



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



In the matter of:)
)
) ISCR Case No. 21-02605
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

October 20, 2023

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On February 22, 2023, 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 March 12, 2023, and requested a hearing before an administrative judge. (Answer.) The case was previously assigned to another administrative judge, but reassigned me on August 1, 2023. The Defense Office of Hearings and Appeals (DOHA) had issued a notice of hearing on July 11, 2023, scheduling the hearing for August 8, 2023. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 through 3, which were admitted without objection, and Hearing Exhibit (HX) I for Administrative Notice. Applicant testified on his own behalf and called one witness. The record was left open until September 8, 2023,

for receipt of additional documentation. Applicant presented one document, which I marked Applicant's Exhibit (AppX) A and admitted into evidence. DOHA received the transcript of the hearing (TR) on August 21, 2023.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to Taiwan and The People's Republic of China (PRC), but subsequently withdrew the Government's concerns regarding the PRC. (TR at page 40 lines 5~11.). Department Counsel provided a five-page summary of the facts, supported by nine Government documents pertaining to Taiwan, identified as HX 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 all the allegations in SOR. During the course of the hearing, the Government withdrew allegation 1.f. (TR at page 20 line 10 to 21 line 14, at page 28 lines 13~16, at page 29 line 10 to page 30 line 15, and at page 40 lines 12~18.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 64-year-old employee of a defense contractor. He has been employed with the defense contractor since June of 2005. He has held a security clearance since 2008. Applicant has a Ph.D. from an American university. He is married to a U.S. citizen, and has two adult U.S.-born, children. (TR at page 16 lines 4~14, at page 17 line 18 to page 20 line 9, at page 35 line 11 to page 37 line 16, and GX 1 at pages 5, 12, 16~17, 21~22 and 35~36.)

Guideline B - Foreign Influence

1.a. Applicant served as a finance officer, and second lieutenant, in the Taiwanese Army from about 1984 to about June 1986, more than 27 years ago. His military service was mandatory. (TR at page 16 line 15 to page 17 line 17, and GX 1 at page 14.)

1.b. and 1.c. Applicant's parents are citizens and residents of Taiwan. They are farmers. His father is 94 years old, and his mother is 84 years old. Applicant has nearly daily contact with his parents by "video phone." They are unaware of, and uninterested in, any details about Applicant's employment. (TR at page 27 line 11 to page 28 line 12, at page 28 line 17 to page 29 line 9, at page 32 lines 6~15, and at page 37 line 20 to page 38 line 17.)

1.d. Applicant has two brothers who are both citizens and residents of Taiwan. They are 57 and 62 years old, and "run their own cafeteria" in Taiwan. He has limited

contact with his brothers. (TR at page 30 line 17 to page 32 line 5, at page 32 line 19 to page 34 line 15, and at page 38 lines 8~12.)

1.e. Applicant's 60-year-old sister is a citizen and resident of Taiwan. She is a "salesperson for a food company." Applicant has limited contact with his sister. (TR at page 38 lines 13~25, and GX 1 at page 25.)

1.f. As noted above, this allegation has been withdrawn by the Government.

Notice

I take administrative notice of the following facts regarding Taiwan: Taiwan is a democracy led by a president and parliament selected in multiparty elections. The U.S. approach to Taiwan has remained consistent across decades and administrations. We do not support Taiwan independence, but expect cross-Strait differences to be resolved by peaceful means. In recent years there have been multiple cases involving illegal export of U.S. restricted dual-use or military technology to Taiwan or by Taiwanese nationals and companies.

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. 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's parents and siblings are citizens and residents of Taiwan. 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; 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 has limited contact with his parents and siblings, only by iPhone. His parents are elderly farmers, and his three siblings work in the food industry. Applicant, in fact, participated in a successful counterintelligence and espionage investigation, on behalf of the U.S. Government, which led to the Government withdrawing allegation 1.f. Foreign Influence concerns are 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 that guideline, but some warrant additional comment. Applicant has a distinguished history of working in the defense industry. He performs well at his job. (AppX A.) 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 concerns.

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. ~ 1.e:	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