



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



In the matter of: )  
)  
) ISCR Case No. 12-05232  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie Mendez, Esq., Department Counsel  
For Applicant: Cathryn E. Young, Esq.

03/12/2014

**Remand Decision**

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the foreign influence security concerns generated by his family members who are Afghan citizens and residents. Also, Applicant’s failure to disclose to an investigative agent during a 2011 interview that he was on conduct-related administrative leave at the time of the interview constituted an intentional, material omission. As such, it generates a personal conduct security concern that Applicant failed to mitigate. Clearance is denied.

**Statement of the Case**

On September 11, 2012, the Department of Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B, foreign influence, and E, personal conduct. 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

DOHA received Applicant's answer to the SOR on November 16, 2012, admitting the allegations under the foreign influence guideline (Paragraph 1) and denying the allegations under the personal conduct guideline (Paragraph 2). He requested a hearing, whereupon the case was assigned to me on June 10, 2013.

On July 24, 2013, a notice of hearing was issued scheduling the case for July 18, 2013. The hearing date was then rescheduled and moved to August 15, 2013. It was held as rescheduled. At the hearing, I received 11 Government exhibits marked as Government Exhibits (GE) 1 through 11, in addition to 34 Applicant exhibits, marked as Applicant's Exhibit (AE) A through HH. Also, I received Applicant's testimony. At the end of the hearing, I left the record open to allow both parties to submit additional exhibits. Within the time allotted, the Government submitted one exhibit that I incorporated into the record as GE 12. The transcript was received on August 26, 2013.

On November 8, 2013, I issued a decision denying Applicant's request for a security clearance. Applicant appealed, contending that he submitted exhibits during the period that the record was open after the hearing that were not admitted into evidence. The Appeal Board remanded the case "for further processing." (ISCR Case No. 12-05232 (App. Board, February 10, 2014) at 2)) Upon remand, I contacted counsel for Applicant who forwarded me the missing exhibits. I have identified them as AE II to AE TT, and admitted them into evidence.<sup>1</sup>

### **Additional Findings of Fact**

AE II, AE KK, AE PP, and AE RR through AE TT concern allegations that the Government either withdrew, or that I found in Applicant's favor. Consequently, I will address them no further in the Remand Decision. AE JJ is a performance appraisal, for the period of May 2008 through April 2009, and AE LL through OO are character references. AE QQ is a copy of an e-mail correspondence between Applicant and a prospective employer that occurred in February 2010. A factual summary of these exhibits is set forth as follows:

In 2009, Applicant received a good performance evaluation from the employer who later placed him on administrative leave in 2011 for alleged time card fraud. (AE JJ at 2) A coworker at that job characterized Applicant as a "perseverant, hardworking, thoughtful" person who was always "respectful of rules and regulations." (AE LL) Applicant's immediate supervisor at the clinic where he works currently noted that he

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<sup>1</sup>On appeal, Applicant's counsel contended that 12 exhibits that she identified as AE FF through AE QQ were missing from the record. On remand, I discovered that there were, in fact, 12 missing exhibits, but that Applicant's counsel incorrectly identified them as AE FF through AE QQ. Identified correctly, these 12 exhibits are AE II through TT. This clerical error explains why Applicant contended on appeal that three exhibits were missing which were actually in the record. (AE FF through HH). (See ISCR Case No. 12-05232 (App. Board, February 10, 2014) at footnote 1)

“always follows policies and procedures, and completes his assignments and duties with full honesty.” (AE MM)

### **Policies**

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of national security.”

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a security clearance.

### **Supplemental Analysis**

During an investigative interview in November 2011, Applicant discussed his employment history, but did not tell the agent that he was on conduct-related administrative leave when the interview occurred. I concluded in my decision of November 8, 2013 that Applicant’s explanation for failing to disclose this information when confronted by an investigator during a follow-up interview constituted a material misrepresentation of relevant information. Having considered AE II through AE TT, my original conclusion remains unchanged. Applicant has failed to mitigate the security concerns.

### **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 B:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant

Subparagraph 2.b:	Against Applicant
Subparagraphs 2.c-2.d:	WITHDRAWN
Subparagraph 2.e:	For 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.

MARC E. CURRY  
Administrative Judge