



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



In the matter of:)
)
) ISCR Case No. 17-02862
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: Ronald Payne, Personal Representative

02/12/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On September 20, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence, and Guideline E, personal conduct. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 6, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 28, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on the same

day. I convened the hearing as scheduled on January 17, 2018. The Government offered exhibits (GE) 1 through 7. Applicant testified and offered exhibits (AE) A through F. There were no objections to any of the exhibits offered, and they were admitted into evidence. DOHA received the hearing transcript on January 24, 2018.

Request for Administrative Notice

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about Afghanistan. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.¹ The facts are summarized in the Findings of Fact, below.

Applicant's personal representative asked that I take administrative notice of certain Federal District cases. He did not provide me a copy of the cases. I left the record open until January 24, 2018, to allow Applicant or his personal representative to provide copies of any case law he wanted me to consider. I also explained that I was not bound by precedent from Federal District courts. The record closed and no additional documents were provided.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a, 1.b, 1.c, 2.b, and 2.c. He denied the allegation in SOR ¶ 2.a. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 34 years old. He was born in Afghanistan. He was educated there and received a college degree in 2007. He moved to the United States in 2008 on a Special Immigration Visa. In 2012, he married in Afghanistan and his wife resides there with their two children ages four and two years old. Applicant became a naturalized U.S. citizen in 2014.²

Applicant testified he worked as a contractor for the U.S. Army from 2004 to 2008. In approximately 2006 or 2007, he received a "night letter" at his home in Afghanistan from the enemy threatening to kill him if he continued to work for the United States. He continued to work for the Americans. In 2009, he was living in the United States and was hired by another contractor and deployed to Afghanistan with the U.S. Marines. He testified that there are several videos, available to the public, of him working as a translator with high-ranking U.S. military officers meeting with local nationals in Afghanistan. He commented that this is "not a good thing." He testified that it was risky and sensitive to be seen in the videos working with the American military. Applicant testified that some of the missions he participated in were with U.S. forces in hostile environments under combat situations. Applicant professed his loyalty to the United

¹ Source documents are attached to Hearing Exhibit I.

² Tr. 25-28.

States. He surmised that if his family was captured by the Taliban, there would be nothing he could do because his family would be killed regardless. He would assist the U.S. forces in locating the enemy as his only resort. Applicant testified he would remain loyal to the United States under any circumstance and would sacrifice his life.³

During Applicant's October 2016 interview with a government investigator, he disclosed that he came to the United States on a Special Immigration Visa after working with coalition and U.S. Forces in Afghanistan as an interpreter. After working with the forces, Applicant wanted to continue his services, but felt his life would be in danger if he remained in Afghanistan, so he applied for the visa.⁴

Applicant disclosed on his September 2016 Electronic Questionnaires for Investigations Processing (e-Qip) his work history. He applied to be a linguist with his present employer, a federal contractor, in September 2016. He disclosed his work history on his e-Qip beginning in July 2005. Since then Applicant has worked numerous times with different federal contractors. He lived and worked in Afghanistan during these times. From March 2009 to April 2011, he worked as a linguist for a federal contractor in Afghanistan. He indicated he resigned from this job due to "other interpreters were giving me a hard time."⁵ He had periods of self-employed and unemployment where he indicated he lived in the United States. From May 2011 to September 2011, he was employed as a cultural advisor and role player for a federal contractor in the United States. From October 2012 to February 2013, Applicant was in Afghanistan for a religious/cultural mission trip. He also spent time visiting his family. He was in Afghanistan visiting his family from June 2015 to November 2015, and again from March 2016 to August 2016.⁷

From 2008 to 2015, Applicant was traveling back and forth from the United States to Afghanistan at varying intervals to work and visit his family. His wife, two children, parents, four brothers, two sisters, parents-in-law, brothers-in-law and sisters-in-law are all citizens and residents of Afghanistan. He has one additional brother who is a permanent resident of Belgium. Applicant stated during his October 2014 interview by a government investigator that this brother had been a shop owner in Afghanistan, but terrorists tried to kill him, so he moved out of the country.⁸

One of Applicant's brothers living in Afghanistan is a university student. His three other brothers living there take care of Applicant's wife and children. They live in a family compound. One of his brothers has worked for the U.S. Government in the past. Applicant's father owns two homes in Afghanistan. Applicant's parents, wife, children, and brothers live in the same family compound. Applicant's two sisters are married

³ Tr. 30-51, 88-90.

⁴ Tr. 90; GE 3.

⁵ GE 1.

⁷ Tr. 91-97; GE 2, 3.

⁸ Tr. 81-85, 91-97.

housewives. One is married to a pharmacist and the other is a student. Applicant's wife's parents and her siblings are all citizens and residents of Afghanistan.⁹

In his 2014 interview, Applicant disclosed that he provided approximately \$1,000 to \$1,500 every three to four months to his father beginning in 2008 to help with household expenses. He estimated that from 2008 to 2014 the total amount he provided was \$45,000. At his hearing, Applicant stated that he now sends his brother money to take care of Applicant's wife and children. He also sends money for his mother's medical care when necessary. In the past, he provided money every three to four months. Now he provides money more often due to his family's needs.¹⁰

Applicant's wife is a homemaker. During his October 2014 interview, he indicated that he had applied to the United States Government for resident alien status for his wife and for her to move to the United States. He explained that at the time, due to this job working for the United States, it was not safe for him to have contact with her.¹¹ In his October 2016 interview, he indicated he had daily contact with his wife through social media applications. When visiting Afghanistan, Applicant also maintains contact with his parents and siblings who reside there. He stays with them in the family compound.¹²

From June 2013 to March 2015, Applicant lived in Afghanistan. He returned to the United States from March 2015 to June 2015, and then returned to Afghanistan until November 2015. He was not working as a linguist during these periods. He was spending time with his family. He returned to the United States in November 2015, and stayed until March 2016. He then returned to Afghanistan where he remained until August 2016. He was not working in Afghanistan then, but was there to spend time with his family. His family resides close to the Pakistan border.¹³

Applicant does not own a house in the United States and does not rent an apartment when he resides here. He stays with a friend. He does not own property in Afghanistan. He testified that he has a checking, savings, and brokerage account in the U.S. and estimated his assets to be approximately \$230,000. He does not have any financial accounts in Afghanistan.¹⁴

In Applicant's answer to the SOR, he denied the allegation in ¶ 2.a. The evidence documented that allegation. While employed by a contractor and working in Afghanistan, Applicant received a verbal warning in October 2010 after another employee reported

⁹ Tr. 86-88.

¹⁰ Tr. 85-87, 106; GE 2.

¹¹ GE 2.

¹² Tr. 87; GE 3.

¹³ Tr. 91-97, 105.

¹⁴ Tr. 26-29, 105.

that Applicant had made racially offensive comments and exhibited a negative attitude toward employees based on their ethnicity. Applicant received a written warning in March 2011 for a violation of company policy, after it was reported that Applicant had a personal relationship with a female linguist, which was prohibited. Included within the personnel action documents from his employer, is a written statement from the SSGT who was the linguist manager at the time.¹⁵ The SSGT interviewed Applicant. An excerpt from the written statement follows:

[Applicant] stated he was not sure why [command] released him after seven months of service. I asked [Applicant] straight out, you don't think it had anything to do with a female? He dropped his head and said, "Well I will not lie." I had relation[s] with the female. He called it a two minute deal. If I understood him correctly. He defiantly admitted to having sex with the female he was serving with.¹⁶

Applicant testified that he did not have a personal relationship with a female linguist.¹⁷ Applicant resigned in lieu of termination in March 2011. Applicant disputed the conduct that was alleged and the basis for his resignation. He admitted receiving both the verbal and written warnings. The evidence shows an investigation was conducted regarding the alleged misconduct, and Applicant provided a three-page handwritten rebuttal to the allegations. On March 18, 2011, he signed a "Resignation after One Year Commitment" letter, which states, "resignation in lieu of termination." Applicant's record of written warning specifies the misconduct alleged and states "By violating General Order No. 1, you will be recommended for termination from the [name] contract."¹⁸

Applicant testified that he agreed that in March 2011 he resigned from his contractor job in lieu of termination. He admitted he failed to disclose this information on his September 2016 e-QIP because he believed it did not fall within the seven-year disclosure period. He testified he reviewed his e-QIP with his facility security officer after he completed it, but he did not include the information because he thought it was outside the seven-year disclosure period. Applicant's resignation was a significant event in his life. I did not find his testimony credible that his failure to disclose it on his e-QIP was because of his mistaken belief that it occurred outside of the timeframe for the requested information. I find he deliberately failed to disclose he resigned in lieu of termination on his e-QIP.¹⁹

¹⁵ Tr. 97-99; GE 6.

¹⁶ GE 6 at page 12.

¹⁷ Tr. 78.

¹⁸ Tr. 52-72, 77-78; GE 6; AE A.

¹⁹ Tr. 52-72, 77-78, 97-99.

Applicant was terminated from his employment with a government contractor in April 2015 due to allegations of misconduct. Applicant did not disclose this information on his September 2016 e-QIP. He testified that he did not disclose it because he did not think he was terminated. He believed he was merely released from the team. He stated that he was offered a job by the same company several months later. He said his current federal contractor is the same one who indicated he was ineligible to be rehired. He initially testified that he did not receive any paperwork regarding the termination, but during cross-examination he admitted he did receive a termination letter. He reiterated he believed he was only terminated from the team and not from employment. He stated two days after completing his e-QIP, he contacted the government investigator to disclose his termination from the team. There is insufficient evidence to support his assertion.²⁰

Documentary evidence indicates that Applicant had a contract start date of November 26, 2014, and an end date of December 25, 2015. The document states that on April 11, 2015, he was to return to the United States and "Termination Date: April 17, 2015."²¹ In the narrative provided by the site manager, it states,

[Applicant] has been released from the Task Force . . . for conduct unbecoming of a linguist in terms of "Lack of Integrity." It has been stated that [Applicant] was not present for duty to his assigned TEAM. His continued presence would disrupt the continuity of the operation as it moves forward in establishing rapport and the foundation needed with the Afghan Military Forces. He is not able to return to the TEAM & Task Force in the future.²²

Applicant signed the document on April 10, 2015. He disputed the conduct alleged and the reason for the termination. Applicant's testimony that he thought he was released vice terminated from employment was the reason he did not disclose the April 2015 termination on his e-QIP.²³ I did not find his explanation credible. I find he deliberately failed to disclose on his e-QIP that he was terminated from his employment due to misconduct in April 2015.

Applicant provided numerous character letters. He is applauded for his superior translator skills and his devotion to the mission, especially during critical times and high risk and dangerous situations. He is described as dedicated, professional, motivated, outstanding, selfless, technically proficient, hardworking, talented, tireless, enthusiastic, devoted, trusted, sincere, courageous, and courteous.²⁴

²⁰ Tr. 72-76, 78, 100-104; GE 7.

²¹ GE 7.

²² GE 7.

²³ GE 7.

²⁴ AE B.

In a letter of recommendation from a General Officer for Special Immigration Status, the General Officer commented about Applicant's personal courage and the fact he received countless threats against him and his family, and numerous attempts were made on his life.²⁵ Applicant was authorized to carry a firearm for his personal protection.²⁶ Applicant provided copies of negative results from criminal records' searches from the county and city in the United States where he resides when he is in country.²⁷ He provided numerous certificates of training and appreciation.²⁸

Afghanistan²⁹

The United States Department of State's travel warning for Afghanistan remains in effect and it warns U.S. citizens against travel there because of continued instability and threats by terrorist organizations against U.S. citizens. Travel there is unsafe due to ongoing risk of kidnapping, hostage-taking, military combat operations, and armed rivalry between political and tribal groups, militant attacks, suicide bombings, and insurgent attacks. These attacks may also target Afghan and U.S. Government convoys and compounds, foreign embassies, military installations, and other public areas.

Extremists associated with various Taliban networks, the Islamic State in Iraq and Syria (ISIS), and members of other armed opposition groups are active throughout the country. These terrorist groups routinely attack Afghan, coalition forces, and U.S. targets with little regard for or the express intent to cause civilian casualties. Due to security concerns, unofficial travel to Afghanistan by U.S. Government employees and their family members is restricted and requires prior approval from the State Department.

Afghanistan continues to experience aggressive and coordinated attacks by different terrorist groups. These groups remain active and were able to conduct a number of high-profile, mass-casualty attacks in Kabul against sectarian and Afghan government targets. They continue to plan such attacks against U.S. and coalition forces and Afghan interests. Border regions of Afghanistan and Pakistan remain safe havens for terrorists. The Afghan government struggles to assert control over this remote region.

According to a June 2017 U.S. Department of Defense report on Afghanistan, Afghanistan faces a continuing threat from as many as 20 insurgent and terrorist networks present and operating in the Afghanistan-Pakistan region, in what is the highest concentration of extremist and terrorist groups in the world.

²⁵ AE A.

²⁶ AE A, D.

²⁷ AE E.

²⁸ AE F.

²⁹ HE I.

The State Department's report on human rights for Afghanistan notes there was widespread violence, including indiscriminate attacks on civilians and killings of persons affiliated with the government by armed insurgent groups, widespread disregard for the rule of law and little accountability for those who committed human rights abuses. There was also targeted violence and endemic societal discrimination against women and girls.

Afghanistan remains an important partner of the United States in the fight against terrorism, working with the U.S. to eliminate terrorist groups. The U.S. Government continues to invest resources to help Afghanistan improve its security, governance, institutions, and economy. The U.S. Government has a strong bilateral partnership with the Afghan government.

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 EO 10865 provides that 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

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(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; 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.

AG ¶¶ 7(a) and 7(e) require evidence of a “heightened risk.” The “heightened risk” required to raise these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country, as well as each individual family tie, must be considered.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

The United States Department of State warns U.S. citizens against travel to Afghanistan because of continued instability and threats by terrorist organizations against U.S. citizens. It also has serious concerns about terrorist activities in Afghanistan that specifically target Americans. Extremists associated with various Taliban networks, ISIS, and members of other armed opposition groups are active throughout the country. These terrorist groups routinely attack Afghan, coalition forces, and U.S. targets. Border regions of Afghanistan and Pakistan remain safe havens for terrorists. The Afghan government struggles to assert control over this remote region. The State Department’s report on human rights for Afghanistan notes there was widespread violence, including indiscriminate attacks on civilians and killings of persons affiliated with the Government by armed insurgent groups, widespread disregard for the rule of law and little accountability for those who committed human rights abuses.

Applicant’s wife, two children, parents, four brothers, two sisters, and his wife’s parents and siblings are citizens and residents of Afghanistan. Applicant has made frequent trips to Afghanistan to visit his family, staying for several months at a time. He has applied for U.S. permanent residency for his wife and children, but that process has not concluded. Before he married in 2014, Applicant sent his family money to help with their expenses. He continues to send his brother money to provide support for Applicant’s wife and children. He also sends money to his mother for medical care. Applicant’s numerous family members residing in Afghanistan create a heightened risk and a potential foreign influence concern. AG ¶¶ 7(a), 7(b), and 7(e) apply.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on the facts:

- (a) the nature of the relationship 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 and interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; 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's entire immediate family, which includes his wife, two children, parents, four brothers, two sisters, and his wife's parents and siblings are citizens and residents of Afghanistan. He visits his family for months at a time. He provides financial support for them. Applicant's contact with his family is not casual nor infrequent. AG ¶ 8(c) does not apply.

I have considered Applicant's close relationship with his family in Afghanistan. It is an unsafe place for those residing there, and especially for U.S. citizens. Terrorism and human rights abuses for people living there are rampant. These groups conduct kidnappings and hostage-taking. Applicant has been threatened in the past for working with U.S. forces. Terrorist groups in Afghanistan target U.S. citizens. I cannot find that it is unlikely that Applicant would be placed in a position of having to choose between his wife and children, parents, siblings and his wife's family and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant has been a U.S. citizen since 2014. He has repeatedly returned to Afghanistan and stayed for months to visit his family even when not working with U.S. forces. He is obviously a devoted husband, father, son, and brother. He provided financial support for his parents and siblings before he married and provides financial support for his wife, children, and mother since marrying. All of his immediate family members and his wife's family members are citizens and residents of Afghanistan. Although he has applied for permanent residency for his wife and children, that process has not been completed or approved.

