

DATE: June 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0628

REMAND DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Arthur A. Elkins, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

When attending graduate school in Sweden, the Applicant became a permanent resident, and obtained a work permit. After receiving his Doctor of Philosophy degree, he returned to the U.S. He maintains a computer user account and a personal internet web page through the foreign university as well as the title of adjunct researcher. He has friends who are foreign citizens. His foreign contacts are sufficiently casual to evidence little risk of foreign influence. Additionally, his outside employment or activities do not pose a conflict with his security responsibilities. Clearance is granted.

STATEMENT OF THE CASE

On February 22, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 30, 2001, the Applicant answered the SOR and elected to have his case decided on the written record, in lieu of a hearing. On April 5, 2001, the Applicant requested a hearing. The case was assigned to me on April 23, 2001. Notice of Hearing was issued on May 10, 2001, scheduling the hearing which was held on June 21, 2001.

The Government's case consisted of one witness and nine exhibits (Gov. Ex.). The Applicant relied on his own testimony and one document. (App. Ex.) The record was held open to allow the Applicant to submit additional documents. Following the hearing, a single submission was received. Department counsel having no objection to its admission, the submission was admitted as App. Ex. B. A transcript (tr.) of the hearing was received on July 2, 2001. On September 17, 2001, a decision favorable to the Applicant was issued. The decision was appealed.

On April 26, 2002, the DOHA Appeal Board entered a Decision and Remand Order. On May 14, 2002, a complete copy of Gov. Ex. 9 was received from Department Counsel. A copy had also been sent to the Applicant. On May 17, 2002, I issued an order giving the Applicant until the close of business on June 7, 2002, to confirm receipt of Gov. Ex. 9 and provide comments on it. On May 24, 2002, the Applicant responded to the order by data fax, which I have marked and

admitted as App. Ex. C.

PROCEDURAL MATTERS

The Appeal Board remanded the case concerning questions about Gov. Ex. 9. In their Decision and Remand Order (DRO) gave six directives a. through f. In response to DRO a., the extraneous, one page document inadvertently included in the original decision has been removed. The record was reopened and Department Counsel submitted a copy of Gov. Ex. 9, in response to DRO b. In response to DRO c., the Applicant has received a copy of Gov. Ex. 9. In the Applicant's response to Gov. Ex. 9 (App. Ex. C) he states Gov. Ex. 9, which he recently received, is exactly the same as the full set of photocopies of his web pages sent to him by Department Counsel in preparation of the June 2001 hearing. The Applicant indicates those pages have not been modified since March 2001. In response to DRO d., the complete Gov. Ex. 9 has been admitted into evidence and included in the case file. I have considered the complete copy of Gov. Ex. 9 prior to making my decision, in response to DRO e. In response to DRO f., a new decision consistent with the requirements of Items E.3.1.35 and E3.1.25 of the Directives's Additional Procedural Guidance follows.

FINDINGS OF FACT

The SOR alleges personal conduct (Guideline E), foreign preference (Guideline C), foreign influence (Guideline B), and outside employment (Guideline L). The Applicant admits some of the allegations and denies the rest.

The Applicant is 50-years-old and has worked for a defense contractor since June 1993. He is seeking to maintain a security clearance. In November 1999, the Applicant talked with Defense Security Service Special Agents in an open and frank discussion. One agent stated the Applicant was cooperative, but the Applicant was not sure of some of the information being requested. (tr. 50) The Applicant indicated he was unsure of some of the information, but was unsure how or who may have been involved. He provided information as he recalled it. (tr. 52)

From 1985 through 1988, the Applicant attended graduate school at a state university in the United States. While there, he met a visiting Swedish professor, who was looking for someone with the Applicant's expertise. (tr. 143) The Applicant expressed an interest in visiting or living in Sweden. The Applicant had completed three years of study at the state university, had passed his major exams, and was prepared to start on his dissertation. In June 1988, the Applicant delivered a paper at a conference in Sweden. He was offered a job in Sweden--a country which had historical expertise in his areas of academic concentration. (tr. 74)

From November 1988 until June 1993, the Applicant worked in Sweden, as a computer analyst. He was also doing administrative scholarly work at a salary of \$25,000.00 per year. In 1989, his classification changed from probationary to permanent employee of the foreign company. In July 1991, he became a postdoctoral research assistant/assistant professor for research at a Swedish University. (Gov. Ex. 3) The position was for two years, renewable for an additional two years. The Swedish government funds the university. (tr. 83) His official position was as a "disatator," which meant he had no course work, but was required to submit a dissertation. In addition to his primary job of preparing his dissertation, he gave occasional lectures and attended departmental meetings. (tr. 147) He paid no tuition, but paid a minor amount for student activity or union dues. His salary while working at the university was between \$36,000.00 and \$45,000.00 per year. In 1989 or 1990, the Applicant visited a Swedish school of economics arranged by a friend, Mr. E., a Swedish citizen. He also visited a former Swedish armament manufacturer to look at software tools and facilities. (tr. 98) A number of commercially available database tools had been set up and were being evaluated at the facility. (tr. 130) He viewed research test bed facilities and data base modeling. In December 1992, he received a Doctor of Philosophy degree from the university. In June 1993, his position as assistant professor ended and he returned to the U.S.

As a U.S. citizen living in Sweden, the Applicant did not have a Swedish passport, driver's license, or other identification credentials. In December 1988, needing some type of identification to cash checks the Applicant registered with the Swedish tax authorities and was issued a Swedish social identification number (personnummer), similar to a social security number, which he obtained at the Swedish Post Office. The required number gave him no benefit as to Swedish retirement. (2) While living in Sweden, he was covered by a national health care program. Registering with the Swedish tax authority was required by law and not discretionary. (tr. 73) In 1993, the tax office

notified the Applicant (App. Ex. B, tr. 106) he had been removed from the tax registry because he had returned to the United States.

When the Applicant arrived in Sweden, he initially filed for temporary residence and for a work permit. At the end of 1989 or early 1990, his employer had to commit to make him a permanent employee or let him go. At the same time, the Applicant filed for permanent residence as required by law. (tr. 106) Swedish law prohibits foreign nationals from being employed longer than a year without being designated permanent employees and obtaining permanent residences and work credentials. The residence and work permits were renewable every three years. In December 1992, the Applicant last renewed his residence/work permit. The Applicant never acquired Swedish citizenship for Swedish citizenship requires five years of residency and the Applicant lived in Sweden only four and one-half years.

Prior to leaving the university the Applicant received an unpaid position with the vacuous title of "Adjunct Researcher," a title not recognized by the university. (tr. 79) Although the Applicant uses the title, he has never been notified this is in conflict with his U.S. security responsibilities. The arrangement allows the head of the department to claim the Applicant as associated with the department and allows the Applicant to use the affiliation in his private, scholarly, non-DoD activities. The arrangement also allows the Applicant internet access to the university's computer, which the Applicant rarely uses. (tr. 154) Anyone signing onto the Applicant's web site at the university is automatically forwarded to the Applicant's computer in the U.S.

Sometime between November 1988 and August 1990, the Applicant had a casual dinner with four or five Swedish citizens. During the course of the evening, numerous topics were discussed, including the Palestinian civil disobedience campaign known as "Intifada" and what it would take for that organization to collect information and disseminate it to the international media. The discussion turned to what a computer and database could do to allow the "Intifada" to compile and distribute information. This abstract discussion occurred only during that evening's dinner conversation. No one present was an "Intifada" sympathizer or had ties to the organization. No action was ever taken concerning the discussion. The Applicant did not know any Palestinian or "Intifada" personnel and has never divulged any classified, proprietary, or restricted information to any "Intifada" personnel, or to agents or operatives of any foreign country or organization.

In the mid-1980's the Applicant met a Canadian woman while they were both students at the same state university in the U.S. From 1989 to 1990, the Applicant engaged in a romantic relationship with this woman. In the Summer of 1990, after the affair had terminated, the woman was the Applicant's house guest for two weeks in Sweden. The visit was tense: the Applicant was nervous, out of sorts, distracted, and did not pay sufficient attention to the woman. (tr. 121) He was uncomfortable having her at his house, and he looked forward to her departure. As the Applicant states, "she was driving him up the wall." (tr. 57) She kept pressing him to tell her what was wrong. Not wanting to tell her the truth--that he did not want her there--he fabricated a lie. (tr. 58) He took a recent dinner conversation about a lap top computer and an upcoming trip to the Middle East and wove them together. He told her he was nervous because he intended to transport a computer to the "Intifada" organizers during an up coming trip to the Middle East. This story satisfied the woman. In reality, his nervousness was due to her presence and nothing more. The Applicant's scheduled trip to the Middle East was canceled. He has never delivered a computer, or any other technology to any foreign government or organization. (tr. 115)

Periodically since 1990 until late 1999/early 2000, the woman telephoned or wrote to the Applicant through his parents and brother. This was done because the Applicant did not want his former girlfriend to have his telephone number or address. After his brother complained about the woman calling him, the Applicant gave his former girlfriend his current telephone number so she could contact him directly. The Applicant feels no affection for this woman. (tr. 67)

In December 1994, the Applicant returned to the Swedish university to participate, along with five other members, on a grading committee to determine if a graduate student had passed his doctoral dissertation. The Applicant was in Sweden for two weeks, although his committee duties lasted only two days. Neither the Applicant nor the other committee members were paid for their participation, but were reimbursed for travel and lodging expenses. (tr. 76)

In 1996, the Applicant set up a Web page through the Swedish University (Gov. Ex. 9) where he continues to maintain a computer user account. (tr. 79, 110) The pages contain personal information and professional background information

about the Applicant (tr. 62) including the Applicant's resume. None of the web pages contains classified information or information about the Applicant's organizational unit or projects. The data provided is similar to that ordinarily and routinely listed in a *curriculum vita*. Any e-mail addressed to the Applicant at the university is automatically forwarded to him at his home computer in the U.S. Since 1996, the Web pages have been continually in place. Between the summer of 1998 and early 2001, the pages were not updated. In early 2001, the pages were updated and have remained unchanged to present--June 2002. In the last three years the Applicant has spent about eight hours in construction, maintenance, and design of the pages. (tr. 102)

In June 1999, the Applicant took a two-week vacation to Sweden. While there, he gave a lecture on information systems at the Swedish University (tr. 98) and visited the collaborative information technology facilities at a Swedish School of Economics and the National Defense College. Both locations had research test bed facilities which were "specially equipped rooms for people to more or less sit around a conference table and make decisions." (tr. 98) Neither of the research test bed facilities were operational.

The Applicant has a number of friends who are foreign citizens. (Gov. Exs. 6, 7) While in Sweden, he collaborated on multiple consulting jobs. The Applicant and Mr. E, a Swedish citizen, have co-authored a series of papers. The Applicant contacted Mr. E. a few days prior the hearing, concerning a paper they had jointly written. He exchanges e-mails with Mr. E. once or twice a week and has telephone contact every two or three weeks. On trips back to Sweden, it is common for him to stay at Mr. E.'s home. He has e-mail contact with another Swedish citizen who works at a school of economics and telephones him every two to three weeks. This individual is a member of the American Society for Cybernetics (ASC), a society to which the Applicant also belongs. He also maintains contact with other individuals he met while attending the Swedish university.

The Applicant has a friend, Ms. M., a citizen of Brazil and instructor at a Brazilian university, with whom he planned an international symposium in November 1997. The Applicant had occasional contact with this person when organizing a second symposium prior to it being cancelled. He sends or receives two or three e-mails a year from this individual, but in recent months, has lost contact with this person. (tr. 152) The Applicant has regular contact with a Canadian citizen, Ms. B., who is also a member of the ASC. They have regular contact concerning the ASC. In November 1997, he had his only face to face meeting with this person. (Gov. Ex. 7) One foreign citizen, Ms. O., (who considers him like an uncle) is an instructor at a foreign national war college. (tr. 71) He sends her e-mails once or twice a week and she responds once a month. Their last telephone contact was in 2000. On an average of once a year, the Applicant converses with a foreign national in Australia (tr. 89) and, in the past five years, he has talked with the individual five to ten times. (tr. 150, 151) Periodically, the Applicant receives inquiries from foreign nationals on academic and scholarly matters. (tr. 68)

The Applicant has no deep bonds of affection for these individuals. He does not send birthday cards or holiday cards to them, except for an electronic birthday card to Ms. O. Since returning to the U.S. he has not sent holiday or birthday presents to anyone in Sweden. (tr. 159) He has never been solicited by any of them to discuss his work. The Applicant has never withheld the fact he has contact with foreign nationals. (tr. 70)

The Applicant has no financial assets or interests in Sweden. He owns no real estate anywhere. He rents an apartment in the U.S. All of his assets are in the U.S. He maintains a checking account, a money market account, a 401 (K) plan, a Roth IRA, and certificates of deposit, all in the U.S. He belongs to professional organizations in the U.S. and is a member of Mensa.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Personal Conduct (Guideline E) The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Conditions that could raise a security concern and may be disqualifying also include:

1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances. (E2.A5.1.2.1.)

Conditions that could mitigate security concerns include:

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability. (E2.A5.1.3.1.)

Foreign Influence (Guideline B) The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying include:

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country. E2.A2.1.2.1.

3. Relatives, cohabitants, or associates who are connected with any foreign government. E2.A2.1.2.3.

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States. E2.A2.1.3.1.

3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.

5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5.

Foreign Preference (Guideline C) The Concern: 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.

Conditions that could raise a security concern and may be disqualifying include:

4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country. E2.A3.1.2.4.

Conditions that could mitigate security concerns include:

None apply.

Outside Activities (Guideline L) The Concern: Involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information. E2.A12.1.1.

Conditions that could raise a security concern and may be disqualifying include any service, whether compensated, volunteer, or employment with:

1. A foreign country. E2.A12.1.2.1.

Conditions that could mitigate security concerns include:

1. Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities. E2.A12.1.3.1.

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of producing contrary proof then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline E, personal conduct. Under Guideline E, the security eligibility of an applicant is placed into question when the Applicant is involved in conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The Applicant made a false statement to his ex-girlfriend about transferring a computer to the "Intifada."

Sometime between November 1988 and August 1990, during a casual dinner with four or five Swedish citizens, the topic of the Palestinian civil disobedience campaign, known as "Intifada," was discussed. No one present was a member of the organization or had ties to the organization. The abstract discussion, which was one of many topics discussed during dinner, included the impact a computer and database would have on compiling and distributing information. This topic was discussed only during the one dinner and it was all talk. No action was ever taken concerning the discussion. The Applicant never went to the iddle East, never met with the "Intifada," and never gave them a lap top computer. It was discussed only one time.

In 1990, the Applicant wove this dinner conversation into a lie he told to an ex-girl friend who was his house guest in Sweden for two weeks. The visit was a tense, uncomfortable situation with the Applicant acting nervous, out of sorts,

distracted, and not paying sufficient attention to the woman. The Applicant's tense demeanor was caused by the woman's presence for he did not want her to be there. When she questioned his demeanor, instead of telling her she made him uncomfortable and he wanted her to leave, he made up a story that he was going to take a computer to the "Intifada." The story, although false, had the desired effect and satisfied his ex-girlfriend's curiosity. Although the Applicant lied to his ex-girl friend, at no time did the Applicant ever intend to transport a computer. MC 1-⁽³⁾ applies. I find for the Applicant as to SOR subparagraphs 1.a. and 1.b.

In 1996, the Applicant set up a Web page (Gov. Ex. 9) through the Swedish University. The Applicant also has a local Web page in the U.S. Any e-mail addressed to the Applicant at the foreign university is automatically forwarded to him at his home computer, in the U.S. Both Web pages contain topics of interest to the Applicant and personal and professional background information about the Applicant similar to that ordinarily and routinely listed in *curriculum vitae*. In the last three years he has spent minimal time constructing, maintaining and designing his web page. Having one's current position listed on a web site, unless that position is classified, is not of security concern. The fact the site also lists the vacuous title of "Adjunct Researcher," is not of security concern. The title is not recognized by the university, is an unpaid position, and allows the department to claim the Applicant's association with the department and allows the Applicant to list the affiliation in his private, scholarly, non-DoD activities.

The maintenance of these web pages and his position as Adjunct Researcher has been alleged as a violation of personal conduct under Guideline E. None of the disqualifying factors apply to SOR subparagraphs 1.c. or 1.d. Since this is not unfavorable information DC 1 does not apply. There was no deliberate omission, concealment, or falsification of relevant and material facts. (DC 2) No false or misleading information was provided to an investigation. (DC 3) The personal conduct does not increase the Applicant's vulnerability to coercion, exploitation or duress. (DC 4) There is no pattern of dishonesty or rule violations (DC 5) nor association with persons involved in criminal activity. (DC6) I find for the Applicant as to SOR subparagraphs 1.c. and 1.d.

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family members or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country. The Applicant has associates who are foreign citizens, some of which work indirectly for foreign governments. Some of his associates work for foreign universities, but are not agents of a foreign power and there is no evidence they have been subject to any undue attention by foreign authorities.

A security risk may exist where the Applicant is bound by affection, influence, or obligation to individuals who are not citizens of the United States or may be subject to duress. The Applicant's contacts are not of this category. While in Sweden, the Applicant met numerous foreign nationals, and he still communicates with a few of them. Additionally, his work and area of study have put him in contact with other individuals from various parts of the world. Some of these individuals work for foreign universities and these foreign universities may or may not be funded by foreign governments. With most of the individuals, the Applicant's contact is infrequent consisting of e-mails or telephone calls every few months, yearly, or even less frequent.

Of the Swedish citizens he knows, the Applicant maintains frequent contact with only two. He sends e-mail to one individual, Ms. O. (who considers him like an uncle) once or twice a week and she responds once a month. Their last telephone contact was in 2000. The Applicant and the other Swedish citizen, Mr. E., have co-authored a series of papers. The Applicant contacted Mr. E. a few days prior the hearing, concerning their jointly written paper, exchanges e-mails with this individual once or twice a week, and has telephone contact every two or three weeks. On his infrequent trips to Sweden, it is common for the Applicant to meet with Mr. E. and stay at Mr. E.'s home. The Applicant's contact with these two individuals may be frequent, but there is no evidence they are agents of a foreign power. The Applicant has no deep bonds of affection for these individuals. He does not send them birthday or holiday cards or presents. MC 1-⁽⁴⁾ Applies. I find for the Applicant as to SOR subparagraphs 2.a., 2.c., 2.d. 2.e. and 2.f.

Since 1990, when the Applicant's romantic involvement with a Canadian citizen ended, the Applicant has had infrequent contact with her. Until recently, all contact from her went to the Applicant's brother, because the Applicant did not want her to know his location. The Applicant has no feelings of affection for this individual. I find for the Applicant as to SOR subparagraph 2.b.

The Government has satisfied its initial burden of proof under Guideline C, (Foreign Preference). Under Guideline C, the security eligibility of an applicant is placed into question when

an individual acts in such a way as to indicate a preference for a foreign country over the United States; he or she may then be prone to provide information or make decisions that are harmful to the interests of the United States. The majority of these actions occurred between 1988 and 1993 when the Applicant lived in Sweden.

In 1988, the Applicant moved to Sweden to work and continue his studies. In December 1992, the Applicant received his PhD and returned to the U.S. within six months. He has returned to the foreign university on one occasion, in 1994, to serve on a doctoral examination program.

When living in Sweden, he was required to register with the Swedish tax authorities, to get a work permit, and to file for residency. Swedish law prohibits foreign nationals from employment exceeding a year without being designated permanent employees, obtaining permanent residences, and permanent work credentials. The Applicant was issued a Swedish social identification number (personnummer). While in Sweden, the Applicant worked as a computer analyst, doing administrative scholarly work, as a postdoctoral research assistant, and as an assistant professor for research at a Swedish University, which like all Swedish universities, was state funded. When he returned to the U.S., the Swedish tax office notified him he had been removed from the Swedish tax registry.

Prior to 1993, while living in Sweden, the Applicant was covered by a national health care program. Disqualifying Condition (DC 4), accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country, applies. All entitlement to foreign medical benefits ended when he returned to the U.S. The Applicant has no Swedish retirement benefits for they are covered under a reciprocal agreement with U.S. social security. The Applicant never applied for foreign citizenship and never lived in Sweden long enough to qualify for citizenship. ⁽⁵⁾ He maintains no financial assets outside the U.S.

When the Applicant lived, worked, and studied in Sweden he had to comply with Swedish law concerning work permits, residence, and taxation, which he did. However, he is no longer subject to Swedish law, residence requirements, or work permits. Having a foreign job nine years ago and complying with the law when holding that job does not post a current risk of foreign influence. I find for the Applicant as to SOR subparagraphs 3.a., 3.b., 3.c., and 3.e.

Prior to receiving his PhD, the Applicant received educational benefits from Sweden. But those benefits ended upon his returned to the U.S. in 1993. The Applicant's conduct concerning these benefits is not recent. Since returning to the U.S., he has not received any additional educational or medical benefits from Sweden and it is highly unlikely he would ever receive such benefits again. Although not sanctioned by the United States, students are not prohibited from studying at foreign universities or receiving foreign degrees. I find for the Applicant as to SOR subparagraph 3.d.

In December 1994, the Applicant returned to the Swedish university to participate (for two days) as one of five members on a grading committee to determine the doctoral qualification of a graduate student. The Applicant was not paid for his participation, but was reimbursed travel and lodging expenses. His actions on the grading committee did not indicate a preference for a foreign country over the U.S. or that the Applicant may be prone to provide information or make decisions harmful to the interests of the U.S. because of it. I find for the Applicant as to SOR subparagraph 3.f.

In June 1999, while on vacation in Sweden the Applicant visited two non operational test bed research facilities. These were specially equipped rooms for people to make decisions around a conference table. One was at the Stockholm School of Economics and the other at the Swedish National Defense College. The Applicant has a professional interest in advanced information systems. His visit to test bed facilities, even if they are located in a foreign country, does not indicate a preference for a foreign country over the U.S. or that the Applicant may be prone to provide information or make decisions harmful to the interests of the U.S. because of it. I find for the Applicant as to SOR subparagraph 3.g.

There is no evidence Applicant has maintained a foreign citizenship to protect financial interests or for any other reason. With his career and residence in the United States and no financial interests outside of the U.S., the security concerns raised by his Guideline C conduct are overcome. Accordingly, I find for the Applicant as to Guideline C.

The Government has satisfied its initial burden of proof under Guideline L, Outside Activities. Under Guideline L, the security eligibility of an applicant is placed into question when an Applicant is involved in outside employment or activities which pose a conflict with an individual's security responsibilities or could create an increased risk of unauthorized disclosure of classified information.

The Applicant worked for a Swedish university from July 1991 through June 1993 and in 1994 participated on a doctoral committee, and has conducted guest lectures on his infrequent trips to Sweden. The Applicant has the vacuous title of "Adjunct Researcher," a title not recognized by the university, which allows the department to claim the Applicant's association and allows the Applicant to mention the affiliation in his private, scholarly, non-DoD activities. The arrangement also allows the Applicant internet access to the university's computer, a service he rarely uses. Although the Applicant maintains this title, he has never been notified this is in conflict with his security responsibilities. The Applicant's prior employment by the university, serving on the grading committee, and his unofficial title do not pose a conflict with the Applicant's security responsibilities. MC 1 ⁽⁶⁾ applies. I find for the Applicant as to SOR subparagraph 4.a.

It may appear the security concerns were evaluated piece meal. However, the SOR alleges numerous unrelated allegations which each had to be examined. In reviewing the incidents the overall security worthiness of the Applicant was paramount. The security worthiness of the Applicant was based on the whole picture of the Applicant's judgment, reliability or trustworthiness. In viewing all aspects of the allegations, it is clearly consistent with the national interest to grant or continue his security clearance.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline E (Personal Conduct): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2 Guideline B (Foreign Influence): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Subparagraph 2.f.: For the Applicant

Paragraph 3 Guideline C (Foreign Preference): FOR THE APPLICANT

Subparagraph 3.a.: For the Applicant

Subparagraph 3.b.: For the Applicant

Subparagraph 3.c.: For the Applicant

Subparagraph 3.d.: For the Applicant

Subparagraph 3.e.: For the Applicant

Subparagraph 3.f.: For the Applicant

Subparagraph 3.g.: For the Applicant

Paragraph 4 Guideline L (Outside Employment): FOR THE APPLICANT

Subparagraph 4.a.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. Any amounts paid on his behalf into the Swedish social security system would be credited through an international agreement to his U.S. social security account. (tr. 105)
3. MC 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability. (E2.A5.1.3.1.)
4. MC 1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States. E2.A2.1.3.1.
5. A person must live in Sweden five years before they can file for citizenship. The Applicant lived in Sweden only four and one half years.
6. MC 1. Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities. E2.A12.1.3.1.