

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Applicant's foreign influence, including close foreign family ties and his failure to list his foreign relatives who reside outside of the United States, has been mitigated. Clearance is granted.

CASENO: 02-21137.h1

DATE: 01/26/2005

DATE: January 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21137

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant's foreign influence, including close foreign family ties and his failure to list his foreign relatives who reside outside of the United States, has been mitigated. Clearance is granted.

STATEMENT OF THE CASE

On June 2, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 21, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 1, 2004. A notice of hearing was issued on November 8, 2004, scheduling the hearing for November 24, 2004. At the hearing the Government presented five exhibits. The Applicant presented one exhibit and testified on his own behalf. The official transcript (Tr.) was received on December 8, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 53 years of age and married. He is employed as a Network Administrator and Telecommunications Specialist for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Jordan in 1951. He immigrated to the United States in 1970 to obtain his college education. In 1977, he became a permanent resident of the United States, and in 1986, he became a naturalized United States citizen. He married a native born United States citizen and they have two grown children who are native born United States citizens. The Applicant has no property, bank accounts or any other assets in Jordan. He exercises his right to vote, serves on jury duty and owns a house in the United States worth approximately \$500,000.

The Applicant has eight siblings. Four of them reside in the United States with whom the Applicant is very close. Four other siblings live outside of the United States. Two of his sisters are citizens of Jordan and currently reside in Jordan. Another sister who is a citizen of Jordan resides in Nablus, West Bank. He also has a brother who is a citizen of Jordan who lives in Saudi Arabia. None of his family members abroad have any association whatsoever with any foreign Government. None of his siblings abroad have any knowledge about what type of work the Applicant does. He maintains contact with his siblings abroad by telephone about once every two weeks or so. He also has monthly contact with each of his siblings by letters and cards.

The Applicant was asked hypothetically what he would do if any of his foreign family members were coerced into having to obtain confidential information from him.

You did say hypothetically. I have two answers, I can answer that with honesty. Number one, my family, even my wife here in the United States and my children, they do not know what I do. All they know is I work as a Computer Specialist and a Telecommunications Specialist. I never discuss with them what I do. So, how would they know what I have access and not access to? That's number one. Number two, to me it's common sense, that if something like this is to happen, I will approach, I will go to the security authority on base and I will explain to them exactly what I just heard and received and I basically will work with them, if not ask them, to give me any assistance because it's wrong. The best I can do is to let someone know what's going on; that I am being threatened, blackmailed or whatever the term is. You know and just wait for their direction, let them guide me, how to handle the situation, which I hope and pray to God it

will never happen. (Tr. pp. 48- 49).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, 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 completed a security clearance application dated September 8, 2000, wherein he was required to reply to the following question: **(9) Your Relatives and Associates**, Give the Full Name, Date of Birth, County of Birth, Country(ies) of Citizenship, Current Street Address and City (country) of Living Relatives and State for each of Your relatives and associates, living or dead", to which the Applicant listed his relatives that currently reside in the United States. He did not list any of his relatives who reside of the United States, specifically his three sisters and one brother. (See Government Exhibit 1).

The Applicant testified credibly that he made an honest mistake when he answered the question on his security questionnaire in response to question 9. His only explanation for failing to list his three sisters and one brother abroad is attributed to his simple misunderstanding of the question. (Tr. p. 28). The Applicant met on several occasions with DSS agents after completing the application concerning other matters, specifically tax issues and foreign travel. During one of his interviews the Applicant even discussed his most recent travel to Jordan for his brother's wedding, when all of his siblings traveled from different countries and met for the first time in nineteen years. Nothing further was mentioned. Sometime later, the Applicant was contacted concerning his foreign siblings. The Applicant provided the Government with all of the information about the identities, residents and citizenship of his siblings abroad. (Tr. pp. 28-34). The fact that he did not answer question 9 correctly appears to be an honest mistake on the Applicant's part. This information leads me to believe that he did not intentionally conceal his foreign relatives who live outside of the United States from the Government.

Mitigation.

Fifteen letters of recommendation were submitted by coworkers, colleagues and other professional associates that know or work with the Applicant, from various military personnel in the Department of the Air Force, including a three star general, who is Director of the Space Program, indicate that the Applicant is an extremely dedicated employee with superb character qualities. He is a person of high moral standards, character, honesty and integrity. He is considered extremely trustworthy and highly ethical. (See Applicant's Exhibit A).

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 criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on 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:

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.

Condition 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;

Condition that could mitigate security concerns:

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 the loyalty of the person(s) involved and the United States.

Guideline E (Personal Conduct)

Condition 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 statute, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Condition that could mitigate security concerns:

2. The falsification was an isolated incident, was not recent, and the individual has subsequently proved correct information voluntarily.

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 criteria established in the DoD Directive identify personal characteristics and conduct which 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 eligible for a security clearance. Eligibility for access to classified information is predicted 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. 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 reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which 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."

The Government must make out a case under Guideline B (foreign influence) and Guideline E (Personal Conduct) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates that he has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The evidence establishes that the Applicant has resided in the United States citizen for the past thirty-five years. He is a United States citizen, married to a United States citizen, and has two native born children. He owns a home here and is fully integrated into our United States system which includes the right to vote. None of his foreign siblings and their families have any connection with any foreign Government, or are in a position to be exploited by that Government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Although he is close to his foreign relatives, his contacts with them is not of a nature to influence his security worthiness. Mitigating Condition (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 the loyalty of the person(s) involved and the United States* applies. Based on the foregoing, this does not raise a security concern and Guideline B (Foreign Influence) is found for the Applicant.

As previously discussed, I do not find that the Applicant intentionally falsified his security clearance application concerning his foreign siblings. The Applicant testified credibly and presented significant evidence attesting to his honesty and veracity. Furthermore, after having made the mistake in answering the question wrong, the Applicant during a subsequent interview candidly and openly volunteered all of the information about the identities, residences and citizenship of his siblings abroad. He also identified siblings that the DoD was not aware of. This was an honest mistake that he corrected, and was obviously an aberration to his consistent good character and integrity that his fifteen letters of recommendation attest to. Mitigating Condition (2) *The falsification was an isolated incident, was not recent, and the individual has subsequently proved correct information voluntarily* applies. Accordingly, I find for the Applicant under Guideline E (Personal Conduct).

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B and Guideline E of the

adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines B and E.

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: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant 1.c.: For the Applicant

1.d.: For the Applicant 1.e.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge