



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-05100
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Jacob T. Ranish, Esquire

12/21/2015

Decision

HOGAN, Erin C., Administrative Judge:

On April 8, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline B, Foreign Influence. The action was taken under Executive Order 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 after September 1, 2006.

On April 21, 2015, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 1, 2015. I was assigned the case on July 30, 2015. On September 11, 2015, a Notice of Hearing was issued, scheduling the hearing for October 5, 2015. The hearing was held as scheduled. During the hearing, the Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4. Department Counsel’s List of Government Exhibits was marked as Hearing Exhibit (HE) I. The Government presented a document citing several U.S. Government sources regarding the nature of the Russian government. He requested administrative notice be taken of the document.

Applicant did not object and the Administrative Notice document was marked as HE II. Applicant testified, called one witness and offered 13 exhibits which were admitted as Applicant Exhibits (AE) A – M. The record was held open until October 19, 2015, to allow Applicant additional time to submit additional documents. He timely offered additional documents, which were marked and admitted as AE N - AE V. Department Counsel's response to Applicant's post-hearing exhibits is marked as HE III. Applicant Counsel's response to Department Counsel's Response is marked as HE IV. On November 16, 2015, I reopened the record to allow the Government to provide copies of the all documents referenced in his Administrative Notice memorandum (HE II). The Government provided copies of all the documents on December 4, 2015. I marked the documents as HE V. The transcript (Tr.) was received on October 13, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his response to the SOR, Applicant admits all SOR allegations with the exception of SOR ¶ 1.c, which he denies.

Applicant is a 62-year-old Department of Defense contractor seeking to maintain a security clearance. He runs his own business which is organized as a C-corporation. He requires a security clearance because he contracts with several military organizations. He is a high school graduate. He served on active duty in the United States Navy from May 1974 to July 1979. He is single and has no children. (Tr. at 31-32, 60-63; Gov 1)

Financial Considerations

Under the Financial Considerations concern the SOR alleges Applicant failed to file and pay his federal income tax returns for tax years 2011 and 2012 (SOR ¶ 1.a); his state tax returns in 2011 and 2012 (SOR ¶ 1.b); and that he has a \$500 state tax lien pending against him for tax year 2006 (SOR ¶ 1.c). Applicant listed on his security clearance application, dated November 15, 2013, that he was about three years behind on his taxes. He also volunteered during his background investigation interview on December 16, 2013, that he owes state and federal government taxes for tax years 2011, 2012, and 2013. During the hearing, Applicant also admitted that he had not filed his state and federal income tax returns for tax years 2013 and 2014. (Tr. 53, 68; Gov 1 at 23-24; Gov 4 at 3) Applicant's failure to file tax returns for tax years 2013 and 2014 was not alleged in the SOR. They will be considered under the whole-person factors and matters in mitigation rather than as an alleged security concern.

Applicant's mother passed away in 2007. Thereafter, his father's health began to decline. Applicant took care of his father until his death in 2010. His father spent the last year of his life in a nursing home after falling. As his father's health care expenses grew, Applicant used his own income to pay his father's bills. Applicant admits he neglected his own affairs taking care of other people's needs. He also managed a

garage that his father and his father's siblings inherited from his grandfather. The 2009 - 2010 timeframe was very stressful for Applicant. (Tr. 39-42; Response to SOR; Gov 4) In February 2010, Applicant was diagnosed with severe sleep apnea. Applicant testified that prior to this time he was depressed and suffered from memory loss. He said his life changed when he received treatment for his sleep apnea. (Tr. 43; Gov 4; AE J-K)

Applicant was responsible for managing his father's estate after he passed away. He testified that he just couldn't look at the paperwork. He was grieving for his father and felt tremendous guilt about having to put him in a nursing home. He was late on filing income taxes for tax years 2011 - 2014. He claims had it not been for this hearing, he would not have "come out of it." Applicant initially hired a bookkeeper and then a tax attorney on September 28, 2015, to prepare and file his taxes. (Tr. 45, 51-52, 71, 85; AE H)

Applicant filed his federal income tax returns for tax years 2011 – 2014 on September 25, 2015. On that same date, he paid all of the taxes owed with the exception of tax year 2012. (AE A – AE G) His bookkeeper and his tax attorney advised him to wait until he learns what penalties the Internal Revenue Service (IRS) is going to impose because of his late filing. Applicant incurred a large tax debt that year because he inherited money from his father's estate, to include a portion from the sale of the garage owned by his father and his father's siblings. The tax attorney also advised that he will work with the IRS to enter into a payment program to pay off this large tax debt. (Tr. 52-55)

