



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



In the matter of:)
)
) ISCR Case No. 19-01666
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Department Counsel
For Applicant: *Pro se*

January 28, 2020

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On December 22, 2017, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). On June 26, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 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) dated June 8, 2017.

Applicant answered the SOR on July 22, 2019, and requested a hearing before an administrative judge. On October 17, 2019, the Government moved to amend the SOR to include one single allegation under Guideline H, Drug Involvement. Applicant responded to the amended SOR on October 22, 2019. The case was assigned to me on November 6, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing that same day, and the hearing was convened as scheduled on December 4,

2019. Applicant responded the Amendment and admitted the allegation. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant offered four exhibits at the hearing, referred to as Applicant's Exhibits A through D, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 12, 2019.

Request for Administrative Notice

The Government requested I take administrative notice of certain facts relating to the Peoples Republic of China (PRC). Department Counsel provided a ten page summary of the facts, supported by twenty-four Government documents pertaining to China. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. (HE-I) 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 is 39 years old. He is married with no children. He has two Master's degrees, one in Business, and the other in Data Science. (Tr. p. 5.) He is employed with a defense contractor as a Software Engineer. He is seeking to retain a security clearance in connection with his employment.

Guideline B – Foreign Influence

Applicant is a native-born American citizen. Both of his parents are from Taiwan. He grew up here and obtained his education in the United States. He married a Chinese woman, who became a naturalized American citizen before he married her.

Applicant's only contact with China is with his mother and father-in-law, who are citizens and residents of China. His mother-in-law was a civil engineer who has now retired. His father-in-law worked in the real estate business and he has recently retired. Neither of them speak English. Applicant's father-in-law has never served in the Chinese military, nor has he worked for the Chinese Government. Applicant visited his in-laws in China as recently as 2018. His in-laws come to the United States to visit Applicant and his wife about once every two years or so. (Tr. p. 34.) Any foreign travel Applicant does to China or elsewhere, he reports to his company security officer.

Applicant's wife is an only child. When her parents pass away, she stands to inherit a two bedroom condominium valued at approximately \$300,000. Applicant nor his wife have any assets of any kind in China, including bank accounts.

Anytime Applicant travels to China he has always informed his security manager and follows all security protocol. Applicant has never been approached, confronted, or contacted by any foreign entity attempting to obtain protected information from him.

Applicant states that he is loyal to the U.S. and that his limited relationships with any foreign resident of China cannot induct him to do anything against the interests of the United States. (Tr. pp. 44 - 46.)

Guideline H – Drug Involvement

In October 2018, during his security clearance interview with an investigator, Applicant admitted that from February 2017 through February 2018, he used marijuana. He explained that as a result of a left knee injury in June 2012, where he dislocated his knee cap, which required surgery, he has continued to have discomfort. Instead of over-the-counter drugs, Applicant chose to use marijuana for relief since it was legalized in the state for recreational use. Applicant stated that in order to purchase marijuana from a dispensary, he had to obtain a prescription from a doctor first. He then purchased the marijuana he used to soothe his knee discomfort. Applicant stated that he is aware that marijuana use is still prohibited under Federal law. He stopped using marijuana before his interview in October 2018, because his medical marijuana card which allowed him for one year to purchase marijuana from a dispensary had expired and he decided not to renew it. At the time Applicant used marijuana, from February 2017 through February 2018, he held a security clearance issued by the Department of Defense. Applicant stated that he never asked anyone at work to determine whether he should or should not use marijuana. He did not report his marijuana use on his security clearance application because he did not see it as an issue. He remembers the last time he used marijuana to have occurred sometime before February 2018.

Applicant began working for his current employer, a defense contractor, in 2001. Over the years, ownership of the company has changed hands, but the Applicant's employment has continued. Applicant is currently a supervisor with over 15 engineers working for him. He explained that he chose to use marijuana because he was doing it on his own personal time and not while he was at work. Applicant expressed that he enjoyed the use of marijuana, but felt that by doing a cost/benefit analysis, the cost to continue using it was too great.

Applicant submitted a Statement of Intent dated June 14, 2019. It indicates that Applicant has not used marijuana since February 2018. It also states that Applicant does not intend to use marijuana in the future and that if he does, his security clearance will be subject to automatic revocation. (Government Exhibit 3.)

