DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 04-12742
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: Daniel C. Schwartz, Esq., and Jennifer M. Kies, Esq.

September 29, 2010

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke eligibility for a security clearance. Under Guideline E, Applicant's past and current service as a non-executive director of certain corporate boards does not demonstrate such questionable judgment that it should disqualify Applicant from access to classified information. But under Guideline K, Applicant's record of repeated security infractions is not mitigated. Accordingly, as explained in further detail below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,[1] on July 27, 2009, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guidelines known as Guideline L for outside activities, Guideline B for foreign influence, and Guideline K for handling protected information. The SOR also recommended that the case be submitted to an administrative judge to decide whether to deny or revoke Applicant's security clearance.

Applicant answered with a 30-page reply, dated October 9, 2009, and requested a hearing. Three months later, the Agency amended the SOR by adding a new factual basis under the security guideline known as Guideline E for personal conduct. Applicant answered with a 11-page reply, dated January 28, 2010, and the reply included a submission urging withdrawal of allegations and a supporting memorandum of law.

The case was assigned to me March 13, 2010. A pre-hearing conference was held via conference call on March 25, 2010. The pre-hearing conference was summarized in a memorandum and made part of the record.[2]

The hearing took place over five sessions during May and July 2010. Both Department Counsel and Applicant submitted a large number of documentary exhibits. Department Counsel called no witnesses, while Applicant testified and called four witnesses. During closing arguments, Department Counsel withdrew the SOR allegations under Guidelines L and B. Accordingly, those matters will not be addressed other than in the formal findings.

The last of the five volumes of the hearing transcript (Tr.) was received July 30, 2010. For citation purposes, the transcript is referred to by volume number (in chronological order) and page number. For example, if referring to page 99 of the first volume (from May 14, 2010), the citation is Tr. 1: 99, for the third volume (from May 25, 2010), the citation is Tr. 3: 99, and so on.

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[1] This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

[2] Appellate Exhibit 1.

Post-hearing briefing was directed,[3] and counsel submitted their briefs[4] by the August 27, 2010 deadline. Counsel are commended for their excellent work, and I note that the post-hearing briefs were particularly helpful in deciding this case.

Findings of Fact

Based on the evidence as a whole, the following facts are established by substantial evidence.[5]

Applicant is employed by a [redacted] organization that does research and development for the federal government. As a senior fellow, Applicant is considered a part-time on-call employee. In addition, Applicant owns and operates a consulting firm. Before that, Applicant served as an employee of the U.S. Government for more than 30 years in various assignments in the United States and abroad. Applicant's governmental service included [redacted] positions.[6] In addition to consulting, Applicant's post-government career includes serving on corporate boards, some of which is at issue in this case.

Applicant is seeking to retain a security clearance as it is a condition of employment with the [redacted] organization.[7] Applicant held a security clearance for many years as an employee of the U.S. Government, which last adjudicated Applicant's clearance in about 1995.[8] That clearance was transferred to the Defense Department when Applicant began her employment with the [redacted] organization in 2000. Then in 2003, Applicant submitted a security clearance application to the Defense Department for a periodic reinvestigation.[9] It is the 2003 application that is under consideration here.

1. Summary of Applicant's security infractions (SOR ¶¶ 3.a–3.e)

While serving in a [redacted] position in 1998, Applicant committed four security infractions.[10] As a result, Applicant was warned that continued violations

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[3] Appellate Exhibits 14 and 19.

[4] Appellate Exhibits 20 and 21.

[5] Given the size of the record, along with an effort to protect Applicant's privacy, a summarized approach to the findings of fact is appropriate. I have attempted to strike a balance between providing enough information so the parties understand the basis of the decision while at the same time protecting Applicant's privacy.

[6] Exhibit X.

[7] Tr. 3: 67–68.

[8] Exhibits 7 and III.

[9] Exhibit 1.

[10] Exhibit 5.

would result in loss of pay. All four incidents were infractions (as opposed to violations), which under the applicable rules meant that materials were not properly safeguarded, but did not result in the actual or probable compromise of the materials.[11] The four infractions occurred within a controlled access area, which is an area where classified information may be handled, stored, discussed, or processed.[12]

Although not alleged in the SOR, the evidence also establishes that Applicant committed 11 security infractions during the period 1985–1997.[13] Nearly all infractions took place within a U.S. facility abroad. A review of the relevant paperwork shows Applicant was warned, counseled, or briefed multiple times by security officials in light of the infractions.[14] For example, in 1990, when Applicant was briefed on the need to follow a clean-desk policy and the proper storage of classified information, the security officer who briefed Applicant observed that "[u]nless the habits change more violations will be likely."[15] That observation proved accurate as about ten more infractions followed during 1992–1998.[16]

Applicant currently has access to classified information,[17] but not anywhere near the frequency when working for the government. As a part-time on-call employee, Applicant does not have an office, desk, or cubical at the organization. When working there, Applicant typically has access to classified information when participating in meetings and briefings, although Applicant has not physically handled classified information since retiring from the government.

2. Summary of Applicant's involvement with a [redacted] company during [redacted] (SOR ¶ 4.a)

After retiring from the government, Applicant served as a non-executive director on the board of a [redacted] company [redacted].[18] The [redacted] company was incorporated in approximately 1999.[19] [redacted]

[11] Exhibit AAA.

[12] *Id*.

[13] Exhibit 16.

[14] *See* Exhibits 6, 8, 9, 10, 11, 12, 13, 14, and 15.

[15] Exhibit 10.

[16] Exhibit 16.

[17] Tr. 3: 68–69.

[18] Exhibit I.

[19] Exhibit KKK at 36.

[redacted]

Applicant executed an advisory and director's service agreement with the [redacted] company on January 1, 2000.[20] The agreement provided that Applicant was to receive a fee for services in the form of political advice and commercial assistance to the company. In addition, the agreement provided that Applicant would join the board of directors in exchange for an option to purchase or receive equity at favorable terms before an initial public offering of the company. During Applicant's time on the board, a main interest was in the area of corporate social responsibility programs in infrastructure, health, education, and cooperative business ventures for the local residents. Applicant encouraged the company to provide a number of services to local communities. Applicant served as a non-executive director during the three-year period 2000–2002, when Applicant resigned for personal reasons.[21] About five years later in 2007, it appears that the company was wound up and liquidated per court order.[22]

3. Summary of the [redacted] investigation (SOR ¶ 4.a)

The [redacted] company was one of many companies to be named in a series of reports issued during 2000–2003 by a [redacted].[23] In 2000, the [redacted] was established at the request of the [redacted] in light of the [redacted].[24] Because the [redacted] was not a judicial body, it lacked the power to compel testimony or production of documents, and it did "not have the resources to carry out an investigation whereby [the] findings can be considered as established facts."[25] Nevertheless, it gathered a good deal of information and issued a series of reports,[26] and then disbanded in [redacted].

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[20] Exhibit I.

[21] Exhibit J.

[22] Exhibit L.

[23] Although called a [redacted], for purposes of this case, none of the [redacted] members are considered experts within the meaning of Federal Rule of Evidence 702, 703, 704, 705, and 706, because Applicant has not had an opportunity in this case to cross-examine and challenge the members' qualifications.

[24] Exhibit 56.

[25] Exhibit BBB at ¶ 15.

[26] *E.g.,* Exhibits 29, 56, 57, 58, 59, 60, 61, BBB, and HHH.

The [redacted] named the [redacted] company in Annex I—in which it recommended the placing of financial restrictions—of its report published in [redacted].[27] Applicant was then serving as a non-executive director of the [redacted] company and was involved in the company's response to the report. Indeed, the company had a vigorous response to the report. Applicant assisted the company until resigning at the end of 2002 for reasons unrelated to the [redacted] report.

The companies named in Annex I of the [redacted] report (as well as the individuals named in Annex II) were, according to the [redacted], involved [redacted] in a way that could be linked, directly or indirectly, to contribute to funding conflicts in a certain [redacted] country.[28] The 29 companies in Annex I were also considered by the [redacted] to be in violation of certain guidelines for multinational enterprises (Guidelines), as were the 85 companies named in Annex III of the [redacted] report. The Guidelines (a noncompulsory code of business ethics) "are a set of recommendations adopted by governments and addressed to multinational enterprises governing their conduct."[29] Implementation is overseen by a National Contact Point (NCP) for each signatory country.

The [redacted] report created strong reactions by those named in it (to include the [redacted] company) and generated media interest. As a result, the [redacted] undertook the substantial task of having a dialogue with the named companies, to include the [redacted] company, and published their responses or "reactions" in a [redacted] report.[30] In total, 54 parties (companies and individuals) along with 4 governments filed reactions to the [redacted] report. A review of the [redacted] company's reaction shows the company had a series of meetings with the [redacted] and received an assurance that the company and its chairman would be removed from all the annexes to the [redacted] report.[31]

The [redacted], via the dialogue process, reached settlement with a number of the companies and published its final report at the end of its mandate in [redacted].[32] In this report, the [redacted] divided the companies into five categories and placed the [redacted] company into the third category for unresolved cases referred to the relevant NCP

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[27] Exhibit 29.

[28] Exhibit 61 at ¶¶ 9 and 12.

[29] Exhibit HHHH at ¶ 2.

[30] Exhibit HH.

[31] Exhibit HH at Reaction 26, and Exhibit GGGG at Annex 2.

[32] Exhibit 61.

for updating or investigation. The [redacted] placed the [redacted] company in the unresolved category due to an ongoing [redacted] action by the company against a [redacted], as the [redacted] thought additional evidence might come to light during that case.[33]

The process continued with the NCP after the libel action was settled in 2004. The process concluded in 2005 without further developments. In its report or statement on the [redacted] company, the NCP described its efforts to facilitate and mediate a dialogue between the [redacted] company and a non-governmental organization that was acting as a complainant in the matter.[34] Ultimately, the NCP concluded that an agreed settlement could not be reached due to a lack of good faith and a lack of a constructive dialogue between the parties.[35] In concluding its report, however, the NCP noted that the [redacted] had reached resolution with the [redacted] company on the issues raised in the [redacted] reports.[36]

4. Summary of the action by the U.S. Department of Treasury against the [redacted] company and related actions (SOR ¶ 4.a)

In [redacted], the U.S. Department of Treasury's Office of Foreign Asset Control designated the [redacted] company and its former chairman, along with several other entities, whose support for [redacted] regime contributed to the undermining of democratic processes and institutions in the country of [redacted].[37] As a result of Treasury's action, which has not been lifted, any assets of the designated individuals and entities that are within U.S. jurisdiction were frozen and U.S. persons are prohibited from conducting financial or commercial transactions with them. Treasury's action occurred several years after Applicant resigned from the [redacted] company, and none of documents from Treasury mention Applicant.[38] Nor do they mention circumstances that tie the action to when Applicant was involved with the company.

Two other governmental entities took similar actions against the [redacted] company and its former chairman.[39] The [redacted] issued regulations imposing restrictive measures on the sale of certain goods to [redacted] and providing assistance

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[33] Exhibit 74 at ¶ 2.

[34] Exhibit 74.

[35] Exhibit 74 at ¶¶ 18–20.

[36] Exhibit 74 at ¶ 17.

[37] Exhibits 66, 67, 68, and 69.

[38] *Id*.

[39] Department Counsel argued that the actions of the [redacted] and [redacted] are "not probative of anything." Post-hearing Brief at 26. But I suspect Department Counsel might argue just the opposite had the actions been imposed and not lifted by the [redacted] and [redacted]. In short, these are relevant surrounding circumstances.

to [redacted].[40] Under that regulation, in [redacted], the [redacted] company and its former chairman were named as being in violation of the regulation and therefore subject to sanctions, to include freezing of assets.[41] Then in [redacted], the [redacted] removed the [redacted] company and its former chairman from the list of those in violation because there were no longer grounds for keeping them on the list.[42] Following the [redacted], the [redacted] took similar action against the [redacted] company and its former chairman in [redacted], and the [redacted] lifted those sanctions in [redacted].[43]

5. Summary of Applicant's involvement with other companies during 2003 to present (SOR ¶ 4.b)

After resigning from the [redacted] company, Applicant joined the board of an [redacted] company that [redacted]. The [redacted] company was essentially a spinoff of the [redacted] company.[44] In this capacity, Applicant continued working with certain persons who were still on the board of the [redacted] company, to include the chairman. At some point, the chairman dropped off the board of the [redacted] company and Applicant has had no further dealings with him. Applicant served on the board on the [redacted] company until it was dissolved in about 2007. In addition, Applicant served as the non-executive chair of the board for another company, which the prior [redacted] company was a 50% owner. Applicant has had no involvement with or connection to this company since sometime in 2006.

Following the dissolution of the [redacted] company in 2007, a former senior executive of the [redacted] company obtained new employment as the CEO of a [redacted] company. [redacted] Applicant became a non-executive director of the [redacted] company in 2007 and continues to date. The [redacted] company works in several lines of business, and it is also a part-owner of other businesses. One such business is an investment company (company Z) doing business in [redacted], a country of concern to the United States and the international community. The [redacted] company is a 20% shareholder of company Z and has a management contract with the company. The companies are separate corporate entities, they are run independently, and Applicant has no role in or involvement with company Z.

[40] Exhibit BBBB.

[41] *Id*.

[42] Exhibits CCCC and DDDD.

[43] Exhibits EEEE and FFFF.

[44] Tr. 4: 130.

6. Summary of Applicant's good character evidence

Applicant has a long history of dedication to the interests of the United States. Consistent with this fact, Applicant presented a wealth of good character evidence. A retired ambassador[45] and two retired high-ranking military officers[46] appeared as witnesses and they vouched for Applicant's security suitability and trustworthiness. In addition, the documentary evidence includes letters from five individuals who did not appear as witnesses.[47] The authors of the letters are (1) a retired vice admiral (Navy), (2) a retired admiral (Navy), (3) a retired four-star general (Army), (4) a retired four-star general (Marine Corps), and (5) the president of the [redacted] organization that employs Applicant. They are uniform in their praise of Applicant's past accomplishments and service to the United States. They also have a highly favorable assessment of Applicant's security suitability and trustworthiness.

Most impressive was the testimony of a retired four-star general (Air Force).[48] He served at the highest levels of the military establishment, in positions subject to Senate confirmation, and by implication he had the trust and confidence of the Secretary of Defense and the President. In his testimony, he told a story in which he described Applicant's role in an overseas military operation to illustrate his trust and confidence in Applicant.[49] The point of the story was to show that Applicant "was one of the few people that was trusted with this kind of very, very sensitive information to carry out the direction of the President of the United States as we carried out this attack."[50]

Law and Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. The only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information. The Department of Defense takes the handling and safeguarding of classified information seriously because it affects our national security, the lives of servicemembers, and our operations abroad.

[45] Exhibit U.

[46] Exhibits V and GG.

[47] Exhibits C, D, E, F, and G.

[48] Tr. 2: 4–42; Exhibits A and V.

[49] Tr. 2: 8–12; 40–41.

[50] Tr. 2: 12.

A security clearance is a privilege, as it is well-established law that no one has a right to a security clearance.[51] As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[52] Under *Egan,* Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.[53] An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.[54]

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.[55] The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.[56] An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.[57] In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[58] In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.[59] The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.[60]

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense

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[51] *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

[52] 484 U.S. at 531.

[53] Directive, ¶ 3.2.

[54] Directive, ¶ 3.2.

[55] ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

[56] Directive, Enclosure 3, ¶ E3.1.14.

[57] Directive, Enclosure 3, ¶ E3.1.15.

[58] Directive, Enclosure 3, ¶ E3.1.15.

[59] *Egan*, 484 U.S. at 531.

