

DATE: July 25, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0758

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On April 19, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as amended) issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In the Applicant's response to the SOR dated May 17, 2001, he elected to have the case determined on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on June 5, 2001. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on June 11, 2001, and he submitted a response dated June 15, 2001.

The case was assigned to the undersigned for resolution on July 11, 2001.

FINDINGS OF FACT

The Applicant is 55 years old, and is employed by a defense contractor as their Chief Financial Officer. He is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and Guideline in the SOR:

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, and an unwillingness to comply with rules and regulations.

The Applicant was born in the Peoples Republic of China (PRC) in 1944. In 1948 or 1949, his family fled to Taiwan because the communists were gaining control of the PRC. The family lived in Taiwan, and the Applicant graduated from college in Taiwan. In 1970, the Applicant came to the United States to obtain a higher educational degree, but was forced to drop out when he and his wife had a child, and he needed to go to work to support them. The Applicant became a naturalized citizen of the United States in 1987.

The Applicant completed an application for security clearance dated April 14, 2000, and was asked to give the full name, correct code, and other requested information for each of his relatives and associates, living or dead, as specified. The security clearance application requested, in part, that he list the full name, date of birth, country of birth, country(ies) of citizenship, and the current address of his Brother, Sister, Father-in-Law, Mother-in-Law and other relatives. (See, Question 9, of Government Exhibit 4). In addition, under Code 17 (Other Relative), the Applicant was to include only foreign national relatives not listed in 1-16 with whom he and his spouse are bound by affection, obligation, or close and continuing contact. The Applicant listed his mother and father, (both of whom are deceased), and his two children (who were born in the United States). He failed to list his two brothers and one sister, all citizens of Taiwan and residing in Taiwan. He also failed to list his Father-in-Law and Mother-in-Law, both citizens of Mexico and residing in Mexico, and his spouse's seven brothers and sisters, all citizens of Mexico and residing in Mexico. The Applicant explained that he had never applied for a security clearance before, and the process was new to him. He completed the form in a hurry, misread the question, and was not careful with his responses. (See, Government Exhibit 3 and Applicant's Response to File of Relevant Material).

When the Applicant was interviewed by the Defense Security Service he was asked to describe his extended family, and he provided the information. The Applicant stated that he provided all relevant information to the Government as soon as he understood the question. He further stated that under no circumstances was he attempting to conceal anything from the Government.

The same security clearance application asked the Applicant, "Have you traveled outside the United States on other than official U.S. Government orders in the last seven years?" The Applicant answered "NO." This was a false answer. (See, Question 16, of Government Exhibit 4 dated April 14, 2000). The Applicant failed to list his travel to the PRC on May 15, 1999, and his travel to Taiwan on May 29, 1999, for pleasure. He also failed to list his travel to the PRC and Taiwan in May 1996, for pleasure. The Applicant stated that again he misunderstood the question. It never occurred to him that he needed to list his foreign travel that he took for pleasure. He was under the impression that he was to list only official Government travel. He stated that he provided all relevant information to the Government once he understood the question. (See, Government Exhibit 3 and Applicant's Response to File of Relevant Material).

The same security clearance application required the Applicant to indicate whether he has ever been charged with or convicted of any offenses related to alcohol or drugs? (Regardless of whether the record has been sealed or otherwise stricken from the record). The Applicant answered "NO". (See, Question 24, of Government Exhibit 4). The Applicant was arrested for an alcohol related offense in February 1989. However, there is no evidence that he was ever charged or convicted. The Applicant explained that he did not list the incident because no complaint was ever filed against him, there was no evidence to show that he was driving under the influence, and he considered it to be a mistake on the part of the police department for detaining him in the first place. Government Exhibit 6 corroborates the fact that no complaint was filed against the Applicant. Accordingly, I find that the Applicant did not intentionally conceal this information from the Government.

I find that the Applicant's responses to Questions 9 and 16 on his security clearance application of April 14, 2000, concerning his foreign relatives and associates, and foreign travel, were a deliberate attempt to conceal material information from the Government. The Applicant is an intelligent man who is well educated. The Applicant's responses to the questions were completely false and inaccurate, and he knew or should have known that they were false when he provided them to the Government.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct and violated a Federal criminal statute.