A number of letters of recommendation from his Manager, a Project Manager, other professional associates, coworkers, and friends attest to Applicant's excellent work product, good character, integrity, and loyalty to our country. Overall, Applicant is considered to be an invaluable resource to his company. They all, without hesitation, recommend him for a security clearance. (Applicant's Exhibit A.)

Performance reviews of the Applicant for the periods from January 2013 through January 2018, reflects that he receives "high marks" and consistently over achieves and performs beyond expectation. He is also an exceptional team player and has good leadership characteristics. (Applicant's Exhibit C.)

Applicant is an active participant in the community, volunteering for various charity and community outreach events. (Applicant's Exhibit B.)

Applicant has received numerous awards from his employer in recognition of his significant contributions to the work product. (Applicant's Exhibit C.)

Notice

I have taken administrative notice of the following information concerning the People's Republic of China (PRC). Targeting and collection of US political, military, economic, and technical information by foreign intelligence services continues unabated. China is one of the most aggressive collectors of U.S. economic information and technology. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets using removable media devices or e-mail. Chinese actors are the world's most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic security. The nature of the cyber threat will evolve with continuing technological advances in the global information environment. (HE I)

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 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 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. Two 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; 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 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.

Applicant has only two foreign family members, his mother and father-in-law, who are residents and citizens of China. Applicant maintains very limited contact with them, and quite frankly does not speak their language well enough to carry on a conversation. Applicant's ties to his foreign mother and father-in-law in China may pose a heightened security risk for the United States Government. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 and two of them are applicable in this case.

(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; 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 foreign family ties in China raises a prima facie security concern that required the applicant to "present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him." Thus, Applicant bears the burden to establish that his relatives are not vulnerable to influence, coercion, exploitation, or duress. In this case, Applicant carefully explains that his only family in China are his mother and father-in-law. Applicant has no regular contact with them. They know nothing about his job nor do they know that he is applying for a security clearance. Their conversations are minimal, casual, and infrequent at best. His in-laws are not affiliated in any way with any foreign government. Applicant has no other family members or friends or associates of any kind in China.

It is recognized that Applicant is at a higher risk of being targeted for Chinese intelligence gathering since he works for a defense contractor. However, Applicant's family ties are here in the United States. He is a native-born American citizen, who is loyal and dedicated to the American ways. Although he is married to a woman of Chinese descent, she is a naturalized American citizen. Applicant has accomplished

his educational goals, has excelled at work, and has been promoted over the years. He also volunteers in the community in his free time. Thus, it can be assumed that he will continue to place the interest of the U.S. paramount, and always protect the U.S. from any risk of terrorism, and/or any situation that could place the interests of the U.S. in jeopardy. Under the circumstances, Applicant has met this burden and has established two mitigating conditions set forth above under Guideline B.

Analysis

Guideline H - Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia, and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

None of the mitigating factors demonstrate full mitigation. Applicant is not a young and immature engineer, with little or no experience in the defense industry. He is a 37-year-old engineering supervisor, who has worked in the defense industry for the past eighteen years, and has held a security clearance most of that time. He knew or should have known that marijuana use is prohibited by DoD and by anyone who holds a security clearance. To say differently is ludicrous. Applicant has never told his employers that he has been using marijuana. Applicant contends that because he had a prescription for marijuana use, he did not use it illegally. Applicant is wrong. Applicant was entrusted with the privilege of holding a security clearance and is expected to know and understand the rules and regulations that apply to him as a clearance holder.

While holding a security clearance, an individual is held to a higher standard. Applicant admits that he knew that illegal drug use, including the use of marijuana, is prohibited in the defense industry. Furthermore, over the years, Applicant has been privy to numerous security briefings. Given his long history with the defense industry, he knew or should have known that his use of marijuana, even with a “prescription” is prohibited while holding a security clearance. If nothing more, he should have clarified the matter with his security department, when he started using marijuana in 2017, which would have avoided this situation today.

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 Guidelines B and H in my whole-person analysis.

Overall, 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 has mitigated the Foreign Influence security concerns. However, he has not mitigated the Drug Involvement 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
Subparagraphs 1.a, and 1.b:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge