



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



In the matter of:)
)
) ISCR No. 14-00900
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

10/22/2014

Decision

DAM, Shari, Administrative Judge:

Applicant is a dual citizen of his native United Kingdom and the United States. Foreign influence concerns that arise because he was employed as a civil servant for over 30 years with the U.K. Ministry of Defense and held a U.K. security clearance during that time are mitigated. Foreign preference concerns that arise because he receives a small pension from the United Kingdom for those years of civil service, including 12 years when he resided in the United States and worked on a collaborative military project between the two countries, are mitigated. Access to classified information is granted.

Statement of the Case

On May 6, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B (Foreign Influence), and Guideline C (Foreign Preference). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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) effective within the DOD on September 1, 2006. The SOR detailed reasons why DOD adjudicators could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR on or about May 14, 2014, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On July 1, 2014, DOHA assigned the case to me. On August 8, 2014, DOHA issued a Notice of Video Teleconference Hearing, scheduling the hearing for August 20, 2014.

At the hearing the Government introduced into evidence exhibits (GE) 1 to 3 without objection. Applicant introduced into evidence exhibits (AE) A to I without objection. Applicant testified. On August 29, 2014, DOHA received the hearing transcript (Tr.). On September 21, 2014, Applicant proposed corrections to the transcript. On September 24, 2014, I entered an Order giving Applicant until September 29, 2014, to file suggested revisions and giving Department Counsel until October 3, 2014, to file her objections. Department Counsel had no objections to the proposed corrections and they are accepted (HE 1).

Findings of Fact

Applicant admitted all facts alleged in Paragraphs 1 and 2 of the SOR and offered explanations. His admissions are incorporated into these findings of fact. (AE A.)

Applicant was born in 1955 in the United Kingdom to British parents. In 1991 he earned an associate's degree in business and finance from a British university. He also has an associate's degree in mechanical and production engineering from a British university. (Tr. 21.) He married a British citizen in April 1980. They have two adult children who are citizens of the United Kingdom. His daughter is a resident of the United Kingdom. His son is a resident of Spain and has one child. (Tr. 29.) Applicant and his first wife divorced in 2006. Applicant speaks to his children once a week and visits them once a year. (Tr. 30.)

Applicant's parents are deceased. He has two sisters who are citizens and residents of the United Kingdom. They are retired. He speaks to them once a week and visits them once a year. (Tr. 34.) He most recently visited his family in the United Kingdom in August 2013. (Tr. 32.) Other than one colleague, Applicant no longer communicates with former co-workers from the United Kingdom. (Tr. 36; GE 2.)

After working 34 years as a U.K. civil servant, Applicant retired at the end of 2012. During those years he worked as a technical manager for the Royal Air Force (RAF), and held a U.K. secret security clearance. In 2000 Applicant moved to the United States to work on a collaborative project with the U.S. Air Force (USAF). That project

continues today. In 2013 Applicant completed a security clearance application (SF 86) because he would like to resume participation in the project. (Tr. 23, 25, 44.)

In October 2012, Applicant became a naturalized U.S. citizen, while maintaining U.K. citizenship. In November 2012 he obtained a U.S. passport. Since then, he has not used his U.K. passport that expires in 2018 and has no intention to use it in the future. (Tr. 46; GE 2.) In 2013 he surrendered his U.K. passport to the security office of the defense contractor that is sponsoring him for a security clearance. (AE E.)

During an interview with a Government investigator in April 2013, Applicant said he would renounce his British citizenship except for the fact that he earns a pension for his many years of civil service. He stated that his allegiance is solely to the United States and that he has assimilated into the U.S. culture since his arrival here in 2000. He has no intention of exercising any other U.K. right or privilege. The last time he voted in a U.K. election was 1997. (GE 2.) Since becoming a U.S. citizen he voted in one local election. (Tr. 53.)

Applicant has limited financial ties to the UK. He has a bank account in Britain that he uses when he travels there to visit his immediate family. There is about \$1,300 in it. (Tr. 50.) In 2013 Applicant began receiving an annual pension of \$28,000 from the United Kingdom. After paying U.S. taxes, he receives about \$1,200 a month. (Tr. 54; AE F; HE 1.) He does not want to relinquish his dual citizenship because he would lose that pension. He is concerned that if his wife should die, he would be unable to adequately support himself without that money. (Tr. 52, 54.) He divested himself of all other U.K. financial accounts. (Tr. 49.) His net worth in the United States totals about \$572,500, which includes two pieces of real estate and various financial assets. (AE D.)

Applicant married his second wife in 2008. She is a U.S. citizen, who retired from teaching a year ago. (Tr. 28.) She has children and grandchildren, who are citizens and residents of the United States. (GE 2.)

Applicant submitted a character reference from a program manager with the USAF, who worked with him for 14 years in the United States. She explained that the USAF “developed a partnership with the United Kingdom which fostered and allowed a close working relationship with the foreign nations’ civil servants and uniformed members.” (AE B.) She stated that Applicant never “presented a security risk to the United States by trying to gain information he was not authorized to obtain.” (AE B.) This program continues to be a “model” for future programs. (AE B.) She is aware that Applicant’s unwillingness to renounce his British citizenship raises concerns about his allegiance to the United States. However, she is familiar with the many connections he has developed to the United States and his loyalty to this country. “There is nothing in [her] long period of knowing [Applicant] that would make [her] question his character or belief in protecting America from foreign enemies.” (AE B.)

