



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-02024
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

08/10/2015

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 9, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 8, 2014, detailing security concerns under Guideline B, Foreign Influence, Guideline J, Criminal Conduct, and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on October 1, 2014, and he answered it on October 17, 2014. Initially, Applicant requested a decision on the record, but he later requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on January 6, 2015, and I received the case assignment on February 3, 2015. DOHA issued a Notice of Hearing on April 17, 2015, and I convened the hearing as scheduled on May 13, 2015. The Government offered exhibits (GE) marked as GE 1 and GE 2, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE E, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 21, 2015. I held the record open until May 27, 2015, for Applicant to submit additional matters. He timely submitted AE F - AE H, which were received and admitted without objection. The record closed on May 27, 2015.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 2.a of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 3.a and 3.b of the SOR.<sup>1</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 47 years old, works as a system administrator for a DOD contractor. Applicant began his current position in September 2012 and has worked as systems administrator since 1997. Applicant's current team leader wrote a letter of recommendation, stressing Applicant's strong work ethic, professionalism, and exceptional skill set. Applicant has shown that he is trustworthy with sensitive client information, and he always acts with integrity. A co-worker wrote a letter of recommendation, indicating that Applicant is an outstanding employee, who goes the "extra mile" and is one of the most reliable and trustworthy members of the team. In 2013, Applicant received a Coin award for his performance on a company system migration. The Coin award relates to the company core values and is a respected award. Applicant received a favorable performance appraisal in 2014.<sup>2</sup>

---

<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>GE 1; AE A - AE D; Tr. 34-35.

In 1993, when he was 25 years old, Applicant began communicating with a 19-year-old young woman in an internet chat room. Their communication continued regularly over the next six months. They decided to meet, and they planned to marry during his visit with her. He and several friends flew to her town of residence. After they met, they obtained a marriage license, which required a 24-hour waiting period before they could marry. In that 24 hours, the young woman decided that she did not want to get married. They cancelled their wedding plans, then partied for many hours. Applicant believes he drank to excess, as was his habit as a young man. He remembers nothing about the rest of time he spent with the young lady, but he knows he flew home alone and never saw her again. They each moved forward with their separate lives.<sup>3</sup>

In 2003, the young lady called him and told him that they had gotten married during his short visit. She then stated that they needed to get an annulment, and he agreed. She paid for the annulment. They never lived together, shared the same quarters, co-mingled their finances, or lived as a married couple. She verified this information in a signed statement.<sup>4</sup>

On March 6, 2003, Applicant completed a Public Trust Position application (SF-85P). He indicated that he had never been married. When he completed his 2013 e-QIP, Applicant advised that he married in September 1994 and that the marriage was annulled in July 2003. The Government alleges that he falsified his SF-85P when he did not list this marriage. Applicant denies falsifying this answer on the grounds he was unaware of the marriage at the time he completed his SF-85P. He listed the marriage on his most recent e-QIP.<sup>5</sup>

Applicant is highly skilled in computer use. He enjoys playing computer games, such as World of Warcraft. He plays these games with individuals all over the United States. In playing his computer games, Applicant became friends with a woman living in another state, as did the other gamers. At some point, the woman told them that her husband had left and that she did not have enough money to pay her rent. The gamers provided her with rent money for a period of time. Eventually, one gamer stopped sending her money for rent as he could no longer afford it. Another group member offered her housing in another part of the country and near where Applicant lived. She accepted and moved. She lived in the friend's housing for a time, but this arrangement ended. So that she would not live on the street, Applicant offered the woman a room in his two-bedroom apartment, and she accepted. This occurred around 2005. Applicant described their relationship as friends at this time. He did not know her legal status when she moved into his apartment. He admitted at the hearing that her status would

---

<sup>3</sup>Response to SOR; Tr. 19-23, 35-39.

<sup>4</sup>Response to SOR; AE E; Tr. 23-24, 39-41.

<sup>5</sup>GE 2.

not have mattered for him to make this offer. He did not intend to leave her without housing.<sup>6</sup>

The woman (cohabitant) continues to live with Applicant, a fact he disclosed on his e-QIP. Their relationship has progressed to a more intimate one, and they plan to marry. Applicant's cohabitant is a citizen of the United Kingdom (British). She came to the United States in September 2001 to marry a citizen of the United States. She married on September 29, 2001 and lived with her husband for some time. Under the requirements of law and of the regulations of the U.S. Immigration and Citizenship Services (USCIS), her husband was required to file specific documents with USCIS that would allow her to become a lawful permanent resident (a green card holder). He did not. Her marriage did not automatically confer lawful permanent resident status on her. She is currently considered having an unlawful presence in the United States in violation of immigration laws. Since her arrival in the United States, Applicant's cohabitant has not been arrested for any illegal activities.<sup>7</sup>

Applicant indicated an intent to marry his cohabitant once her immigration status is resolved. She told Applicant that she spoke with USCIS and was advised that as long as she was married and because she was from the United Kingdom, USCIS would not seek her out for deportation. Applicant and his cohabitant met with an attorney in 2010, who advised them to wait until changes were made in the immigration law. Based on this advice, they have not taken any action. The attorney did not tell Applicant that he was violating any law by having her live with him. He does not remember telling the attorney they lived together.<sup>8</sup>

After the hearing, Applicant contacted an immigration attorney. The attorney provided a letter outlining the process for Applicant's cohabitant to obtain her lawful permanent resident status. Her purse was stolen sometime ago. It contained her passport and her arrival-departure card (Form I-94). The attorney indicated that Applicant's cohabitant entered the United States legally. He has filed a request with USCIS for a copy of her I-94 form. She plans to divorce her husband, which the attorney anticipated would take six months. Once her divorce is final, Applicant and she can marry. Once they are married and a copy of the I-94 form is received, the attorney will proceed to apply for lawful permanent resident status for her.<sup>9</sup>

Applicant has never asked his cohabitant to work. He provides her support. He also listed her on his e-QIP. They located her husband and asked about a divorce. Her husband said he would get the divorce if they sent him the money because he could not pay for the divorce. They learned that if he lacked income in his state of residence for a

---

<sup>6</sup>Tr. 26-27, 42-47.

<sup>7</sup>Response to SOR; AE F - AE H.

<sup>8</sup>Response to SOR; Tr. 27-29, 48-50.

<sup>9</sup>AE G; AE H.

divorce, he could get it for free. Applicant declined to send him the money because he does not trust him to use the money to get the divorce.<sup>10</sup>

Applicant's cohabitant has family residing in the United Kingdom. She has contact with her elderly parents, who are citizens and residents of the United Kingdom.<sup>11</sup>

Department Counsel did not provide documents for administrative notice concerning the United Kingdom. However, on my own motion, I take administrative notice of the following generally known facts about the United Kingdom. The United Kingdom is a constitutional monarchy. The common law system in the United States is based on the common law system in the United Kingdom, which finds its roots starting in 2015 with the issuance of the Magna Carta. The United Kingdom and the United States have an extremely close working relationship in all matters of mutual concern, including the war on terrorism. The United Kingdom has a strong counterterrorism policy. The risk of terrorism in the United Kingdom is no greater than it is in the United States.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is

---

<sup>10</sup>Tr. 29-30, 49, 51.

<sup>11</sup>Tr. 50.

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters 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 an 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

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 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(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; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's cohabitant and close friend is a citizen of the United Kingdom. Her elderly parents are British citizens and residents. His relationship with his cohabitant is not *per se* a reason to deny Applicant a security clearance, but his contact with her must be considered in deciding whether to grant Applicant a clearance.

In determining if security risk exists, Applicant's relationship and contact with his cohabitant, who is a British citizen, as well as the activities of the British Government and of terrorist organizations in the United Kingdom, are relevant. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contact with his cohabitant and her contact with her family in the United Kingdom and its government create a heightened risk and a security concern because of the ongoing terrorist activities in the United Kingdom. There is no evidence that the British government engages in espionage activities in the United States or targets British citizens living in the United States by exploiting, manipulating, pressuring, or coercing them to obtain protected information.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's daily contacts with his cohabitant cause security concerns, I considered that the United Kingdom and the United States have an extremely close working relationship in all matters of mutual concern, including the war on terrorism, and that the United Kingdom has a strong counterterrorism policy. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his British cohabitant. Applicant's current relationship with his British cohabitant raised a heightened risk under AG ¶¶ 7(a) and 7(b) because of the terrorist activities in the United Kingdom. It is important to note Department Counsel presented no evidence that the risk of terrorism is greater in the United Kingdom than in the United States.

The Foreign Influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and the following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be

placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(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

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;.

Applicant's cohabitant does not work and her parents are elderly. His cohabitant is not politically active in the United States or the United Kingdom. Her family members are not politically active and live quietly. They are not in the public eye, which would make them possible targets of terrorists. There is little likelihood the work, lifestyle and activities of the family members in the United Kingdom of Applicant's cohabitant or her current status would place him in a position of having to chose between the interests of the United States and the interests of a foreign individual, group, organization, or government. Likewise, Applicant's daily contacts with his cohabitant do not create a conflict of interest because his loyalties are with the United States. He has mitigated the security concerns under AG ¶¶ 8(a) and 8(b), but not under AG ¶ 8(c) because he communicates with his cohabitant daily, and she communicates with her elderly parents in the United Kingdom.

## **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶¶ 31(a) to 31(e) describes the disqualifying conditions that could raise security concerns. I have considered all these potential disqualifying conditions, and I find that the Government has not established its case. Applicant's cohabitant legally entered the United States and married a U.S. citizen in 2001. She is separated, but not divorced from her husband. Because her estranged husband failed to timely file the papers required by USCIS after their marriage, her lawful legal status changed. She is currently proceeding to divorce her husband and working to adjust her status to again be legal. The Government did not submit a copy nor did it cite to any U.S. laws which Applicant has violated by providing housing to his cohabitant, who initially lawfully entered the United States. The record does not establish that Applicant's provision of housing to his United Kingdom cohabitant violated any specific criminal offenses.



## Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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.

AG ¶ 16 describes disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

The Government alleges one incident of falsification by Applicant when he completed his 2003 SF-85P (SOR ¶ 3.a). For AG ¶ 16(a) to apply, Applicant's omissions must be deliberate. The Government established that Applicant may have omitted a material fact from his 2003 public trust position application when he answered "never married" to a question asking about his marital status. This information is material to the evaluation of Applicant's trustworthiness and honesty. Applicant denied intentionally falsifying his answer on his public trust position application.

When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>12</sup>

---

<sup>12</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant spent a week with his intended bride in 1994. They obtained a marriage license, but before they married, she decided not to proceed with the marriage. This much he remembers. After she decided not to proceed with the marriage, they embarked on an evening of drinking to lessen the negative emotional impact of her decision. After this evening, Applicant flew home alone. In 1994, he believed that he was single, and when he completed his SF-85P nine years later, he continued to believe that he was and had always been single. Shortly after completing his SF-85P, he learned that he had actually gone through a marriage ceremony in 1994 when the young lady called him for an annulment in 2003 of their legally performed marriage. Applicant was unaware that he was married. In 2003, Applicant learned that he had undergone a marriage ceremony. Applicant did not intentionally falsify his 2003 SF-85P. SOR allegation 3.a is found in favor of Applicant.

Concerning his current living situation, Applicant's cohabitant is not a current holder of a U.S. permanent resident card, although she entered the United States legally in 2001. Her current status may place Applicant in position of vulnerability to coercion, exploitation, manipulation, or duress. AG 17(e)(1) is raised.

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 18(a) through ¶ 18(g), and AG ¶ 18(E) provides "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

Applicant has fully disclosed his cohabitant's situation to security officials, and her attorney is working with immigration. They have started the process of obtaining a green card for his cohabitant. By doing so, he has taken positive steps to reduce and eliminate any vulnerability to exploitation, manipulation, or duress he could face from a foreign or domestic terrorist organization. AG ¶ 17(e) applies. Applicant has mitigated any security concerns raised under Guideline E.

### **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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Government questions Applicant's judgment as a young man in 1994 when he married a young woman with whom he had developed a relationship over the internet when he was intoxicated by alcohol, and in 2005, when he offered housing to a British foreign national. The Government learned about Applicant's 1994 marriage and his foreign national cohabitant because Applicant told the Government about both in his 2013 e-QIP answers. Applicant has been forthright about his current living situation and about his 1994 marriage once he learned that he had gone through a marriage ceremony. Applicant never lived as a married man between 1994 and 2003, when he and his former girlfriend annulled their "marriage". Being honest is important to Applicant, and he has been so. His honesty, integrity, and judgment are not in question. His management and co-workers support this fact.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guidelines B, J and E.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Paragraph 3, Guideline E:

FOR APPLICANT

Subparagraph 3.a:

For Applicant

Subparagraph 3.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 a security clearance is granted.

---

MARY E. HENRY  
Administrative Judge