

KEYWORD: Personal Conduct

DIGEST: In 2004, while working in a foreign country, Applicant engaged in a romantic relationship with a citizen of the People’s Republic of China, and failed to follow his company’s foreign contact reporting procedures, prompting his reassignment within the company shortly thereafter. During a 2006 interview with an investigative agent, he provided misleading, incomplete information about the relationship, and the circumstances leading to his reassignment. Applicant failed to mitigate the security concern generated by this conduct. Clearance is denied.

CASENO: 06-20106.h1

DATE: 06/26/2007

DATE: June 26, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-20106
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT
Ray T. Blank, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

_____ In 2004, while working in a foreign country, Applicant engaged in a romantic relationship with a citizen of the People’s Republic of China, and failed to follow his company’s foreign contact reporting procedures, prompting his reassignment within the company shortly thereafter. During a 2006 interview with an investigative agent, he provided misleading, incomplete information about the relationship, and the circumstances leading to his reassignment. Applicant failed to mitigate the security concern generated by this conduct. Clearance is denied.

STATEMENT OF THE CASE

On November 17, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. Applicant answered the SOR on November 24, 2006. He admitted the allegation listed in subparagraph 1.b, denied the allegations listed in subparagraphs 1.a. and 1.c, and requested a hearing.

The case was assigned to me on March 26, 2007. DOHA issued a notice of hearing on March 29, 2007, scheduling it for April 20, 2007. During the hearing, I received two government exhibits, fourteen Applicant exhibits, the testimony of a government witness, and Applicant’s testimony. At Applicant’s request, I left the record open through May 4, 2007 to allow him to submit additional exhibits. Before the deadline, he submitted four additional exhibits which I marked and received as Exhibits O through R. DOHA received the transcript on May 9, 2007.

FINDINGS OF FACT

_____ The SOR admission is incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 44-year-old single man with a high school education. He served in the U.S. Army from 1980 to his retirement in 2000. During that time, he served in a special forces unit.¹ In 1991, he was promoted to an operations sergeant.²

Applicant’s Army career was highly successful. His superiors repeatedly characterized him as an outstanding soldier with “unquestionable integrity, candor, and selfless service.”³ According to a U.S. Army brigadier general who has known him for ten years, Applicant “is not only extremely competent in every field of endeavor, but . . . never fails to take advantage of every opportunity

¹See generally, Exhibits D through G, Army Evaluation Reports, dated May 3, 2000, May 20, 1999, March 10, 1998, and September 2, 1997, respectively.

²Exhibit E, Army Evaluation Report, dated May 26, 1999, at 1.

³Compare Exhibit G with Exhibits D through F.

available for furthering his own development.⁴ Both his detachment commander, and the lieutenant colonel of his special forces unit stated he was one of the finest non-commissioned officers with whom they had ever worked.⁵

Since retiring from the Army in 2000, Applicant has been working as a construction surveillance technician (CST). His tasks include supervising the renovation and construction of U.S. embassies worldwide. Specifically, he ensures that foreign nationals hired to work on the various projects do not enter controlled access areas without authorization or “implant any surveillance devices, explosive devices, or that they are not casing the building[s] . . . for hostile act[s].”⁶ He is an independent contractor who is assigned to various projects from six months to a year.⁷ When a project is completed, he returns to the U.S., and goes on leave without pay status until his employer assigns him to another project.

Applicant has worked as an independent contractor for the past six years.⁸ With the exception of a one-month period in 2003, he has contracted with the same company during that time. When hired, his employer briefed him on his security responsibilities including, among other things, his responsibility to report contacts with foreign nationals that “evolve into continued social or intimate contact.”⁹

In February 2004, Applicant was assigned to a project in an African country. While there, he supervised a team of approximately 14 men.¹⁰ Approximately three weeks later, he and his team began socializing at a local bar where several women from various Asian countries worked. Applicant became romantically involved with one of them.¹¹

After learning that some of the women may have been from the People’s Republic of China (PRC), Applicant and his team reported these foreign contacts to their supervisor who then ordered them not to return to the bar, and to report subsequent foreign contacts. At that time, Applicant did not report that he had become intimately involved with one of the women, reasoning as follows:

I already had her phone number. So I could just call her and ask her if she wanted to come over to the apartment. I didn’t need to go back to that bar.¹²

⁴Letter of Recommendation, dated August 4, 2000, as included in Exhibit C at 1.

⁵Letters of Recommendation dated September 5, 2000 and August 30, 2000, as included in Exhibit C at 2.

⁶Tr. 50.

⁷Tr. 48.

⁸Exhibit 1, Security Clearance Application, dated February 25, 2004; Tr. 48.

⁹Exhibit 2, Security Violation report at 7; see also, Tr. 64, Overseas Briefing Certificate, signed by Applicant on February 27, 2004, as included in Exhibit 2 at 19.

¹⁰Tr. 76.

¹¹Tr. 58.

¹²Tr. 68.

Applicant did not know his paramour's national origins when they first began dating. Approximately six months later, in July 2006, she told him that she was from the People's Republic of China. (PRC).¹³ He continued to see her for another five months. He did not think it was a problem, because she told him she was from the Hong Kong region, which he thought "[fell] under a per se different rule."¹⁴

On December 13, 2004, Applicant reported the relationship to the project's assistant regional security officer. He then contacted his girlfriend and asked her to show him her local residency paperwork.¹⁵ The paperwork confirmed that she was a PRC native.¹⁶ Applicant then resigned from the assignment, asserting that he had "undermined [his] present position"¹⁷ by not reporting the relationship earlier.

Applicant continued to work on the project for another three weeks to help with the transition. Approximately three weeks later, he returned to the U.S. where he was interviewed by the diplomatic security office of the U.S. Department of Justice. (DOJ) They completed an investigation, and concluded no compromise of classified information occurred.

The DOJ investigation had already begun at the time Applicant reported the contact. It was prompted by a coworker who had observed the relationship and reported it to their supervisor approximately five months before Applicant reported it.¹⁸ The record is inconclusive with respect to whether the ongoing investigation influenced Applicant's decision to report the relationship.

Applicant's supervisors were supportive of him throughout the entire investigation, and advocated for him to remain at their company on another assignment. The day after he resigned from the African assignment, the site supervisor wrote him a recommendation letter stating, among other things, that Applicant's performance was "superb,"¹⁹ and that he was "very conscientious with respect to construction surveillance support requirements."²⁰

Approximately two months after resigning, Applicant was transferred to another embassy construction project.²¹ He worked on that project through its completion, and was assigned to another

¹³Exhibit 2 at 5.

¹⁴Tr. 65.

¹⁵Exhibit 2 at 7.

¹⁶*Id.*

¹⁷Memorandum of Applicant (undated) as included in Exhibit 2 at 3

¹⁸Statement of Program Manager, as included in Exhibit A, Investigative Agent's Report of Investigation, dated January 12, 2006 through February 12, 2006, at 7.

¹⁹Exhibit L, Recommendation Letter of Site Security Manager, dated December 14, 2004.

²⁰*Id.*

²¹Tr. 48.

one in approximately January 2006 where he worked through February 2007.²² According to the site security manager of the project where Applicant worked most recently, he has “a reputation of being trustworthy, honest, and straightforward,” and the program is “more prepared to handle the problems and threats that face our overseas United States Embassy construction projects” because of Applicant.²³

In February 2006, a security clearance investigator met with Applicant to update his security clearance application (SF-86) originally completed in February 2004. The investigator reviewed each question with Applicant. In response to Question 20 (*Has any of the following happened to you in the past 7 years -Fired from job - Quit a job after being told you’d be fired -Left a job by mutual agreement following allegations of misconduct - Left a job by mutual agreement following allegations of unsatisfactory performance - Left a job for other reason under unfavorable circumstances*) he did not mention his resignation from the assignment in December 2004.

Later, the investigator asked about foreign contacts. In response, Applicant mentioned a Chinese “girl” he met at a bar.²⁴ He reported the contact, and “everything was fine.”²⁵ At the close of the interview, he stated there was nothing that could “come up during the process of [the] investigation from records or from personal sources that may contradict anything [he] told [the agent].”²⁶ When asked whether it created any other problems, he said “no.”²⁷ Given that Applicant told the agent “everything was okay” it did not raise “a red flag” with the investigator.²⁸

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual’s eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual’s eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the “whole person concept,” all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency

²²*Id.*

²³Exhibit O, Reference Letter of Site Security Manager, covering the time period from February 28, 2006 to February 26, 2007.

²⁴Tr. 26 – Investigator’s Testimony.

²⁵Tr. 27 – Investigator’s Testimony.

²⁶*Id.*

²⁷Tr. 21.

²⁸Tr. 30.

of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guideline is raised:

Guideline E - 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.

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."²⁹ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

Personal Conduct

Applicant's relationship with a woman from PRC while working overseas generates a security concern under Personal Conduct Disqualifying Condition (PC DC) 16 (e): *personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress*. His responses to questions about the relationship during a 2006 interview with an investigator raise the issue of whether PC DC 16 (b): *deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*, applies.

Applicant ended the relationship approximately two and a half years ago. He voluntarily resigned from the assignment, and was transferred to another one after an investigation concluded no compromise of classified information occurred. His job performance has been exemplary since

²⁹See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

the incident. PC DC 17 (e): *the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*, applies.

Applicant has worked continuously for the same employer whom he worked in December 2004. He resigned from an assignment not a job. Consequently, he did not mislead the investigator when he did not mention the resignation from the 2004 assignment, when requested to update Question 20 of the SF 86.

When asked about foreign contacts, however, Applicant provided a technically accurate, but incomplete and misleading response. In reaching this conclusion, I was particularly cognizant of Applicant's history of honesty and candor, as noted by several of his character references. His admirable reputation could not overcome the doubts generated by his response to the investigative agent, and his testimony at the hearing. PC DC 16 (b) applies without mitigation.

Whole Person Concept

Applicant's career, both in the Army and as a private contractor, has been extraordinary. I am unable, however, to reconcile his decades of exceptional job performance with his 2004 violation of his employer's security protocol, and his failure to be fully forthcoming about it when interviewed by an investigative agent in 2006. When Applicant's supervisor told him to quit going to the bar where he met his paramour, he technically obeyed the order, but kept seeing her, reasoning their contact was acceptable so long as he did not return to the bar. His responses to the investigator during the 2006 interview were similarly disingenuous. Security clearance candidates not only have a duty to respond truthfully to an investigator's questions, they must respond candidly, as well. Moreover, employer orders are to be obeyed not evaded. Applicant has failed to mitigate the security concern.

FORMAL FINDINGS

Paragraph 1 – Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Marc E. Curry
Administrative Judge