Applicant's intentional falsifications on his security clearance application of April 14, 2000, as set forth in

subparagraphs 1.(a), and 1.(b), of the SOR, were each violations of 18 United States Code, Section 1001, a felony.

Paragraph 3 Guideline B - Foreign Influence. A security risk may exist when an individual's immediate family, including co-habitants, 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.

The Applicant has two brothers and a sister and nine nephews and nieces who are citizens of Taiwan and reside in Taiwan. He has yearly contact with his brothers, and converses with his sister about once or twice a month, as she is experiencing some health problems. He states that his siblings are not involved in politics, and are not college educated. The Applicant provides his siblings no financial support. He states that they are all business people and anti-communist, in support of the United States. (Government Exhibit 5).

The Applicant's spouse was born in Mexico and is a naturalized citizen of the United States. The Applicant's children were born in the United States.

The Applicant's Father-in-Law and Mother-in-Law, and his spouse's seven brothers and sisters are citizens of Mexico and reside in Mexico. The Applicant is very close to his wife's parents and provides them with financial support. They visit the Applicant and his wife in the United States every other year. The Applicant has visited them in Mexico on two occasions in the last seven years. (Government Exhibit 5).

Besides his relatives, the Applicant has no other foreign connections. He owns no property and has no personal business or financial interests in Taiwan, the PRC or Mexico. The Applicant has no close associations with any non-United States citizen either in the United States or abroad.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent Guideline. However, the conditions are neither automatically determinative of the decision in any

case, nor can they supersede the Administrative Judge's reliance on his or her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline E (Personal Conduct)

Conditions that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material 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;
5. A pattern of dishonesty or rule violations.

Conditions that could mitigate security concerns include:

None.

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Any criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concern:

None.

Guideline B (Foreign Influence)

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: (1) not citizens of the United States or (2) 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:

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

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DOD Directive identify personal characteristics and conduct that are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information

is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order... shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in personal conduct and criminal conduct that demonstrate poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in dishonest personal conduct (Guideline E), criminal conduct (Guideline J), and is subject to foreign influence (Guideline B). The Applicant is intelligent, and well educated in his field. As Chief Financial Officer of the company he knew or should have known how to correctly answer the questions on the security clearance application. Accordingly, he is held responsible for the incorrect, false answers that he put down. The Applicant deliberately falsified his security clearance application when he attempted to conceal his foreign connections and foreign travel in two foreign countries. This deception on his application, raises serious doubts about his character, integrity and honesty. He has also violated a Federal criminal statute. Under the particular circumstances of this case, the Applicant's conduct shows poor judgment, unreliability and untrustworthiness, and falls far short of meeting the eligibility requirements for access to classified information under Guidelines E and J.

With respect to Guideline B, the Applicant has substantial foreign contacts in his personal life. Although he has no foreign business or financial interests, he has significant emotional and family ties in Taiwan and Mexico. His siblings as well as his nephews and nieces live in Taiwan, and are citizens of Taiwan. His wife's entire family including her Father and Mother and her seven brothers and sisters, not to mention their children, live in, and are citizens of, Mexico. The Applicant provides them with financial support. The Applicant and his wife maintain continuing and regular contact with their families in Taiwan and Mexico.

Furthermore, the Applicant was not forthright in revealing his foreign family ties on his security clearance application. This raises even more questions as to whether the potential for foreign influence exists. It is the Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. He has not done so. Accordingly, I cannot say that he would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

In addition, the Applicant failed to offer any independent evidence from people who know him well, such as family, friends, coworkers, or supervisors that could attest to his trustworthiness. It is not clear from the evidence that the Applicant has gained the necessary insight into the seriousness of his conduct, or whether he is prepared to act honestly and responsibly in the future. There is no evidence of rehabilitation to any extent. Consequently, I cannot conclude that he is now a reliable and trustworthy individual.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation, which is sufficient to overcome the Government's case. On balance, it is concluded that the Applicant has

failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 and 3 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: For the Applicant

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.b.: Against the Applicant.

Subpara. 3.c.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

DARLENE LOKEY-ANDERSON

Administrative Judge