DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 12-11779
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant is not exercising dual citizenship with Canada in order to receive benefits from the Canadian government. He has mitigated the security concerns associated with his Canadian citizenship. His request for access to classified information is granted.

Statement of the Case

On July 20, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew his eligibility for access to classified information required as part of his employment with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.[1]

[1] Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

On July 13, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline C (Foreign Preference).[2] On July 27, 2015, Applicant responded to the SOR and requested a decision without a hearing. On October 26, 2015, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)[3] in support of the SOR. Applicant received the FORM on November 3, 2015, and had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed on December 3, 2015, after Applicant timely submitted additional information (FORM Response) within the time allotted. The case was assigned to me on January 5, 2016.

Findings of Fact

Under Guideline C, the Government alleged that Applicant exercises dual Canadian and U.S. citizenship because he expects to receive monetary retirement benefits from the Canadian government beginning in 2021 (SOR 1.a), and because he intends to retire in Canada (SOR 1.b). Applicant denied, with comments, both allegations. (FORM, Item 1) I make the following findings of fact.

Applicant is a 61-year-old employee of a defense contractor, where he has worked since June 2005. He previously worked in a similar position for a different defense contractor from August 2001 until June 2005. He first received a DOD clearance in connection with that job in 2003 or 2004. (FORM, Item 3)

Applicant was born and raised in Canada. He holds bachelor's and master's degrees in engineering from a Canadian university. He immigrated to the United States in September 1980 after being recruited for work by a U.S. company, and he was naturalized as a U.S. citizen on January 26, 1989. Other than occasional visits of less than a week at a time to see his elderly mother, he has not lived in Canada since 1980. (FORM, Items 3 and 5)

After living and working in Canada until 1980, Applicant became eligible to receive a retirement benefit starting in September 2016 at age 62. As of 2001, his monthly payment (from a total account balance of about $5,000) was estimated to be about $80. There is no requirement that Applicant be a Canadian citizen in order to receive this benefit, which is akin to the U.S. social security program. (FORM, Item 3; Response to FORM)

Applicant stated in his EQIP that he planned on retiring in Canada if his wife agreed. He made a similar statement to a Government investigator when interviewed during his background investigation. When he responded to the SOR, he averred that he and his wife also are considering retirement in the warmer climate of the southern United States. In response to the FORM, Applicant stated definitively that he has no

[2] *See* Directive, Enclosure 2. *See also* 32 C.F.R. § 154, Appendix H (2006).

[3] *See* Directive, Section E3.1.7. The FORM included five exhibits (Items 1 - 5) proffered in support of the Government's case.

plans to return to Canada to live. After his mother dies, he will no longer have any reason to travel to Canada. (FORM, Items 2 - 5; Response to FORM)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,[4] and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

> (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest[5] for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.[6] If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.[7]

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.[8] A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's

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[4] Directive. 6.3.

[5] *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

[6] Directive, E3.1.14.

[7] Directive, E3.1.15.

[8] *See Egan,* 484 U.S. at 528, 531.

interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.[9]

Analysis

Foreign Preference

The security concern under this guideline is expressed at AG ¶ 9 as follows:

> When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Of the specific disqualifying conditions listed under AG ¶ 10, only the following is potentially applicable here:

> (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: . . . (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country.

This does not apply. Applicant still holds Canadian citizenship only because he has not actively taken steps to renounce it. While it might benefit Applicant were he to renounce his foreign citizenship,[10] doing so is not a prerequisite of clearance eligibility. Indeed, Applicant already holds a DOD security clearance. Nor is Canadian citizenship required to receive the Canadian retirement benefit. Finally, the retirement benefit at issue is a future interest that Applicant might also never receive. SOR 1.a is resolved for Applicant.

As to the Government's concern that he might retire to Canada, it has not been established that his status as a dual citizen is also a prerequisite for moving to Canada. It also has not been established what benefits he would receive from the Canadian government under such circumstances. SOR 1.b is resolved for the Applicant.

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline C, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has resided permanently in the United States for more than 35 years. He has been a U.S. citizen for 27 years, and he has held a security clearance for work in the U.S. defense industry for more than 10

[9] *See Egan;* Adjudicative Guidelines, ¶ 2(b).

[10] AG ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*)

years. A fair and commonsense assessment of all available information shows that the security concerns related to his dual citizenship have been mitigated.

Formal Findings

Formal findings 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 C:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant

Conclusion

In light of all available information, it is clearly consistent with the national interest for Applicant to continue to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge