



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



In the matter of:)
)
) ISCR Case No. 14-02475
)
Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2015

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 7, 2014. On July 22, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, for Applicant. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On August 8, 2014, Applicant answered the SOR and requested a hearing before an Administrative Judge. The case was assigned to me on November 11, 2014. On November 19, 2014, a Notice of Hearing was issued scheduling the hearing for December 16, 2014. The hearing was held as scheduled. The Government offered Government Exhibit (Gov) 1, which was admitted without objection. The Government did not present a request for administrative notice, and did not submit any documents. Applicant testified, and submitted Applicant Exhibits (AX) A through H, which were

admitted without objection. I kept the record open for additional submissions until January 6, 2015. Applicant timely submitted additional documents, which were marked as AX I-M. DOHA received the transcript of hearing on December 23, 2014. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admits all of the SOR allegations under Guideline B (Foreign Influence) concerning family and financial connection to the United Kingdom, but denied SOR 1.b concerning an old age pension. He also admits the factual allegations under Guideline C (Foreign Preference) with the exception of SOR 1.d concerning an old age pension.

Applicant is a 54-year-old logistics manager employed with a Department of Defense contractor. He has worked for his current employer since March 2012. Applicant served in the British Navy from 1988 until July 2001. (AX C) During his final years of service (1998), Applicant held an exchange posting with the U.S. Navy and held a NATO secret clearance. (AX B) Subsequent to that posting, Applicant was offered employment in the United States based on his expertise and training while serving in the British Navy. Applicant accepted that position rather than return to the United Kingdom (UK). For thirteen years, since retiring, he has had no ties with the Royal Navy. (Tr. 14)

Applicant was born in the (UK). He joined the British Navy at a young age and ended his career as a Lieutenant Commander. He retired with full pension rights after 24 years of service, as noted above. He currently receives a pension (\$1,200) as a result of that service in the military. (AX D) He does not receive an "old age pension," but will be entitled to one in the future.

As to the pension, this is an entitlement based on his prior military service in the Royal Navy. Applicant does not owe any loyalty or further service for the benefit. His pension represents a steady source of additional income and adds to his financial stability.

Applicant is married and has two adult children. Both children are U.S. citizens. He and his wife moved to the United States following his retirement in 2001. He worked during that time for a major defense contractor. Applicant was in the United States on a work visa and after permanent residence, in September 2013, he became a naturalized U.S. citizen. At that time, he received a U.S. passport. His wife also became a naturalized citizen at that time.

Applicant retained his British passport. At the time of the hearing his passport was issued in February 2012 and due to expire on July 2022. He has since surrendered the UK passport to his corporate security officer. (AX I) Applicant was credible when he explained that he had worked in the United States for many years

with the U.S. Navy, and had never been questioned about either his UK citizenship or foreign passport. It would have been impractical to relinquish the passport before becoming a U.S. citizen. He had no idea that it would be an issue. He stated in his SF 86, that he would be willing to do so. (GX 1)

In 2009, Applicant and his wife sold their home in the UK. (AX E) They purchased a home in the United States with the proceeds from the sale of his former home. His home in the United States is paid in full. (AX F) Applicant and his wife have about \$300,000 in savings, not counting a 401(k). The approximate value of his home in the United States is \$500,000. (Tr. 39) His 401(k) is about \$300,000. Applicant earns approximately \$160,000 US dollars.

Applicant's brother is a citizen and resident of the UK, who works for the Ministry of Defense. (Tr. 31) Applicant describes his brother as a rank and file grade civil servant who works in an office. He expects that job to end in 2015, when his brother will retire. (Tr. 31) Applicant speaks to his brother about once a year. His brother is 56 years old and they are not close. Applicant's parents also live in the UK. They are in their eighties. Applicant sees his parents about every three years and talks to them on the phone about twice a month. (Tr. 34) He last saw them in 2012.

Applicant has multiple bank accounts in the UK. He retained these accounts for several reasons. The British government will not deposit Applicant's pension in a foreign currency or incur transaction fees with overseas banks. Before gaining his U.S. citizenship, Applicant was not certain that he would remain in the United States. Applicant wants to convert the funds to the United States when there is a favorable exchange rate. (Tr. 38)

Applicant submitted numerous letters of appreciation from U.S. naval commands confirming his logistics expertise, dedication, and broad knowledge base. The letters range in time from 1999 to the present. Each letter attests to Applicant's wide range of talents and expertise. His "can do" attitude, technical knowledge and business acumen have been invaluable assets to each command. (AX A, J, K) Applicant also received nominations for technical excellence. (AX M)

An engineer who hired Applicant in 2012 noted that Applicant, as a former Naval officer who has worked for the U.S. Defense office, is fully alert to security considerations inherent in defense-related work and restricted programs. Applicant has the highest work ethic, dedication and professionalism. (AX L)

Applicant noted that during the past years while working for the U.S. Navy as a contractor, he dealt with many issues that required a clearance, but he was in fact given a "waiver." He has been actively involved in all phases of logistics with the U.S. Navy for many years without incident. This is the first time that he has been sponsored for a security clearance.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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, 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 as to 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 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.

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 C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several disqualifying conditions that could raise security concerns. Foreign Preference Disqualifying Condition (FP DC)10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*); and FP DC ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*) apply. Applicant possessed a UK passport which was issued in February 2012 and due to expire in 2022. He served in the Royal Navy and has a military pension. However, this was before he became a United States citizen in 2013.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Preference. The following Foreign Preference Mitigating Conditions (FI MC) are potentially applicable:

FP MC ¶ 11(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*) and FP MC ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) apply. Applicant has been willing to renounce his UK citizenship. After he became a naturalized citizen in 2013, he was unaware that possessing a foreign passport would be a significant issue related to obtaining a security clearance. He worked in the United States with a waiver for the defense community since 2001. He has since surrendered his UK passport to his security officer.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following potentially apply to Applicant's case.

FI DC ¶ 7(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*) does not apply. Applicant's brother and parents live in the United Kingdom. He has little contact with them. There is no heightened risk given the fact that the country in question is the United Kingdom.

FI DC ¶ 7(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*) does not apply for the same reason. Applicant's relationship with family members in the United Kingdom do not create a potential conflict of interest between his obligation to protect sensitive information or technology and any desire to help family members residing in the United Kingdom.

The guideline also includes examples of conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) potentially apply to Applicant's case.

FI MC ¶ 8(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.*) applies. The nature of the foreign country must be considered in evaluating the likelihood of exploitation. The United States and the United Kingdom share a strong relationship and cooperate on numerous fronts including energy, trade, counter-narcotics and the environment. It is unlikely that Applicant would have to choose between the interests of the family and the interests of the United States.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) applies. Applicant has lived and worked in the

United States since about 1998. He was chosen for his work in the defense community based on his expertise gained from the Royal Navy. He and his wife sold their home in the UK and purchased a home in the United States. He is not in much contact with his brother or parents in the UK. He is a naturalized U.S. citizen.

After weighing all of the evidence, including Applicant's testimony, and observing his demeanor at hearing, I am convinced that he would resolve any conflict in favor of the U.S.

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 the 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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature, well-educated, and intelligent former Royal Navy officer. He was chosen for his work in the U.S. Navy due to his expertise. He was asked to work in the United States and has done so after retiring from the Royal Navy. He and his wife have sold their home in Britain and have substantial assets in the United States. He has now relinquished his British passport and was credible in his explanation as to why he did not do so sooner. His adult children are U.S. citizens. He has parents and a brother who live in the UK. But considering the country in question there is no heightened risk. His superiors attest to his favorable character and work performance. After evaluating all of the evidence in the context of the whole person, I conclude Applicant has met his burden of mitigating the concerns raised under foreign influence and foreign preference.

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 C: FOR APPLICANT

Subparagraphs 1.a-d: For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraphs 2a-c: For Applicant

Conclusion

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

NOREEN LYNCH
Administrative Judge