



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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-----, ----- ) ISCR Case No. 06-23977  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: William F. Savarino, Esquire

April 6, 2009

**Decision**

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WHITE, David M., Administrative Judge:

Applicant was denied a security clearance in 1989 after expressing his belief in the validity of terrorism as a tool in fighting oppression, and admitting to disclosure of classified information to a foreign-national prostitute while serving in military intelligence duties. His recent statements concerning both issues support ongoing concerns about his judgment and willingness to comply with security rules and regulations. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his Security Clearance Application (SF-86), on May 8, 2004. On May 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG)

promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 30, 2008. He answered the SOR in writing on June 10, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 6, 2008, and DOHA assigned the case to another administrative judge on August 12, 2008. Due to caseload and scheduling considerations, DOHA reassigned the case to me on October 30, 2008.

DOHA issued a notice of hearing on December 2, 2008, and I convened the hearing as scheduled on January 8, 2009. Department Counsel offered Government Exhibits (GE) 1 and 2, which were admitted without objection. Applicant testified on his own behalf, as did one other witness, and offered Applicant's Exhibits (AE) A and B, which were also admitted without objection. I granted Applicant's request to leave the record open until January 22, 2009, to permit Applicant to obtain and submit additional documents. This evidence was submitted on that date, and admitted as AE C without objection by Department Counsel. DOHA received the transcript of the hearing (Tr.) on February 5, 2009.

### **Findings of Fact**

Applicant is a 50-year-old employee of a federal contractor, where he has worked for six years in management on an overseas facility operation support contract. He has never married, and has no children. In his response to the SOR (AR), he admitted that he was denied a security clearance in 1989, but denied the other three SOR allegations.

In December 1980, after completing three and a half years of college, Applicant enlisted in the Army. He served in signals intelligence duties for about seven and a half years, and was honorably discharged in 1988. During his service, he held a Top Secret security clearance. He was then hired by a defense contractor and applied for a security clearance through them. He failed a polygraph examination administered as part of the required background investigation multiple times. In discussing possible reasons for appearing deceptive, Applicant revealed his terrorism beliefs and unauthorized disclosure of classified material, discussed further below. As a result, in November 1989 the Government denied his security clearance. (SF-86 at 1, 3, 5; Tr. at 28-34; 60-61.)

Applicant then obtained a job with a different company that was performing military support services in Saudi Arabia. He received an interim U.S. security clearance, but after about four months the company pulled out of the contract and left Saudi Arabia. It also cancelled its sponsorship for security clearance applications for its former employees there. Applicant was then hired to work directly for the Saudi Arabian Ministry of Defense, and worked for that government from December 1990 until his contract was terminated in September 1996. He remained a direct employee of the Saudi military even after another U.S. contractor returned and offered employment "because the money was better." During that time, he held a security clearance from the Saudi government. (SF-86 at 4; Tr. at 61-69.)

Applicant was interviewed by an Office of Personnel Management (OPM) investigator in connection with his current security clearance application, and signed a sworn affidavit addressing several issues of potential concern on November 2, 2007 (GE 2). In that affidavit, he discussed why he thought he had failed the security polygraph examination, including “my belief in the use of terrorism that may have triggered a deceptive reading.” (GE 2 at 5.) The interviewer originally wrote that Applicant said:

I support the Irish Republican Army’s (IRA) policies and ideologies of terrorism against the British Government. I do not think Britain should be ruling Ireland. I still think terrorism is a valid tool. I’ve never made donations to the IRA or any other terrorist organization. I do not believe in terrorism against the United States.

(GE 2 at 6.) While reviewing the affidavit to make any desired changes or corrections, Applicant deleted the first sentence of the five quoted above, by lining it out and initialing the deletions. He added the following two sentences to the end of the affidavit in clarification: “I support the Irish Republican Army’s (IRA) their goals of an Independent Ireland. [sic] I understand the use of terrorism to support those goals.” (Both the deleted sentence and the added language are quoted for comparison purposes.) Despite being directly quoted from his affidavit in SOR ¶¶ 1.a, and 1.b, he denied these allegations in his formal answer, stating that there is no context, issue, or situation in which he does or would support the use of terrorism. (AR at 1.)

During the hearing, Applicant said he understood the IRA’s use of guerilla warfare, and he meant to say there are a lot of tools that any group or government may use, “diplomacy, to war, unconventional warfare, terrorism, and so on. And to me it’s just another tool that could be used.” When asked by his attorney if there was any set of circumstances, contexts or scenarios that he could envision supporting terrorism against any group, he replied:

Ultimately what I was trying to say, and I hope I am answering the question pretty much as you are trying, but any group that is and has, you know, the legitimate reasons to petition the government to address their grievances are cut off, they are not allowed to politically participate in the political life of their country, they suffer oppression of some sort, given no other means will resort to violence. All I was trying to say is I can understand why they would do that. It is a valid tool in the sense that it’s one of the things that people will do if they are faced with those situations.

Then asked, “But do you condone the use of violence?” he replied:

I do not condone any use of violence against innocent people. There is a difference between violence against innocent people and violence directed toward, say, the military activities that you are combating with in order to free yourself if you are an oppressed people.

He went on to explain that he did not support either guerrilla warfare or terrorist activities against our U.S. soldiers in Iraq because he supports that war and thinks the U.S. is doing the right thing there. (Tr. at 82-86.)

When Department Counsel asked Applicant if he told the OPM investigator that he supported or recognized and agreed with terrorism as a tool to overthrow the British rule in Ireland, Applicant responded, "I made that statement and what I am saying is it's a tool, like any other, you know, they engaged in diplomacy, they engaged in public relations, everything is a tool." He further agreed that his answer would be the same for other groups like the Red Army Faction, the Shining Path and the PLO, it is a tool but how we judge the use of that tool is something else. When asked if he also agreed that terrorism was a valid technique, he replied that depended on who is using it. He further elaborated, it can be a valid tool but would not be if used to murder innocent people that have nothing to do with the conflict. When asked if his position meant that use of terrorism by organizations like Hamas and Hezbollah, that had no other effective tools of warfare, was valid he agreed, stating, "It's a fact." He clarified that this validity did not mean that he agreed with the goals such groups were trying to achieve, because he does not. (Tr. at 142-148.)

Applicant stated in his response to SOR ¶ 1.d:

I deny revealing classified information to a South Korean prostitute whom I lived with in 1985/6 and deny not reporting the security violation to the authorities. I did not know then and still do not know today that the information I revealed was classified. I did not think it was classified at the time.

In both his November 2007 affidavit and during the hearing, Applicant admitted that he did reveal information that he knew to be classified to the South Korean prostitute with whom he lived for 9 months around 1986. Although he knew he should not have told her the information that related to his work in military intelligence, he did not report having done so at the time because he did not think he had breached security. He later revealed this incident to the polygraph examiner as a possible reason he appeared to be deceptive in his responses about having disclosed classified information to unauthorized personnel. (GE 2 at 3; Tr. at 112-116; 167-171.)

Applicant submitted testimony from his supervisor and declarations from three people who have worked with him in his present position over the past several years. All attested to his strong work ethic, reliability, integrity, and patriotism. He has served two terms as commander of his American Legion post, and leads many support programs for current and former U.S. service members. He was formerly active in AMVETS, and has been a member of his Masonic Lodge in good standing for more than 30 years, which requires national loyalty and good character. (AE A; AE B; AE C; Tr. at 87-98, 122-132.)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used to evaluate an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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." Section 7 of Executive Order 10865 provides that "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying 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.

## Analysis

### Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The Government asserted that Applicant's statements and actions support concerns under two provisions:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the

person may not properly safeguard protected information. This includes but is not limited to consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;
- (2) disruptive, violent, or other inappropriate behavior in the workplace;
- (3) a pattern of dishonesty or rule violations; and,
- (4) evidence of significant misuse of Government or other employer's time or resources.

Applicant was denied a security clearance in 1989 based on his stated beliefs that terrorism, as practiced by the Irish Republican Army and other anti-government organizations, is a valid tool to resist "oppression," and because he had wrongfully revealed classified information to a foreign national with whom he engaged in an extended relationship while holding a high-level security clearance. Although formally denying these allegations in his response to the SOR, he admitted their truth in both his November 2007 affidavit to an OPM investigator and during his testimony at the hearing. He clearly believes himself to be a loyal and patriotic American. He does not approve of attacks on U.S. interests because he agrees with most major U.S. policies and does not see the U.S. Government as an oppressor against whom terrorism would be justified. However, his conduct, stated beliefs, and demeanor reflected questionable judgment and willingness to violate rules and regulations which he does not consider to be justified or important. His recent statements and attitude concerning his revelation of classified information to a foreign national reflected attempts to minimize accountability for such conduct and his lack of appreciation for properly safeguarding protected information. The Government established sufficient evidence, in the form of Applicant's own statements, to raise security concerns under these two whole-person related disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. Applicant asserted that the evidence supports mitigation under the following three provisions:

- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the

stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's conduct and statements of concern originally occurred more than 20 years ago, and taken individually could be considered relatively minor. However, they reflect a pattern of decisions, beliefs and attitudes that he continued to demonstrate as recently as his hearing testimony, casting continuing doubt on his current trustworthiness and judgment. He offered no evidence of counseling or alleviation of circumstances that might demonstrate such behavior is unlikely to recur. His ongoing vulnerability to exploitation does not arise from likelihood of submission to outside threats or duress, but rather from potential disregard for restrictions on use of information imposed by others that he may disagree with. The evidence does support consideration and application of each of these mitigating conditions to some extent, but on balance its mitigating effect does not outweigh the legitimate security concerns discussed above.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 common sense 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 the facts and circumstances surrounding this case. Applicant's conduct of potential concern involves his stated beliefs in the validity of terrorism as a tool to fight perceived government oppression and his wrongful disclosure of classified and protected information to a foreign national. Although the one SOR-alleged disclosure took place in 1986, Applicant's ongoing attitude concerning that incident, as expressed during the hearing, reflected poorly on his current reliability and trustworthiness in security-related



matters. He is fully mature, educated, and accountable for his choices and statements. His coworkers and supervisor consider him to be dedicated, honest, and reliable. Except in his formal response to the SOR, he has been candid and consistent about his pertinent beliefs and attitudes. Although Applicant demonstrated minimal vulnerability to pressure, coercion, or duress from an external source, his past shows his susceptibility to exploitation should he believe that government-imposed restrictions on his use of protected information are less important than other interests. His demeanor during the hearing did not alleviate this ongoing concern. On balance, Applicant presented insufficient evidence to meet his burden of persuasion to mitigate reliability and trustworthiness concerns arising from the personal conduct that was alleged in the SOR and supported by his statements. Overall, the record evidence leaves substantial doubt as to Applicant's present eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge