



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



In the matter of:)
)
) ISCR Case No. 18-02265
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

August 27, 2019

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On January 14, 2019 in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on February 13, 2019, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on May 21, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 24, 2019, scheduling the hearing for June 13, 2019. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 and 2, which were admitted without objection, and Hearing Exhibit (HX) I for Administrative Notice. Applicant testified on his own behalf, and presented three documents; which I marked Applicant’s Exhibits (AppXs) A through C, and admitted into evidence. The record was left open

until July 12, 2019, for receipt of additional documentation, but Applicant submitted nothing further. DOHA received the transcript of the hearing (TR) on June 25, 2019.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to China. Department Counsel provided an eight-page summary of the facts, supported by 15 Government documents pertaining to China, identified as HE I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a.-1.d., and 1.f. He denied SOR allegation ¶ 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 43-year-old employee of a defense contractor. He has been employed with the defense contractor since 2007. (TR at page 17 line 5 to page 23 line 24, and at page 27 line 3 to page 28 line 22.) Appellant served in the U.S. Army for five years, achieving the rank of Staff Sergeant, and was deployed to Iraq. (TR at page 24 line 1 to page 27 line 2.) He has held a security clearance since 2002, since joining the Army after “9/11.” (*Id.*) He is married to a naturalized American citizen, and has three native-born American children. (TR at page 19 lines 16-20.)

Guideline B - Foreign Influence

1.a. and 1.b. Applicant’s mother-in-law and father-in-law are citizens of China, but reside in a retirement home in the United States. (TR at page 29 line 20 to page 31 line 11, and at page 34 line 25 to page 35 line 11.) They have “Green Card[s],” and are seeking to become U.S. citizens. (*Id.*) All they know about Applicant’s work is that he is “an Engineer.” (TR at page 30 line 21 to page 31 line 1.) They never worked for the Chinese government, nor were members of the Chinese Communist Party. (TR at page 31 lines 2-8.)

1.c. Applicant’s brother-in-law is a citizen and resident of China. He is an “Engineer,” working for a “power company.” (TR at page 31 line 12 to page 32 line 6.) Applicant has little contact with his brother-in-law, perhaps “once a year . . . during the holidays.” (*Id.*)

1.d. Applicant’s 70-year-old aunt is a citizen and resident of China. He last contacted her about “15/20 years ago.” (TR at page 32 lines 7-18.)

1.e. Applicant is unsure if he has a bank account in China. He visited China in 2000, and deposited about \$3,500 in a bank account to cover his travel expenses. (TR

at page 32 line 23 to page 33 line 19.) His net worth in the United States is about \$2,500,000. (TR at page 21 line 24 to page 23 line 19, and at page 35 line 12 to page 36 line 6.)

1.f. Applicant's wife once had a company that partnered with a Chinese company. That partnership ceased in 2012, about seven years ago. (TR at page 33 line 20 to page 34 line 19, and at 36 lines 8~10.)

Notice

Department Counsel has asked me to take administrative notice about facts regarding China. China poses a great espionage and cyber-attack treat to the United States. It is an authoritarian state, in which the Communist Party is the paramount authority.

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 are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 (EO) 10865 provides that adverse 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

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest

Applicant's in-laws are Chinese nationals, and his wife once had a partnership with a Chinese company. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(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; 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.

Applicant's mother-in-law and father-in-law live in the United States, and are seeking to become U.S. citizens. He has little contact with his other Chinese national relatives. Applicant's wife's business partnership ended seven years ago, and his net worth in the United States is \$2,500,000. Personal Conduct is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant answered his country's call and served in the U.S. Army for five years after 9/11. While he was born in China, he is an American by choice. His closest familial ties are with his wife, children, and parents-in-law, who are American citizens, or seeking to become Americans. His net worth in the United States is extensive. He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence security concern.

Formal Findings

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

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a.~1.f.: 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 national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge