



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



In the matter of:	)	
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	)	ISCR Case No. 14-05013
	)	
Applicant for Security Clearance	)	

**Appearances**

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

June 1, 2016

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On February 10, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. (Item 1.) 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on March 12, 2015, and he requested that his case be decided on the written record in lieu of a hearing. (Item 1.) On September 22, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered five documentary exhibits. (Items 1-5.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on November 7, 2015. Applicant submitted additional evidence, which has been identified and entered into evidence without objection as Items A, B, and C. The case was assigned to this Administrative

Judge on November 10, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel requested in the FORM that I take administrative notice of certain facts relating to the country of Taiwan that were reviewed in the FORM. The documents upon which the facts were based have been referred to in the FORM as source documents I through XIV. A brief summary of the facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 74 years old, and a United States born citizen. Applicant has been married since 1964, and his spouse, who was born in Canada, became a United States citizen in 1992. Applicant and his wife have one son, who was born in Canada, but is a United States citizen. He also has a sister, who is a United States citizen. Applicant received his Bachelor's, Master's, and Doctorate degrees from a United States university. (Item 2.)

Applicant identified himself on his Electronic Questionnaires for Investigations Processing (e-QIP) as being employed as a Professor of Physics for a United States university from November 1979 to the present. In his Post-FORM submission, he wrote that he had retired from his position on June 30, 2014, although he was elected to emeritus status, and he still maintains an office on campus. (Items 2 and A.)

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

The SOR lists two allegations, (1.a. and 1.b.) regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR.

1.a. The SOR states that Applicant maintains contact with an associate who is a citizen and resident of Taiwan. This associate is employed as the director of a scientific institute in Taiwan and was a senior official of the Taiwanese Government from 2008 to 2012. (Item 1.)

In his RSOR, Applicant admitted this allegation. He wrote that this associate and Applicant have had a purely scientific interaction. The associate and Applicant served together for several years in the Physics department of the United States university, where Applicant worked for approximately 35 years. During their years working together they interacted as scientific colleagues in research and teaching programs. The associate left the university several years ago, and Applicant had no further contact with

him until 2012, when the associate proposed that Applicant serve on the review board of the institute, of which the associate was the director. Applicant asserted in his statement, "At no time in our entire history have [the associate] and I discussed any political or social issues; nor did we discuss any of my government of [sic] industrial research efforts." (Item 1.)

1.b. The SOR states that in approximately October 2013, Applicant was requested by the Taiwanese associate addressed in 1.a., above, to serve on an academic review board at the Taiwanese institute, of which the associate is the director. Applicant agreed to this request and traveled to Taiwan, where he served as an advisory committee member in November 2013. (Item 1.)

In his RSOR, Applicant admitted this allegation. He wrote that he had been encouraged by the Director of the Geophysical Institute of his university to continue his association with the associate and to serve on the academic review board to promote cooperation and collaboration in the geosciences between the two institutes. Applicant further wrote that during his brief visit to Taiwan, November 2 through 7, 2013, he met each day with the faculty and students of the institute to hear descriptions of their research and to discuss their goals and progress toward those goals. Again, Applicant reiterated in his reply, "All of my discussion with the staff and students of the Institute were of a scientific nature. There were no discussions of political or social issues; nor were there any discussions of my governmental or industrial research."(Item 1.)

In his post-FORM statement, Applicant noted that in the FACTS section of the FORM, no mention was made as to his assertion that during his trip to Taiwan, no discussion of his research for Government or industry was made with foreign scientists. (Item A.) Applicant also submitted a letter from his former employer confirming that Applicant had been employed by the United States university as a Professor in Space Physics from October 15, 1979, until his retirement on June 30, 2014, when he ceased to be employed by the university. (Item B.)

Applicant also submitted a letter from the Director of the Geophysical Institute of Applicant's former university. The writendicated that he was employed by the Navy Civil Service for 30 years, during all of which he maintained a security clearance. (Item C.) He wrote that Applicant

is one of our most accomplished faculty and it is inconceivable that he has ever done, or could ever do, anything to jeopardize the security of the United States. [Applicant] has distinguished himself with an outstanding record of research publication and has made numerous significant contributions to national security in his DoD sponsored research.

The Director also wrote that "[the associate] was a distinguished full professor at [the same United States university as Applicant] for 18 years, and he has published more that 240 refereed papers in scientific journal two thirds of which had U.S. co-authors. . . . In addition to his professional ties [the associate] and his wife have two daughters, who are United States citizens, and they are currently living and working in

[a city in the United States] both having successfully graduated from American universities and launched professional careers.” Finally, he described the associate as an outstanding friend to the United States.

## **Current Status of Taiwan**

I take administrative notice of the following facts regarding Taiwan. Taiwan has an elected democratic government. It has the 17<sup>th</sup> largest economy and is a leading producer of high-technology goods. It engages in industrial and economic espionage. Proprietary information technology is high on the Taiwanese list of targeted information to be acquired by their agents from foreign governments and businesses.

There are 23 million Taiwanese citizens. Their per capita income in 2005 was \$15,000, cited by their president in a speech that he presented as economic progress under his administration. Although the United States now recognizes Taiwan as part of the People’s Republic of China (PRC) as “one-China,” it continues to maintain strong unofficial relations with Taiwan.

## **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. 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, 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 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 conditions that could raise a security concern and may be disqualifying. The applicable conditions in this case include: AG ¶ 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.” This is potentially applicable because Applicant’s contact with the associate, who is a citizen and resident of Taiwan.

I find AG ¶ 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 . . . and the individual’s desire to help a foreign person, group, or country by providing that information” also potentially applies in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that AG ¶ 8(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,” is applicable to this Applicant and controlling in this case because of the following facts: Applicant is a United States born citizen, and his wife, son and sister are also United States citizens. Applicant received all of his education, including a doctorate, in the United States. He was employed as a professor at a United States university from 1979, where he had a long and distinguished career, until he retired in 2014, when he was selected as professor emeritus of the university. The associate of Applicant, who resides in and is a citizen of Taiwan, lived and worked as a professor for 18 years at a United States university, and has two daughters, who are United States citizens and residents. The associate is a respected scientist, who has worked with many other American scientists for much of his career. Finally, Applicant clearly asserted that during his entire history with this associate and during his brief trip to Taiwan, no discussion of his research for Government or industry was ever held.

### **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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on the reasons cited above as to why mitigating condition AG ¶ 8(b) applies and is controlling under Guideline B, I find that the record evidence leaves me with no significant questions or doubts as to Applicant’s eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns under the whole-person concept.

### **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

Subparagraphs 1.a. and 1.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.

Martin H. Mogul  
Administrative Judge