[60] ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.[61] Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Analysis

The first issue is does Applicant's past record of security infractions disqualify her from having continuing access to classified information. Under Guideline K for handling protected information,[62] the suitability of an applicant may be questioned or put into doubt when that applicant has a history of noncompliance with security rules and regulations. The overall concern under Guideline K is that:

> Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness to safeguard such information, and is a serious security concern.[63]

The evidence here supports a conclusion that Applicant has a history of noncompliance with security rules and regulations. Applicant's record of multiple security infractions over a period of years is ample proof of this conclusion.[64] It is most probable that Applicant committed the infractions due to a combination of factors, such as the press of business in a demanding work environment as well as lax, careless, or inattentive security practices. Of particular concern is the repeated nature of the infractions despite warnings and briefings by security officials. This shows Applicant was inattentive, did not exercise due care, or had a lax attitude when it came to proper handling and safeguarding classified information. These facts and circumstances require consideration of the following Guideline K disqualifying conditions:

> 34(g) Any failure to comply with rules for the protection of classified or other sensitive information; and

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[61] Executive Order 10865, § 7.

[62] AG ¶¶ 33, 34, and 35 (setting forth the security concern and the disqualifying and mitigating conditions).

[63] AG ¶ 33.

[64] Although not alleged in the SOR, I considered the additional security infractions that took place during 1985–1997 to evaluate the evidence in mitigation and the extent to which Applicant demonstrated reform and rehabilitation. *See* ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (describing five examples when it is proper to consider conduct not alleged in an SOR) (citations omitted).

34(h) Negligence or lax security habits that persist despite counseling by management.

The guideline also contains conditions that may mitigate security concerns. The three conditions are described as follows:

35(a) So much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

35(b) The individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities; and

35(c) The security violations were due to improper or inadequate training.

Of those mitigating conditions, the most pertinent here is subparagraph 35(a). Applicant's security infractions took place years ago. The four security infractions alleged in the SOR, which are the most recent, took place in 1998, more than ten years ago. Crossing the ten-year mark is significant because it is a commonsense measurement of recency or remoteness. This is recognized in the law as well. For example, the law of evidence prohibits interrogation of witnesses about remote criminal convictions by imposing a ten-year time limit.[65]

Nevertheless, Applicant's record of lax or sloppy habits in the handling of classified information should be considered along with any record of recent proper handling of classified information. Applicant has had access to classified information since retiring from the government, but has not had occasion to physically handle classified information. In other words, Applicant has passively received classified information during briefings and meetings, but has not actively handled classified information. This means Applicant has not had an opportunity to demonstrate that the lax or sloppy security habits of the past will not recur. Looking forward, without substantial evidence of change or reform of Applicant's security habits, it is reasonable to expect Applicant's future to be more like the past, which is a record of repeated security infractions despite repeated cautions to the contrary.

The passage of time since 1998 without additional security infractions does not, under the particular facts here, demonstrate changed circumstances or conduct sufficient to justify a conclusion of reform and rehabilitation that would mitigate the security concerns. I reach this conclusion after a thorough review of the record and considerable thought, bearing in mind Applicant's well-established record of exceptional

[65] Fed. R. Evid. 609(b)(2) (describing the ten-year time limit and circumstances where the evidence of conviction older than ten years is admissible).

service to the United States as well as the Appeal Board's rather strict caselaw under Guideline K.

The issue under Guideline E for personal conduct consists of two related parts. The first part, as alleged in SOR ¶ 4.a, is does Applicant's involvement as a non-executive director of the [redacted] company demonstrate such questionable judgment that it should disqualify Applicant from access to classified information. The second part, as alleged in SOR ¶ 4.b, is does Applicant's continued business relationships with certain persons with whom Applicant associated with when involved with the [redacted] company demonstrate such questionable judgement that it should disqualify Applicant from access to classified information.

Under Guideline E for personal conduct,[66] the suitability of an applicant may be questioned or put into doubt due to false statements and credible adverse information that may not be enough to support action under any other guideline. The overall concern under Guideline E is that:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] 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.[67]

In assessing the evidence, I have considered the following disqualifying conditions under the guideline:

> 16(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
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> 16(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

[66] AG ¶¶ 15, 16, and 17 (setting forth the security concerns and the disqualifying and mitigating conditions).

[67] AG ¶ 15.

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:
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> (2) disruptive, violent, or other inappropriate behavior in the workplace;
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> (3) a pattern of dishonesty or rule violations; and
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> (4) evidence of significant misuse of Government or other employer's time or resources.

I have also considered all the mitigating circumstances under the guideline.

Having considered the evidence as a whole as well as the oral arguments and written briefs of the parties, the Guideline E matters are decided for Applicant. In short, I am not persuaded by the evidence that Applicant's involvement, past and current, serving on these particular corporate boards demonstrates such questionable judgment that it should disqualify Applicant from access to classified information.

Concerning SOR ¶ 4.a, the most concerning item is the Treasury Department's action [redacted], when it imposed sanctions against the [redacted] company and its former chairman. Those sanctions are still in effect, and I would likely decide this aspect of the case against Applicant if the evidence had tied Treasury's action to Applicant's involvement with the [redacted] company during [redacted]. But the evidence on this point is not persuasive.[68] Indeed, the evidence shows Treasury took the action [redacted], years after Applicant resigned from the [redacted] company, and Applicant has not associated with the company's former chairman for several years as well. Accordingly, the Treasury Department's action is too disconnected or far removed to attribute to Applicant.

The other matters in SOR ¶ 4.a are not a concern for the following reasons. First, I am not persuaded that the series of reports by the [redacted], when read together, demonstrate that the [redacted] company did anything wrong. Indeed, the [redacted] report and the follow-on action by the NCP suggest that the matters of concern were resolved in the company's favor. In assessing the reports, they should be viewed with a bit of healthy skepticism because the [redacted] was not a judicial body whereby its findings can be accepted as established facts. Further skepticism may be justified because the [redacted] was a creation of the [redacted], an entity where politics and political agendas may come into play. Second, I am not persuaded that Applicant did anything wrong or unethical [redacted] as a non-executive director of the [redacted]

[68] Exhibits 66, 67, 68, and 69.

company. Applicant lacked executive authority as a non-executive director and had a limited role on the board. On balance, Applicant appears to have acted like a reasonable person would have in the same or similar situation. Third, Applicant has had no involvement with the company since the end of 2002, and it would be misguided and contrary to common sense to hold Applicant accountable for the activities of the company during 2003 and beyond.

Turning to SOR ¶ 4.b, it is wholly appropriate to judge an applicant's security suitability by looking at those individuals or entities with whom an applicant voluntarily chooses to associate. With that said, I am not persuaded by the evidence that Applicant's past or current association with former members of the [redacted] company demonstrate questionable judgment under Guideline E. Applicant has not associated with the former chairman in several years and has no intention to do so. Applicant's current association with the CEO of the [redacted]company is not illegal or unreasonable. Applicant has no involvement with company Z and its commercial activities in [redacted]. Indeed, the[redacted]company and company Z are separate corporate entities that operate independently. Accordingly, it would be misguided and contrary to common sense to hold Applicant accountable for the activities of a company in which Applicant has no role or involvement. Moreover, based on the evidence, I am persuaded that this Applicant, who has a record of exceptional service to the United States, would not be associated with the [redacted] regime in any way.

To conclude, following *Egan* and the clearly-consistent standard, Applicant's record of multiple security infractions creates doubts or concerns about Applicant's fitness or suitability for a security clearance. In reaching this conclusion, I gave due consideration to Applicant's case in light of the whole-person concept,[69] and the credit due Applicant is not enough to overcome the security concerns. In doing so, I gave substantial weight to Applicant's exceptional career on behalf of the United States, for which I have great respect. And I gave substantial weight to the highly favorable evidence of Applicant's good character and trustworthiness. Indeed, some of this evidence was quite powerful. Nevertheless, Applicant did not meet the ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline L:	Withdrawn
All Subparagraphs:	Withdrawn
Paragraph 2, Guideline B:	Withdrawn
All Subparagraphs:	Withdrawn

[69] AG ¶ 2(a)(1) – (9).

Paragraph 3, Guideline K:	Against Applicant
All Subparagraphs:	Against Applicant
Paragraph 4, Guideline E:	For Applicant
All Subparagraphs:	For Applicant

Conclusion

In light of the record as a whole, 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.

Michael H. Leonard
Administrative Judge