

KEYWORD: Security Violations; Foreign Influence; Personal Conduct

DIGEST: Applicant, a scientist with a major shipbuilder of Chinese ancestry from Taiwan, had six missing confidential documents in 1998 while a U.S. Navy employee. He also had two Chinese (PRC) professional contacts and a daughter who lived in Shanghai briefly while working for a U.S. bank. He allegedly omitted and falsified material on Personnel Security Questionnaires (DD 398) and in interviews with investigators in 1987 and 1993. He has held his security clearance since leaving government service in 1998. Applicant provided credible testimony as to all allegations. Clearance is granted.

CASE NO: 01-24358.h1

DATE: 09/16/2003

DATE: September 16, 2003

In Re:

SSN: -----

Applicant for Security Clearance

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DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Robert J. Tuidor, Esq., Department Counsel

FOR APPLICANT

Jerome P. Friedlander, Esq.

SYNOPSIS

Applicant, a scientist with a major shipbuilder of Chinese ancestry from Taiwan, had six missing confidential documents in 1998 while a U.S. Navy employee. He also had two Chinese (PRC) professional contacts and a daughter who lived in Shanghai briefly while working for a U.S. bank. He allegedly omitted and falsified material on Personnel Security Questionnaires (DD 398) and in interviews with investigators in 1987 and 1993. He has held his security clearance since leaving government service in 1998. Applicant provided credible testimony as to all allegations. Clearance is granted.

STATEMENT OF THE CASE

On August 9, 2002, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On September 4, 2002, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to another administrative judge who could not hold the hearing. The first notice of hearing was issued on May 15, 2003. An amended notice of hearing was issued on May 23, 2003, setting the hearing for July 22, 2003. The matter was reassigned to me on July 21, 2003, and the hearing was held on July 22 and 28, 2003. The government introduced eleven exhibits and the Applicant introduced five. One exhibit offered by the government was not admitted. All others were admitted into evidence except for one paragraph in Exhibit 11. The transcripts were received on July 30 (Vol.1) and August 7, 2003 (Vol. 2).

FINDINGS OF FACT

Applicant admitted all of the specific allegations under Guidelines K, B, and E except for paragraph 3c under E but disagreed with the adverse interpretation placed on all allegations. After a complete review of the evidence in the record and upon due consideration of the record, the following additional findings of fact are made.

Applicant is a native of Taiwan who has a college degree from a university in Taiwan and graduate degrees from two U.S. universities. He has written or collaborated on a large number of technical articles and papers published in professional journals or by the U.S. government.

Applicant is a scientist on naval architecture with a major U.S. shipbuilding corporation contracting with the U.S. Navy. He retired from the Navy in 1998 where he had done the same type of work since 1968. He has continued to hold a

security clearance since his retirement.

In 1998 Applicant could not account for six confidential documents from the classified library in his agency. When a security officer questioned him at a random security check he could not locate or account for them. He retired two months later and never heard further about the issue until two interviews were taken in 1999 (Exh 3 and 4). His supervisor wrote an explanatory memo about the matter in May of 1998. (Exh. 8) His exit checkout was approved when he left the agency. (Exh. E)

Documents such as those at issue in this matter were often put in the burn bag when no longer needed and not returned to the library. (TR Vol. 1, 63)

Applicant attended numerous international conferences where persons engaged in his field met to exchange information. One of those was a scientist from the PRC with whom Applicant is alleged to have a relationship who had similar responsibilities in the PRC as Applicant had for the U.S. Navy. All meetings were approved by his supervisors and reports were filed with his supervisor after each meeting. In several interviews with investigators and on applications for security clearances these specific contacts were not reported although the international organization sponsoring the meetings was reported.

Applicant's supervisor also had professional and personal contact with the same PRC scientist as the Applicant is alleged to have. (TR Vol 1., 88) Applicant and his supervisor had occasional social contacts with both father and son when they were in the U.S.

Applicant served a mandatory period of military service in Taiwan and described it in a security interview as related to sports. This was partially inaccurate in that he was assigned to an ordnance factory but was running a sports program for them since the senior officers did not want a short term draftee doing ordnance work that was being done to supply U.S. troops during the Viet Nam conflict (TR Vol 2, 101 and 102).

Applicant's daughter lived in Shanghai for a period of time ending in 2000 working part time at the U.S. consulate and learning the Chinese language. She lived in the same apartment house as the son of the scientist from the PRC with whom Applicant is alleged to have a relationship. They did not live in the building at the same time. Applicant's daughter now lives in the U.S. and works for a major U.S. corporation.

The son of the scientist came to the U.S. and studied at a U.S. university where Applicant has taught since 1988. The son obtained a doctoral degree and Applicant was one of three readers for his doctoral dissertation. Applicant also served as a reader for many other doctoral candidates and a mentor for other students at several universities. After graduation the son was hired by the Applicant's agency but left in 1998 after a possible security breach and investigation. Applicant's supervisor was aware of the facts of the investigation but could not divulge the information except to say the Applicant was not involved. (TR Vol 1, 86)

POLICIES

[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b)

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

Considering the record evidence as a whole, the following security guidelines apply:

Security Violations-Guideline K

Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness and ability to safeguard classified information.

Conditions that could raise a security concern and may be disqualifying include violations that are deliberate or multiple or due to negligence. (DC 2)

Conditions that could mitigate a security concern include (MC) actions that:

1. were inadvertent;
2. were isolated or infrequent.

Foreign Influence-Guideline B

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.

Conditions that could raise a security concern and may be disqualifying (DC) 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

Conditions that could mitigate security concerns (MC) include:

1. a determination that the immediate family members in question would not constitute an unacceptable security risk
3. contacts with foreign citizens are casual and infrequent
4. the individual has promptly reported to proper authorities all contacts from a foreign country

Personal Conduct-Guideline E:

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.

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

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;
3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trust-worthiness determination;

Conditions that could mitigate security concerns include;

1. the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

While Applicant could not account for the six missing documents, the head of his office rebutted the allegation and pointed out the actual practices of the office in a credible manner that successfully mitigated the allegation. The Disqualifying Condition (DC) under Guideline K was established by the security officials that there had been noncompliance. However, the Mitigating Conditions (MC 1 and 2) were established by the Applicant and his supervisor that the violation was inadvertent and infrequent since there was no indication or proof of prior security breaches. The report by the supervisor in response to the security officials apparently was accepted as Applicant was permitted to retire and did not suffer any consequences or lose his clearance for the past six years.

The issue of Foreign Influence issue under Guideline B (DC) regarding Applicant's daughter and his professional and personal relations with two Chinese (PRC) scientists was mitigated (MC 1) by the fact that the daughter is no longer a resident of Shanghai and his contacts with the two foreign citizens was casual and infrequent (MC 2) and that his contacts with them were reported (MC 3). Mitigating Conditions (MC) 1 applies in that immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power and thus do not constitute an unacceptable security risk.

The issue of Personal Conduct under Guideline E regarding Applicant's omission or falsification of relevant and material facts in his application for clearance and interviews with security investigators (DC 2) and providing false and misleading information to investigators and officials. (DC 3) was successfully mitigated by providing correct information to the officials and by Applicant's reasonable interpretation of the requirements. Applicant's reports of his trips to international conferences including his contacts at the conferences show that these contacts were well known in his agency and provide a reasonable basis for his determination that these government activities need not have been reported.

Applicant's description of his military service in a 1993 security interview that omitted the fact that was assigned to the logistics ordnance arm of the military was explained at the hearing that his actual work was in sports management for the facility and that was the reason for the description.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that he is trustworthy, reliable, and eligible for access to classified information.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline K FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline B FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Paragraph 3. Guideline E FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d.: For Applicant

Subparagraph 3.e.: For Applicant

DECISION

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

Charles D. Ablard

Administrative Judge