I have considered Applicant's loyalty, devotion, and commitment when working with U.S. and coalition forces in Afghanistan over the years. I have considered that he participated in high-risk, dangerous combat operations and has been praised by commanders and military personnel for his commitment to them. I believe Applicant is loyal to the United States. However, Applicant has been personally threatened for his work. He noted he has appeared in videos where his identity has been compromised, which creates additional risks. Afghanistan continues to have significant terrorist activity that specifically target both Afghans and Americans. Applicant's close relationship with his family in Afghanistan, his routine and lengthy visits to see his family, his financial support for them is commendable. His familial ties to Afghanistan are not insignificant. It is too great of a burden to expect him to be loyal to the interests of the United States and

resolve any potential conflicts in favor of the United States over those of his wife, children, parents, and siblings. AG ¶ 8(b) does not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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. I find the following 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;

(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: . . . (2) any disruptive, violent, or other inappropriate behavior.

(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 group. Such conduct includes: (1) engaging in activities which if known, could affect the person's personal, professional, or community standing.

Applicant deliberately failed to disclose on his 2016 e-QIP that he resigned in lieu of termination from employment in March 2011, after making racially offensive comments and exhibiting a negative attitude toward employees based on ethnicity. He also deliberately failed to disclose he was terminated from another employment position due to misconduct, specifically having a relationship with a female co-worker, in violation of company policy in April 2015. His explanations for failing to disclose both negative

employment incidents are not credible. His deliberate omissions of that information raise the above disqualifying conditions.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Four mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

There is insufficient evidence that Applicant made prompt, good-faith efforts to correct his omissions before being confronted with the facts. Applicant stated that he made a mistake when he failed to disclose his 2011 resignation in lieu of termination on his 2016 e-QIP believing it was outside of the seven-year disclosure requirement. This was a significant event in Applicant's life and one that he continues to dispute. Based on the documentary evidence regarding his 2015 termination from employment, I did not find Applicant's explanation for not disclosing the information credible. He knew he was terminated from his employment, and not solely released from his team. The evidence does not support his contention that he contacted an investigator shortly after he completed the e-QIP. The evidence is insufficient to conclude he made a prompt good-faith effort to correct these omissions. Applicant deliberately failed to disclose two negative employment incidents on his e-Qip. His explanations were not credible. AG ¶ 17(a) does not apply.

Applicant's omissions and misconduct are not minor. Applicant continues to dispute the underlying conduct that caused him to resign and be terminated in 2011 and in 2015, despite substantial evidence. There is insufficient evidence that Applicant has taken positive steps to alleviate the stressors or factors that contributed to his inappropriate and unreliable behavior. I am unable to conclude it is unlikely to recur. His omissions cast doubt on his reliability, trustworthiness, and good judgment. There is

sufficient evidence to substantiate Applicant's resignation and terminations in 2011 and in 2015. AG ¶¶ 17(c), 17(d), and 17(f) do not apply.

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 the 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 and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 34 years old and has been a naturalized U.S. citizen since 2014. He has strong family ties with his wife, children, parents, siblings and his wife's family, who are citizens and residents of Afghanistan. I have given considerable weight to Applicant's service to the United States forces in Afghanistan under combat conditions and during critical operations. His commitment and loyalty to the United States is noted, but it is not outweighed by his familial obligations and loyalty to those closest to him, who reside in Afghanistan. It is too great a burden to expect him to resolve a conflict of interest in favor of the United States instead of his family. The heightened risks raised by familial ties in Afghanistan continue to raise security concerns under Guideline B, foreign influence and are unmitigated.

Applicant did not mitigate his deliberate failure to disclose derogatory employment information on his 2016 e-QIP. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guideline B, foreign influence, and Guideline E, personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge