



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 07-00737
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)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: David P. Price, Esquire

March 11, 2008

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's request for a security clearance is denied.

On November 4, 2005, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance for his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request. On July 26, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

addressed in the Revised Adjudicative Guidelines (AG)² under Guideline B (foreign influence), Guideline E (personal conduct), and Guideline J (criminal conduct).

Applicant timely responded to the SOR and requested a decision without a hearing. On August 27, 2007, pursuant to paragraph E3.1.7 of Enclosure 3 of the Directive, Department Counsel timely requested a hearing to resolve this matter. The case was assigned to me on November 2, 2007, and I scheduled a hearing to be held on December 11, 2007. The parties appeared as scheduled. The government presented eight exhibits (Gx. 1 - 8) and two witnesses. Department Counsel also asked that I take administrative notice of the information contained in a pre-hearing submission submitted on or about October 23, 2007, and included in the record as Judicial Exhibit (Jx.) I. Applicant testified in his own behalf and offered 16 documents sorted by subject matter and admitted as Appellant's Exhibits (Ax.) A - D. DOHA received the transcript (Tr.) on December 28, 2007.

Findings of Fact

Under Guideline E, the government alleged in SOR ¶1.a that Applicant deliberately falsified his response to e-QIP question 11 ("Your Employment Activities") by omitting his employment at a gas station and convenience store in March 2000. In SOR ¶1.b, the government alleged Applicant deliberately falsified his response to e-QIP question 23 ("Your Police Record") by answering "no," thereby omitting the fact he was arrested in March 2000 and charged with attempted obstruction of justice and unlawful sale of alcohol to a minor. He pleaded guilty to the charges and was placed on 12 months probation and fined. In SOR ¶1.c, the government alleged Applicant deliberately gave a false material statement during an October 31, 2005, interview with a U.S. Army investigator by denying he had ever been arrested or charged with any crime. In SOR ¶1.d, the government alleged Applicant also deliberately gave a false material statement when during the same interview when he omitted his March 2000 gas station employment. In SOR ¶1.e, the government alleged Applicant gave a false name to a peace officer during his March 2000 arrest.

Under Guideline J, the government alleged in SOR ¶2.a the arrest Applicant omitted in response to e-QIP question 11. In SOR ¶2.b, the government alleged his deliberate falsifications of material fact alleged in SOR ¶¶1.a - 1.d constituted criminal conduct in violation Title 18, United States Code, §1001.

Under Guideline B, the government alleged in SOR ¶3.a that Applicant's brother-in-law is a retired Egyptian Army officer, who is a citizen of and resides in Egypt. Under SOR ¶3.b, the government alleged Applicant traveled to Egypt in 2004, but that his U.S. passport does not have a visa issued by the Egyptian government.

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Applicant admitted, albeit with explanation, all of the SOR allegations. His responses to the Guideline E allegations admit the facts alleged but deny the intent required to make his statements disqualifying. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant was born in Egypt in May 1951. He came to the United States in 1977 after receiving a college degree in accounting, and he became a U.S. citizen in May 1983. Applicant married his wife, who was also born and raised in Egypt, in July 1981. She became a U.S. citizen August 1989. Applicant and his wife have one child, age 24, who was born and raised in the United States. (Gx. 1)

Applicant's parents are deceased, but had come to the U.S. and were naturalized citizens when they died. His three brothers and one sister came to the U.S. before he arrived, and all are naturalized U.S. citizens. Appellant's wife has one brother who is a citizen of and still resides in Egypt. He is a retired Egyptian Army officer with whom Applicant speaks about once a year. Applicant last saw his brother-in-law in 2004, when the latter came to the U.S. to see Applicant's wife. (Tr. 114 - 115) Applicant has no personal contacts or financial interests in Egypt, and he has returned there twice since 1977, once in 1981 to get married and most recently in 2004 to visit a seaside resort. He used his U.S. passport for all of his foreign travel and does not hold a foreign passport. (Tr. 115 - 117)

Egypt and the United States maintain friendly relations. The U.S. provides Egypt a great deal of financial and military support. Both countries are closely aligned in the global war on terror (GWOT) and in efforts to maintain stability in the Middle East. Egypt has a nominally democratic government consisting of an executive branch, a bicameral legislature, and an increasingly independent judiciary. However, one party has held an overriding majority in the government since 1978, and only recently were open elections held. The U.S. State Department has observed that Egyptian citizens have no meaningful opportunity to change their government. While Egypt has been aggressive in counterterrorism efforts, its domestic human rights record has been poor. Law enforcement and executive organizations have employed arbitrary arrests and torture in the name of rooting out terrorists and other enemies of the state. The results include deaths while in custody, disappearances while in custody, and suppression of anti-government expressions. The primary threat of intelligence gathering and espionage against the United States from Egypt results not from the Egyptian government, but from the activities of terrorist organizations trying to operate there. (Jx. 1)

Applicant's Egyptian name can be difficult for Americans to either understand or pronounce, so he has "Americanized" his name as "-----." However, he has not legally changed his name, and his Egyptian name is the only name that appears on his passport. (Gx. 6) It is also the only name he listed on his e-QIP even though e-QIP Section 5 specifically asked him to list other names he has used. (Gx. 1)

In March 2000, Applicant was working as a cashier at a gas station convenience store. It was one of three jobs he held at the time as he and his wife were trying to resolve some financial difficulties. On March 11, 2000, he sold beer to an underage female who turned out to be working for the police as part of a sting operation. In order

to complete the citation against Applicant, a uniformed officer asked him for some identification. Applicant stated he did not have his driver's license or other form of identification with him, so the officer asked for his name, address, phone number, and social security number. Applicant stated his name was Sam Nelson, but he did not explain that it was not his legal name. Additionally, the rest of the personal information he provided was false. He did not want to provide accurate information because he was afraid of losing his job. He was then given a citation for selling alcohol to a minor under 21. (Gx. 4; Tr. 30 - 41, 95 - 100, 121 - 129)

On March 13, 2000, the police returned to the convenience store after they determined he had tried to deceive them. He immediately produced his driver's license with the information the police had asked for the day before. He was arrested, handcuffed and taken to jail, where he was charged with obstruction of justice. Through a plea agreement, Applicant pleaded guilty to both charges, was fined and placed on probation for 12 months. (Gx. 3) After Applicant completed the terms of his sentence, he petitioned to have the record of his arrest expunged. (Ax. D)

In October 2005, Applicant was hired by a defense contractor for work as an Arabic translator for military personnel at Guantanamo Bay, Cuba, and for U.S. military forces in Iraq. His work required a security clearance, for which he applied in November 2005 by submitting an e-QIP. In response to e-QIP questions in Section 11 ("Your Employment Activities"), he did not list his employment at the convenience store in March 2000. He explained in his answer to the SOR and in his testimony that he thought he did not have to list any employment less than 90 days in duration. (Answer to SOR; Tr. 106 - 107) In response to e-QIP questions in Section 23 ("Your Police Record") he omitted the information about his convictions for selling alcohol to a minor and for obstruction of justice. Applicant has explained he either did not understand the question or thought that, because his record had been expunged he did not have to disclose the information. (Tr. 103 - 106)

In October 2005, Applicant was interviewed by a U.S. Army counterintelligence agent as part of a background investigation to determine whether Applicant should be given a clearance so he could work as a Category 2 linguist overseas. Applicant failed to disclose to the agent his March 2000 employment at the convenience store or his convictions for obstruction and selling alcohol to a minor. In his interview, he denied any adverse involvement with law enforcement. (Gx. 5; Tr. 47 - 62)

Applicant worked as a translator in Guantanamo Bay, Cuba and in Iraq until July 2007. His performance at both locations was excellent. Several members of the military chain of command where he was assigned spoke highly of his dedication and reliability. (Ax. B) Before working for a defense contractor, he worked in various social services jobs and worked a second job at a home for the mentally challenged. His work in those jobs earned him equally high praise. (Ax. A)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,

and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).³ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, these factor are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations), at AG ¶ 18, and Guideline E (personal conduct) at AG ¶ 15.

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁵ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her 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.⁶

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

Analysis

Foreign Influence. Applicant's contacts overseas may pose a security concern because, as stated in AG ¶6,

[f]oreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, 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 government presented sufficient information to support the allegations in SOR ¶3. Applicant's brother-in-law, a former Egyptian Army officer, still lives in and is a citizen of Egypt. Applicant has had little contact with him since Applicant became a U.S. citizen. Applicant has no other personal or financial interests outside the U.S. and has only returned to Egypt twice since 1977. The facts presented here make applicable the disqualifying condition at AG ¶7(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).

Also applicable are the mitigating conditions at AG ¶8(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.), AG ¶8(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), and AG ¶8(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). From 1981 to the present, Applicant has seen his brother-in-law perhaps three times and only speaks with him at most once a year. Further, all of Applicant's personal and financial interests have been in the U.S. for 30 years. On balance, the security concerns about Applicant's foreign contacts are mitigated.

Personal Conduct.

Applicant's personal conduct may be a security concern because, as stated in AG ¶ 15,

[c]onduct 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.

The government's information supports the allegations that Applicant deliberately falsified his responses to e-QIP questions about his employment and criminal conduct, that he gave false information to the police, and that he tried to mislead an Army investigator by omitting information about his employment history and by denying adverse involvement with law enforcement. As to his omissions from his security questionnaire of employment history and criminal record information, his argument that he misunderstood the questions or thought he did not have to list an arrest that was expunged finances, without more may seem plausible. However, along with Applicant's deliberate attempts to mislead police and an Army investigator, the record reflects a pattern of deliberate dishonesty intended to protect his own interests. Available information makes applicable the disqualifying condition at AG ¶16(b) (deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative).

By contrast, the record does not warrant consideration of any of the mitigating conditions listed in AG ¶17. Applicant did not promptly correct any of the false statements he has made. Nor can his conduct be viewed as minor, because of the government's compelling interest in ensuring it has all of the information needed to make an accurate and fair assessment of a person's suitability for access to classified information. In turn, a key aspect of that suitability is a person's honesty, even when faced with unpleasant or adverse circumstances. Available information shows Applicant will resort to deception whenever faced with adverse personal circumstances. Such conduct bears directly on his trustworthiness, reliability, and judgment. Accordingly, Applicant has failed to mitigate the security concerns about his personal conduct.

Criminal Conduct.

Applicant's criminal conduct may be a security concern because, as stated in AG ¶30,

[c]riminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The government submitted sufficient information to support the allegations that he engaged in criminal conduct in March 2000 and in November 2005. After being convicted in 2000 of trying to impede the state's ability to enforce its laws by deliberately providing false information to the police, Applicant repeated his conduct in 2005 by trying to impede the government's ability to assess his suitability for access to classified information. His conduct in 2000 was a violation of his state's criminal code (Gx. 8), and his conduct his 2005 was a violation of 18 U.S.C. §1001. Available information requires application of the disqualifying conditions in AG ¶31(a) (a single serious crime or

multiple lesser offenses) and AG ¶31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted).

I have also reviewed the mitigating conditions listed in AG ¶32; however, the record does not warrant consideration of any of them. Available adverse information goes directly to Applicant's reliability, trustworthiness, and good judgment. Because the personal references who have recommended Applicant for a position of trust do not appear to have knowledge of the adverse information in his background, the favorable information about his work performance and reliability does not have sufficient persuasive value to overcome the security concerns about his criminal conduct.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines B, E, and J. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶2(a). Applicant is 56 years old and has spent most of his adult life as a productive citizen of the United States since arriving from Egypt more than 30 years ago. His work as a translator in support of the U.S. military has been outstanding. His co-workers, friends, and superiors feel he is reliable and trustworthy. However, he has tried to conceal information the government needs to accurately assess his ability and willingness to protect the national interests as his own. Such dishonesty is not isolated because he had also tried to deceive civilian authorities a few years earlier when faced with misdemeanor criminal charges. His conduct is directly at odds with the fundamental tenets of the personnel security program, in that Applicant has a history of lying to protect his own interests at the expense of the government's compelling interest in protecting classified information. That he has done so even when faced with possible criminal penalties only reinforces the government's concerns. Available information tends to show he will repeat this conduct in the future. Accordingly, significant doubts persist about whether Applicant is suitable for access to classified information. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the national interest.⁷

Formal Findings

Formal findings 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 E:	AGAINST APPLICANT
Subparagraph 1.a - 1.e:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a - 2.b	Against Applicant

⁷ See footnote 6, *supra*.

Paragraph 3, Guideline B:

FOR APPLICANT

Subparagraph 3.a - 3.b:

For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MATTHEW E. MALONE
Administrative Judge