The \$500 tax lien alleged in SOR ¶ 1.c was the result of Applicant's failure to complete a form to submit to the state indicating whether or not his business had sales taxes. Business owners are required to complete the form each year even if the business did not have sales taxes. Applicant said the lien filed against him was the result of his failure to complete and submit forms. He satisfied the lien on November 9, 2012. (Tr. 57-58; AE I)

Applicant filed his state income tax returns for tax years 2011 – 2014. Applicant only owed the state for tax year 2012. For tax year 2012, Applicant owes \$14,695. He is still waiting to see whether or not a penalty is going to be imposed before he begins to resolve the state tax debt. (Tr. 68 - 69; AE N – AE F)

Applicant works on his paperwork every day. A bookkeeper and an accountant also help with his business affairs. He has no additional delinquent debts. (Tr. 55-58; Gov 2; Gov 3)

Foreign Influence

Applicant met Ms. A., a young woman from Russia, on an Internet chat room for aspiring writers. He has never met her in person. He has contact with her at least once a month, but sometimes it could be once every three months, usually through e-mail or skype. The relationship is not sexual. When Ms. A was a student, Applicant gave her

\$1,500 because she needed it to stay in school. She intends to pay him back. Ms. A writes for a newspaper. Her focus is on animal rights. Her full-time job is for a company that purchases raw materials for manufacturing goods. He did not know the specifics of Ms. A's job. (Tr. 33-38, 73, 75)

Applicant does not know if anyone in Ms. A's family works for the Russian military or for the Russian government. Ms. A does not know what Applicant does for a living. The last time Applicant had contact with Ms. A was last week. Ms. A lives with her boyfriend. Applicant was not able to provide specifics about him. (Tr. 75-76, 92-93)

Applicant testified that he likes to make people's lives better. He is single and does not need money. He takes things for what they are. He believes in a person until they give a reason not to believe in them. (Tr. 75-76) Miss A does not know Applicant occasionally works for the U.S. military. Applicant doesn't tell people what he does for a living and that he requires a security clearance because it keeps him out of trouble. (Tr. 92-93)

Administrative Notice – Russia

Russia is one of the leading state intelligence threats to U.S. interests, based upon their capabilities, intent, and broad operational scope. Russian intelligence services continue to target U.S. and allied personnel with access to sensitive computer network information. Russia seeks data on advanced weapons systems and proprietary information from U.S. companies and research institutions that deal with energy, finance, the media, defense, and dual use technology. Russia's Ministry of Defense is establishing its own cyber command, which will be responsible for conducting offensive cyber activities, including propaganda operations and inserting malware into enemy command and control systems.

Russia's intelligence services are conducting a range of activities to collect economic information and technology from U.S. targets. Russia remains one of the top two most capable and persistent intelligence threats and aggressive practitioners of economic espionage against the U.S. Non-cyberspace collection methods include targeting of U.S. visitors overseas, especially if the visitors are assessed as having access to sensitive information.

Russia has significant human rights problems. The U.S. State Department have reported specific incidents of human rights abuses to include: restrictions on civil liberties as the government continues its crackdown on dissent against Putin's presidency; government discrimination against racial, ethnic and religious minorities, and homosexuals; denial of due process in politically motivated cases; allegations of torture and excessive force by law enforcement; life-threatening prison conditions; interference in the judiciary and the right to a fair trial; restrictions on freedom of speech and press; restrictions on free assembly and association; widespread corruption; violence against women; and government failure to prosecute or punish most officials who committed serious abuses.

(All administrative notice facts can be found in HE II and HE V.)

Whole-person Factors

Over the past couple years Applicant has given a lot of his money away. He inherited half of the his father's house. It sold for \$155,000. His share of the inheritance was \$75,000. He inherited about \$235,000 from the sale of the garage that his father's sibling owned. Applicant has given away about \$160,000 of his inheritance. He has about \$180,000 remaining. (Tr. 67-68). Applicant gave one individual a truck. He gave a single mother a car and helped maintain the car when she could not afford to maintain it. Before it was sold, he rented his father's house to a family who lost their house in a fire. When the family moved out, he gave them most of the furniture because the family had nothing. He paid a young woman's tuition for her last semester in law school. (Tr. 46-49; AE L)

Mr. W testified on Applicant's behalf. Mr. W is a married to Applicant's cousin. He testified Applicant is one of the most honest people he knows and is a very good person. Applicant is very generous. He has given Mr. W two vehicles and his father's cuff links. Applicant refused to let him pay him anything for it. Mr. W said Applicant recently gave a boat to someone. Applicant gives things away to people because he feels good about it. (Tr. 96-97)

Twelve individuals wrote character letters on Applicant's behalf. (AE M; AE U) The president of the company sponsoring Applicant for a clearance recommends Applicant for a security clearance. He has known the applicant for two years. He states that Applicant is an honorable and trustworthy person. He receives stellar reviews and is mindful of budgeting. As the assistant facility security officer of his company, he has a thorough understanding of the responsibility bestowed on clearance holders. He believes Applicant is an excellent candidate for a security clearance. (AE M at 2)

Others describe Applicant as ". . . an extremely knowledgeable, dependable, kind, patient, and effective presenter." (AE M at 4) "He goes above and beyond with his efforts." (AE M at 3) He is ". . . a man of great character and action." who "...always conducts himself professionally and with great integrity." (AE M at 6) The vice-president of another company, who has worked with Applicant since 2003 states: "He has always performed above and beyond the call of duty and has been asked back virtually everywhere we have sent him. He is one of the most honest and trustworthy contractors we know out of a database of over 5,000." He believes Applicant possesses the highest caliber of integrity, honesty, and maturity and strongly support his selection for the highest level security status. (AE U)

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 must be considered when determining 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 access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 F, Financial Considerations

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

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); AG ¶ 19(c) (a history of not meeting financial obligations); and AG ¶ 19(g) (failure to file annual Federal, state or local income tax returns as required or the fraudulent filing of the same) apply to Applicant's case. Applicant did not file his federal and state tax returns for 2011 and 2012. A state tax lien was also entered against Applicant for failing to pay a debt. Applicant has the means to pay these tax debts, however, health issues and grief over his father's passing made him unable to file the returns.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with their creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage their finances in such a way as to meet their financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

AG ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control) applies because Applicant recognized that he needed assistance with filing his taxes and hired an accountant to help him file his taxes for tax years 2011 – 2014. All tax debts are resolved with the exception of tax year 2012. Applicant has the money to pay this debt, but based on the advice of his accountant, they are waiting to see the amount of penalty the IRS will impose because of his late filing. He has no other delinquent accounts. His tax problems are being resolved and his current financial situation is under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant paid the state lien that was alleged in SOR ¶ 1(c). He has filed his state and federal tax returns for tax years 2011 – 2014. All taxes are paid with the exception of tax year 2012. His accountant is waiting for the IRS to indicate the penalties to be assessed for this tax year. Once that is determined, Applicant will enter into a repayment plan for tax year 2012.

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline indicates two conditions that could raise a security concern and may be disqualifying AG ¶ 7 in this case:

- (a) contact 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 sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

Applicant befriended Ms. A, a Russian citizen, on an internet site for aspiring writers. They communicate through e-mail and skype. His communications with Ms. A can range from every couple months or once a week. He loaned her \$1,500 so that she could stay in school. Applicant has frequent contact and a close relationship of affection with Ms. A. The nature of the Russian government and the fact Ms. A is a citizen of and resides in Russia, establishes a heightened risk of potential foreign exploitation, inducement, manipulation, pressure or coercion in order to obtain classified information or sensitive documents. Applicant's relationship with Ms. A also creates a potential conflict of interest between Applicant's obligation to protect sensitive information and technology and his desire to help Ms. A by providing that information.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government. AG ¶¶ 7(a), and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns 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 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 interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

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

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

I find AG ¶¶ 8(a) and 8(b) apply to Applicant's case. Applicant and Ms. A share a common interest in writing, they eventually became friends through their participation on a web-site for aspiring writers. It does not appear Ms. A works for the Russian government. She is not aware that Applicant has a security clearance and has access to classified information because he never discusses his job with her. Through his relationship with Ms. A, it is unlikely that he will be placed in a position to choose between helping Ms. A as opposed to U.S. interests. Applicant was born and raised in the U.S. He has never traveled to Russia and Ms. A has never visited him. Applicant has deep and longstanding relationships and loyalties in the U.S. I am confident that he can be expected to resolve any conflict of interest in favor of U.S. interests.

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(a):

(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 considered the favorable recommendations of Applicant's friends and co-workers. I considered that Applicant has taken active steps to resolve his tax problems. I considered that he has no other delinquent debts aside from the tax debts. Aside from the tax issues, Applicant is financially stable. Security concerns under financial considerations are mitigated.

Applicant's relationship with Ms. A, Russian citizen, while not casual and infrequent, does not rise to the level that would make him vulnerable to coercion. His longstanding ties in the United States indicate Applicant can be expected to resolve any

potential conflict of interest in favor of the U.S. government. Security concerns under foreign influence 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 2.a – 2.b:	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. Applicant is warned that his failure to resolve his 2012 tax debt and failure to file and pay his state and federal taxes in the future will result in the revocation of his security clearance.

ERIN C. HOGAN
Administrative Judge