolve his tax problems even before the SOR was issued. He understands the seriousness of the security concerns raised by his tax problems. He promised to timely file and pay his taxes in the future.

Applicant's wife is a Tunisian citizen. Her 73-year-old father (mother deceased), and four siblings are residents-citizens of Tunisia. Applicant's father-in-law is retired. He worked for the Tunisian government as a Border Patrol policeman. Applicant stated that his first in-person contact with his in-laws was when he traveled to Tunisia to get married in 2009. After that, in-person contact has been every one or two years when he and his wife traveled to Tunisia to visit with her relatives. All other contact has been through the internet, telephone calls, or text messages, approximately three to four times a year, during special occasions such as holidays or birthdays. Applicant indicated that his contact with his in-laws is limited due to the language communication barrier.

Applicant has two sisters-in-law and two brothers-in-law. One of the brothers-in-law is an attorney who works some cases for the Tunisian parliament. The second is a tourist guide in the same Middle East country where Applicant works. One sister is married and works as a homemaker. The second sister receives disability income from the Tunisian government and worked in a bank.

Applicant's wife is a teacher and from 2005 to August 2017, she worked and lived in the same Middle East country where Applicant works. Applicant testified that she is very pro-American and has been residing in the United States since August 2017. Applicant and his wife traveled to the United States for their son to be born in the United States. In November 2016, she submitted her petition for U.S. citizenship.

In his 2016 SCA and during interviews, Applicant indicated his plans to purchase a vacation property in Tunisia. After his hearing, on August 16, 2018, Applicant submitted a written statement re-stating his future plans to retire and purchase property in the United States and not in Tunisia. He now understands the security concerns raised by him buying property or retiring in another country.

Applicant highlighted his 20 years of service in the Air Force, plus his 14 years working with federal contractors while holding a clearance without any issues or concerns, except for those in the SOR. Applicant credibly promised to continue paying his legal debts and to avoid any future tax problems. Earning \$100,000 a year, his

financial situation is stable, and his income will allow him to pay his debts and taxes on time.

I take administrative notice of the following facts concerning Tunisia. Tunisia is a republic with a multiparty, a unicameral parliamentary political system, and a president with powers specified in the constitution. The diplomatic and military relationship between the United States and Tunisia has long been one of trust and mutual support, especially on curbing terrorism and crime. The United States have been instrumental in shoring up Tunisia's security since the 2011 revolution. Tunisian government officials and security forces have occasionally violated the rights of political prisoners and committed other human rights violations. Security forces aggressively monitor and question those suspected of threatening Tunisian security.

Citizens of Tunisia are limited in political freedoms. Rights such as freedom of association, freedom of speech, and freedom of the press are limited. There are also human rights violations reported, including torture and extended pretrial detentions. Tunisia has "open borders with Libya and Algeria" creating an unpredictable security environment. U.S. citizens are warned against travel to southeastern Tunisia as well as the west mountainous areas due to the threat of terrorism. Terrorist attacks have previously targeted Tunisian government and security forces and popular tourist sites. Many terrorist organizations are active in Tunisia. The Tunisian government has intensified its counterterrorism efforts and secured U.S. assistance to overhaul its military and civilian security forces. The Tunisian government requires Tunisian-Americans to enter and leave Tunisia on a Tunisian passport.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), implemented by the DOD on June 8, 2017.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, § 2. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense

consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability 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 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.

Applicant's history of financial problems is documented in the record. He failed to timely file federal income tax returns for tax years 2008 through 2012. He also had one consumer debt charged-off and a delinquent mortgage that was later foreclosed. AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(f) (failure to file or fraudulently filing annual Federal, state, or

local income tax returns or failure to pay . . . income tax as required.” The record established the disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b). ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Most of the above financial considerations mitigating conditions are fully raised by the facts in this case and mitigate the security concerns. Applicant’s financial

problems started after his 2007 divorce because of lack of communication with his ex-wife and his overseas employment that kept him out of the United States for most of the year. He failed to file a tax return in 2008 and his negligence snowballed into not filing returns into 2012. In 2011, Applicant retained the services of a CPA firm that helped him file his delinquent returns and established payments for any back taxes. Between 2013 and 2017, Applicant timely filed his income tax returns (within his extensions to file) and paid all back taxes. Currently, Applicant owes no back taxes to the IRS.

Applicant settled for less and paid a charged-off debt to a telecommunications company in April 2017. (AE 3) Concerning the delinquent mortgage (SOR ¶ 1.c), Applicant explained that periods of unemployment between 2001 and 2003 caused him to become delinquent and he was unable to bring the account current. In June 2007, he executed a Special Warranty Deed in favor of his ex-wife. In return, his ex-wife agreed to indemnify and hold him harmless from paying the note and complying with any performance of the obligations specified in the documents securing payment of the note. (AE 3) The creditor foreclosed on the property in 2012. The creditor stopped any collection actions against Applicant after Applicant provided the creditor with the Special Warranty Deed and a copy of the divorce decree. Subsequently, the creditor went out of business. Applicant's Experian credit report from June 2018 (AE 3), does not reflect Applicant owes any mortgage, mortgage payments, or debts related to any mortgages.

Applicant's financial problems could be attributed to, or were aggravated by, circumstances beyond his control, specifically, his periods of unemployment with the subsequent decrease in family earnings, and the financial hardship resulting from his 2007 divorce and maintaining two households. I find these circumstances to be beyond his control.

Applicant acknowledged his lack of judgment and diligence in timely filing his income tax returns and paying his taxes. Notwithstanding, Applicant established that as far back as 2011, he retained the services of a CPA firm to help him file his delinquent tax returns and pay his back taxes. The IRS documents on evidence show Applicant timely filed his income tax returns after 2013, paid all back taxes, and is current on his income tax filings and paying his taxes.

Applicant's financial problems occurred under circumstances unlikely to recur and they do not cast doubt on his current reliability, trustworthiness, or judgment. His evidence is sufficient to establish that his financial problems were caused or aggravated, to some extent, by circumstances beyond his control. Considering the evidence as a whole, Applicant has been financially responsible under the circumstances. There are clear indications that his financial problems are resolved. He has been timely filing his tax returns and paying his taxes and promised to continue to do so. With his job earnings he should be able to pay for his family's living expenses and current debts. Moreover, Applicant has matured and understands the security clearance consequences of not maintaining his financial responsibility and complying with his legal obligation to timely file and pay his taxes.

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; and
- (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.

Applicant's wife is a citizen of Tunisia and she has immediate family members who are citizens and residents of Tunisia. Tunisia has problems with terrorist organization in bordering states and within its own borders. It also has human rights problems; and it has been victimized by terrorism. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

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

- (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 Tunisia. 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.

Applicant is a loyal U.S. citizen. He served 20 years in the Air Force and has continued to serve the United States abroad working for federal contractors supporting deployed U.S. forces. None of his Tunisian family members have any direct connection to the Tunisian government. Applicant's wife lived and worked in another Middle East country between 2005 and August 2017, when she moved to the United States. She recently applied for U.S. citizenship. Applicant has no plans to move to Tunisia or to purchase property in Tunisia. He and his wife traveled to the United States so that his son would be a native-born U.S. citizen, and they are ready to purchase property in the United States. He expressed his undivided loyalty for the United States, which he considers his home.

I find that Applicant's wife and his in-laws ties to Tunisia are outweighed by his deep and long-standing relationships and loyalties in the United States. I 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(b) is 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 F and B in my whole-person analysis. I also considered Applicant's credible testimony and service.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude financial consideration concerns and foreign influence security concerns are mitigated.

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 F:	For Applicant
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 1.a-1.d:	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.

JUAN J. RIVERA
Administrative Judge