

KEYWORD: Foreign Influence; Criminal Conduct; Personal Conduct

DIGEST: Applicant's one-time contact with his sister, a resident citizen of Lebanon, in the last 31 years reduces is potential for foreign influence to a very manageable level that does not render him a security risk. His criminal conduct is mitigated by his character evidence and the passage of about 15 years without recurrence of criminal behavior. However, his character evidence is insufficient to overcome the deliberate omission of the 1992 felony charge and the 20 debts (over 180 days delinquent) from his security form in November 2004. Clearance is denied.

CASENO: 07-00017.h1

DATE: 09/19/2007

DATE: September 19, 2007

In re:)	
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SSN: -----)	ISCR Case No. 07-00017
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
PAUL J. MASON**

APPEARANCES

FOR GOVERNMENT
Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant's one-time contact with his sister, a resident citizen of Lebanon, in the last 31 years reduces his potential for foreign influence to a very manageable level that does not render him a security risk. His criminal conduct is mitigated by his character evidence and the passage of about 15 years without recurrence of criminal behavior. However, his character evidence is insufficient to overcome the deliberate omission of the 1992 felony charge and the 20 debts (over 180 days delinquent) from his security form in November 2004. Clearance is denied.

STATEMENT OF CASE

On March 5, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) to the Applicant indicating that based on foreign influence (Guideline B), criminal conduct (Guideline J), and personal conduct (Guideline E), DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On March 22, 2007, Applicant provided a typewritten response to every factual allegation of the SOR. This typewritten answer was notarized on March 23, 2007, and received by DOHA on March 27, 2007. Applicant also furnished an undated handwritten response (answers to each allegation written on the SOR) that was received by DOHA on April 23, 2007.

On June 29, 2007, this case was assigned to me. On July 10, 2007, this case was scheduled for hearing on August 1, 2007. The Government submitted four exhibits (GE), and Applicant submitted one exhibit (AE). All exhibits were admitted in evidence. Testimony was taken from Applicant. The transcript (Tr.) was received on August 10, 2007. I received two character exhibits after the hearing between September 6 and September 8, 2007. Even though the exhibits were not submitted by August 16, 2007,¹ Department Counsel stated she had no objection to exhibits being admitted in evidence. The two character exhibits are admitted in evidence.

RULINGS ON PROCEDURE

At the hearing, the Government moved to amend subparagraph 2.b. by deleting the words "for striking your spouse in the head/face with a hammer." Pursuant to E3.1.17. of the Directive, the motion was granted. (Tr. 79) The allegation shall read "On or about June 12, 1992, you were arrested in [county], [state] and charged with aggravated battery, a felony. On June 28, 1992, the charge was dismissed."

FINDINGS OF FACT

¹ Applicant was advised on page 69 of the transcript (Tr. 69) of the time period he had to submit additional exhibits..

Applicant is 48 years old and employed by a defense contractor. He is married with three children. He was born in Lebanon in April 1959. He has been a resident of the United States since approximately 1976. He received his US citizenship in March 1983.

The SOR contains allegations addressing foreign influence, criminal conduct, and personal conduct. Applicant admitted his 52-year old sister is a resident citizen of Lebanon as alleged under foreign influence (Guideline B). Applicant admitted subparagraphs 2.a and 2.c. In his typewritten answer (March 22, 2007), Applicant admitted subparagraph 2.b. (including the fact that the aggravated battery was a felony), but noted in the response that the reference in the allegation about striking his wife with a hammer was incorrect. In his handwritten answer to subparagraph 2.b., he simply denied the entire allegation. At the hearing, Applicant stated his daughter assisted him in the preparation of his typed answer, and he reread the answer before having it notarized. Also, at the hearing, Applicant recalled an undercover police officer (not a shoplifter) was in his store. Applicant shoved the officer against a newsstand when the officer would not leave the store. He was arrested and charged with aggravated battery. After his arrest, he hired a lawyer. He did not recall having to return to court. Though he recalled being arrested for aggravated battery (Tr. 39), he testified he did not believe he had been charged with a felony. (Tr. 44) I find Applicant was arrested for aggravated battery, a felony.

Applicant denied he intentionally omitted any information (subparagraphs 3.a., 3.b., and 3.c.) from his security clearance application (date stamped on the first page November 3, 2004) he signed on November 9, 2004.

Foreign Influence. Applicant's sister was born in Lebanon (GE 1) in August 1955. After spending her first 14 years in her birth country, she married and moved to the Ivory Coast of Africa where she remained for about 35 years. She also gave birth to four children. Three of the four children are now US citizens. The fourth child returned with Applicant's sister to Lebanon about three years ago. While she was in Africa, she and her husband owned a shoe factory, though she is not certain of the size of the factory. Applicant's sister is currently unemployed in Lebanon. Applicant has never contacted his sister directly. However, he gets information about her through her daughter who is a US citizen. The last time he actually had face-to-face contact with his sister was about 12 years ago after their father passed. (Tr. 34) Applicant has never provided monetary support for her. (Tr. 35)

According to GE 1, Applicant's parents are deceased. Five of Applicant's seven siblings are US citizens. Applicant has been married to his wife since 1986; she became an US citizen in 1997. They have three children, all born and living in the US.

Criminal Conduct. On December 18, 1990, Applicant and his wife began arguing in front of guests. His daughter interceded. Applicant struck his wife and daughter (subparagraph 2.a.). The police were called and arrested Applicant for battery of his wife and daughter. His wife had her charges and her daughter's charges dropped.

On November 22, 2001, Applicant was arrested for domestic battery (subparagraph 2.c.), A misdemeanor. During a religious holiday known for fasting and sacrifice, Applicant accused his wife of talking about a forbidden subject in his presence. He struck her and was charged with battery; the battery charge was dismissed on condition he complete 12 hours of anger management. Upon

completion of the classes, the charges were dropped. (Tr. 45) On June 12, 1992, Applicant testified he was in his store when an undercover officer tried to sell him a video. The officer would not leave the store, and Applicant pushed him against a newsstand inside the Applicant was arrested for aggravated battery, a felony (subparagraph 2.b.). On June 28, 1992, the charges were dismissed.

Personal Conduct. On November 9, 2004, Applicant signed an security clearance application (SCA) certifying the information within the SCA was true and accurate. Applicant deliberately falsified subparagraph 3.a. by failing to disclose he had been charged with a felony in response to question 21. *See*, SOR, 2.b., Applicant's typed answer, and GE 2. Applicant's explanation that he did not know he had been charged with a felony is not credible due to his typed answer to subparagraph 2.b., that he reread and had notarized, where he admitted the criminal offense was a felony.

Subparagraph 3.b. (question 26 of this SCA) requires information concerning arrests, charges and convictions in the last 7 years from November 9, 2004, the date Applicant signed the SCA. Applicant answered "No." Because subparagraph 2.c. occurred outside the seven year window, his negative answer is correct, and a favorable finding is warranted.

Subparagraph 3.c. (question 38 of his SCA) requires disclosure of information about debts in the last 7 years that are over 180 days delinquent. Applicant answered "No" to the question, falsely asserting he had no debts over 180 days delinquent. GE 3 and 4 show that when he signed the SCA in November 2004, he had 20 debts over 180 days delinquent. In his typewritten answer to the SOR, Applicant indicated he had taken steps to resolve the debts. At the hearing, Applicant conceded he knew about one or two debts being over 180 days delinquent at the time he furnished the SCA, but he did not think the overdue debts were important. Applicant provided other explanations for the debts, including that some debts belonged to the business, and his wife paid some of the debts. The lack of documentation² undermines and weakens Applicant's claims for omitting the information. I find he deliberately omitted material information from the security form in November 2004.

From 1987 to 1993, Applicant owned a convenient store that closed when he ran out of capital to maintain the store. From 2001 to 2004, he operated a used car business that terminated when he no longer had the capital. From October 2004 to the present, Applicant has been employed as an interpreter for a defense contractor. Applicant has performance evaluations but declined to furnish them in the record.

A military official indicated in an undated letter (dated August 27, 2007 in the lower right-hand corner of the exhibit) that he worked with Applicant in linguistics and interpreting for October 2006 through January 2007. In that period, the official carefully observed Applicant's professionalism and excellent teaching capabilities. Another military official stated by letter dated June 15, 2005 that in the period from April 1, 2005 through July 15, 2005, that through his steadfast devotion to his linguistic assignments, lives have been saved.

² Applicant was furnished additional time to submit information about the status of the debts. While two character statements were admitted in evidence, no information concerning the debts was provided.

I have taken official notice of the US Department State documents, including consular information sheets, terrorism reports, and human rights reports. These reports indicate Lebanon has a long history of civil unrest. After having experienced civil war between the early 1970s and 1992, the country experienced a relative degree of stability until the early 2000s when the country was again struck by internal strife. Currently, the government is forcefully trying to expel one of two internationally recognized terrorist organizations that continue to destabilize the parliamentary democracy.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant’s security suitability.” ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Foreign Influence (FI)

Foreign contacts and interests may be a security concern if the individual has divided loyalties, and may be manipulated into helping a foreign entity at the expense of the US.

Criminal Conduct (CC)

Criminal behavior raises serious questions about a person’s judgment and ability to comply with the law, rules and regulations.

Personal Conduct (PC)

Exhibiting poor judgment or dishonesty during a security investigation raises doubt concerning a person’s judgment and trustworthiness.

CONCLUSIONS

Foreign Influence (FI). The familial connection Applicant has to his sister invokes FI disqualifying condition 7.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 individual's desire to help a foreign person, group, or country by providing that information*) due to the sibling relationship between Applicant and his sister, a resident citizen of Lebanon. This connection could create a potential for conflict between Applicant's obligations as an interpreter and a potential desire to help his sister, or a group or a country.

The record conclusively shows that Applicant's contacts with his older sister have been minimal over the years at best. In the last 31 years, he has had no communication or contact with her except for the face-to-face contact they had at their father's funeral 12 years ago. While there has been no change in direct communication with his sister in the last three years, Applicant receives updates about his sister's health status via contacts with her daughter (a US citizen) living in the midwestern part of the US.

Applicant has been a US citizen for the past 27 years. In that time, he has owned a convenience store for six years and a used auto lot from 2001 to 2004. Currently, he is a linguist/cultural advisor for a defense contractor. He has held that position since October 2004. Five of Applicant's seven siblings are US citizens. Applicant has been married to his US wife since 1986. All three of Applicant's children were born in the US. Considering the total lack of meaningful or emotional contact between Applicant and his sister, FI mitigating condition (MC) 8.c. (*contact or communication with the foreign citizens is so casual and infrequent that there is little likelihood it could create a risk for foreign influence or exploitation*) applies. Applicant's 31-year-history of living and working in the US provides additional justification for the application of FI MC 8.c. I find for Applicant under the FI guideline.

Criminal Conduct (CC). Behavior that results in a violation of the criminal law constitutes conduct cognizable under this guideline. Applicant committed criminal conduct in 1990, 1991 and 1992. In December 1990, he struck his wife and daughter during an argument. In November 2001, he struck his wife again during a quarrel. Even after attending 12 weeks of anger management where he learned how to control his temper, he committed similar conduct in June 1992, when he hit an undercover police officer. Applicant's crimes fall within CC DC 30.c. (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*) Though Applicant committed a similar offense less than eight months after striking his wife in November 2001, the passage of at least 15 years since the 1992 offense without criminal or irresponsible behavior, I conclude Applicant has met his ultimate burden of persuasion under the CC guideline.

Personal Conduct (PC) A security clearance aspirant has a duty to be honest during all phases of the security investigation. That includes furnishing forthright information when filling out the SCA, when providing a statement, or when supplying some other requested information. Applicant did not provide honest answers when he filled out the security form in November 2004. His responses

to subparagraphs 3.a. and 3.c. fall within PC DC 16.a. (*deliberate omission of relevant facts from any personnel security questionnaire used to determine security clearance eligibility*) He provided two explanations for not answering question 21 (subparagraph 3.a.) honestly. The only explanation that I give the most credence to is his typed answer (that his daughter helped to complete) to subparagraph 2.b when he admitted he had been charged with a felony and also admitted he did not disclose the felony charge because the offense was dropped. His admission that the charge was a felony raises a reasonable inference he knew he had been charged with a felony at the time he filled out the SCA in November 2004. I find against Applicant under subparagraph 3.a. of the SOR.

Subparagraph 3.b. is found in Applicant's favor as Applicant's most recent offense is outside the time-window of the question.

Subparagraph 3.c. is found against Applicant. In November 2004, when furnished a response to question 26 of his SCA, he testified that he knew he had debts over 180 days delinquent. Though GE 4 and AE 1 indicate that the creditor in subparagraph 3.c.(6) was resolved through settlement, Applicant provided no documents to support his claims that any of the other creditors have been paid or settled at the time he completed the SCA. Subparagraphs 3.a., 3.c., and the personal conduct guideline are found against Applicant.

The PC guideline contains two mitigating conditions that could potentially remove the security concerns caused by Applicant's dishonesty. PC MC 17.a. (*the individual made prompt, good-faith efforts to correct the omission, before being confronted with the facts*) is not applicable because Applicant still denies he deliberately falsified question 21 about being charged with a felony. Although Applicant acknowledged some of the debts were over 180 days delinquent when he completed his SCA, he has provided insufficient evidence in mitigation to entertain the notion that his dishonesty will not recur. PC MC 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressors, circumstances, and such behavior is unlikely to recur*) is not applicable. In sum, though Applicant's statements from two military officials provided positive weight in mitigating the criminal conduct, the character evidence does not adequately mitigate his deliberate omission of relevant and material information from his SCA. Subparagraphs 3.a. and 3.c. are found against Applicant.

In reaching my findings under the specific guidelines, I have also considered those findings in the context of the whole person model. Applicant knew he had debts over 180 days delinquent, yet, he answered "No" because he did not think the debts were important. The poor judgment Applicant displayed in providing false information about his criminal record and his financial problems on his security form has not been adequately mitigated under the PC guideline.

FORMAL FINDINGS

Paragraph 1 (Foreign Influence, Guideline B):

FOR THE APPLICANT.

Subparagraph 1. a.

For the Applicant.

Paragraph 2 (Criminal Conduct, Guideline J):

FOR THE APPLICANT.

Subparagraph 2.a.

For the Applicant.

Subparagraph 2.b.

For the Applicant.

Subparagraph 2.c.

For the Applicant.

Paragraph 3 (Personal Conduct, Guideline E):

AGAINST THE APPLICANT.

Subparagraph 3.a.

Against the Applicant.

Subparagraph 3.b.

For the Applicant.

Subparagraph 3.c.

Against the Applicant.

3.c.(1) through 3.c. (20)

Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it not is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Paul J. Mason
Administrative Judge