Applicant presented awards he received in 2001 and 2005 for his work on the joint project. He also provided commendations from USAF officers complimenting him for his contributions and outstanding performance in the international military program.

(AE I.) Applicant acknowledged two projects that he spearheaded while working collaboratively with the USAF. He arranged to have RAF equipment in the Middle East move injured U.S. military members to U.S. bases for medical help. He also devised a plan that allowed the RAF to loan necessary equipment to the USAF. (Tr. 77; HE 1.)

Applicant explained that much of the information he would have access to while working in the joint program is no longer secret because other countries have the information. He acknowledged that there may be some information, however, that is secret. (Tr. 69-70.) He emphasized that he wants to continue contributing to the United States' defense system. (Tr. 58.) He repeatedly asserted his love and allegiance to the United States. Applicant presently works as a substitute truck driver for a local county's developmental disability program. (Tr. 61.)

There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

Policies

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines. 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 "[a]ny 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, "[t]he 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: "[a]ny 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 B, Foreign Influence

AG ¶ 6 explains the security concern pertaining to foreign influence as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 sets out a condition that could raise a security concern and may be disqualifying in this case:¹

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's history of employment with the United Kingdom and holding a U.K. security clearance could create a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help the United Kingdom by providing that information. AG ¶ 7(b) applies.

AG ¶ 8 lists two conditions that could mitigate foreign influence security concerns raised in this case. Those with potential application are:

¹No evidence was introduced suggesting a heightened risk of influence or exploitation based on Applicant's U.K. family members, and I find none.

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(f) the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and count not be used effectively to influence, manipulate, or pressure the individual.

The evidence establishes mitigation under AG ¶ 8(b). Applicant demonstrated deep and longstanding relationships to the United States since arriving in 2000. For 12 years he worked closely with the USAF on a joint project that has assisted both countries in their war on terrorism. He developed numerous friends and colleagues among members of that team project who are U.S. citizens. In 2008 he married his spouse, a U.S. citizen and resident. He has ongoing relationships with her children and grandchildren who are U.S. citizens and residents. He has readily assimilated into the U.S. culture. In October 2012 he became a naturalized U.S citizen. In November 2012 he obtained a U.S. passport that he uses for all travel. He can be expected to resolve any conflict in favor of the United States.

There is sufficient evidence to establish additional mitigation under AG ¶ 8(f). Applicant's net worth of \$572,000 is located in the United States, and includes real estate, financial investments, and cash. His earned pension from the United Kingdom, after paying U.S. taxes, is about \$14,400 annually. This small financial interest from the United Kingdom, which inures to him as a consequence of 34 years of civil service and dual citizenship, is unlikely to result in a conflict or pose a threat to U.S. security interests, considering the amount of his U.S. assets.

Guideline C, Foreign Preference

AG ¶ 9 sets out the security concern involving foreign preference:

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.

AG ¶ 10 describes two conditions that could raise a security concern and may be disqualifying in this case:

(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; and

(5) using foreign citizenship to protect financial or business interests in another country.

Beginning in 2013 Applicant started receiving a small annual pension earned after 34 years of civil service in the United Kingdom. He retains British citizenship in order to obtain that retirement benefit. There is sufficient evidence to raise the above disqualifying conditions.

AG ¶ 11 provides conditions that could mitigate security concerns arising under this guideline:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

None of the above suggested mitigating conditions apply. However, based on a review of the record and an analysis of the general security concerns articulated in AG ¶ 9, the disqualifying conditions raised under this guideline are mitigated. Applicant receives a pension that he earned after many years of employment with the U.K. government. Under the circumstances in this case, receipt of those monies does not indicate his preference for the United Kingdom over the United States. Twelve of the 34 years he worked for the United Kingdom were spent residing in the United States and participating in a joint venture between the two countries in the war on terror. During that time he married a U.S. citizen, chose to become a U.S. citizen himself, and to continue residing here after retirement. He has no intention of returning to the United Kingdom to live or work. He uses his U.S. passport to travel and not his U.K. passport, which he willingly relinquished to a security officer. His actions and credible statements

regarding his love and allegiance to the United States unquestionably document his preference for the United States.

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 relevant 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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. All comments included under Guideline B and Guideline C are incorporated into this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There are a sufficient facts supporting mitigation of the raised security concerns, as detailed in the analysis under both guidelines. Applicant is an intelligent, honest, and ethical man, who chose U.S. citizenship after 12 years of residency here. He presented an impressive record of accomplishments during his participation in a joint venture between the United States and United Kingdom. In two instances he managed separate endeavors that specifically assisted U.S. service members in the Middle East during the war on terrorism. He noted that much of the information that may have been classified within the joint venture is no longer secret because the project expanded and now includes other Western nations. A program manager for the USAF, who worked with Applicant for 14 years, attests to Applicant's honesty and ability to protect classified information. She has no reservations about supporting his request for a U.S. security clearance because she never witnessed him breach security protocols, and knows of his strong allegiance and personal connections to the United States.

The evidence leaves me without any doubts as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate the security concerns arising from foreign influence and foreign preference.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Paragraph 2, Guideline C: FOR APPLICANT

Subparagraphs 2.a and 2.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge