

KEYWORD: Personal Conduct

DIGEST: Applicant rebutted security concerns over personal conduct issues resulting solely from her travel to Cuba in February 2000 as that isolated incident of poor judgment fails to demonstrate "a pattern of dishonesty or rule violations." This personal conduct concern is superseded by her good judgment in fully disclosing this irregular travel to Cuba in security clearance applications both in October 2000 and again in April 2002 and by her subsequent history of her excellent conduct on the job where Applicant is highly regarded. Since being granted a clearance in 2001, Applicant has displayed good judgment and reliability in her handling of classified information. Clearance is granted.

CASENO: 02-23235.h1

DATE: 08/23/2004

DATE: August 23, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-23235

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

## **FOR APPLICANT**

John F. Mardula, Esquire

### **SYNOPSIS**

Applicant rebutted security concerns over personal conduct issues resulting solely from her travel to Cuba in February 2000 as that isolated incident of poor judgment fails to demonstrate "a pattern of dishonesty or rule violations." This personal conduct concern is superseded by her good judgment in fully disclosing this irregular travel to Cuba in security clearance applications both in October 2000 and again in April 2002 and by her subsequent history of her excellent conduct on the job where Applicant is highly regarded. Since being granted a clearance in 2001, Applicant has displayed good judgment and reliability in her handling of classified information. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons<sup>(1)</sup> (SOR) to the Applicant on July 16, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR alleges specific concerns over personal conduct (Guideline E). Applicant retained counsel and responded to the SOR allegations in an Answer notarized on September 10, 2003, where she admitted in part and denied in part and requested a hearing.

The case was assigned to Department Counsel, who attested the case was ready to proceed; and the case was assigned to another judge on December 1, 2003. Subsequently, the case was re-assigned to me on February 18, 2004. A mutually convenient date for hearing was agreed to. A Notice of Hearing issued on February 18, 2004, set the matter for March 10, 2004, at a location near where Applicant works and lives. At the hearing the Government introduced three exhibits (Exhibits 1-3), which were all admitted into evidence and asked that I take Administrative Notice of one document dated August 13, 2001<sup>(2)</sup> (AN I). (TR 16-20) The Applicant's counsel offered six exhibits, which were admitted into evidence (Exhibits A-F) (TR 20-27) and called two witnesses.

Applicant was give an additional seven days until March 17,2004, to submit additional evidence; and the government had three additional days until March 22, 2004, to review the document. (TR 58) On March 15, 2004, Applicant's counsel forwarded an additional exhibit (Exhibit G) to Department Counsel for her review; her office forwarded it to me on March 16, 2004, with no objection. Exhibit G was admitted into evidence, and the record then closed. The transcript

(TR) was received on March 18, 2004.

## **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 32 years old, has worked for a defense contractor #1 in State #1 since April 1999 and is in a professional position on projects both in the U.S. and overseas. Applicant completed a security clearance application (EPSQ) initially in October 2000 and was granted a secret clearance in September 2001. Applicant completed another Security Clearance Application (EPSQ) in April 2002 to seek a top secret clearance. (Answer; Exhibit 1; Exhibits A, G; TR 43-44, 46)

Applicant attended a university in State #1. She graduated with a B.S. degree in December 1999 which was awarded in January 2000. Previously she attended an university in State #2 from 1990 to 1994. (Exhibit 1; Exhibit G; TR 43)

### **Personal Conduct**

When Applicant completed her initial EPSQ in October 2000 to seek a secret clearance she fully disclosed in response to Question 16 all the foreign countries she had visited: Cuba and Mexico from February 10 to 23, 2000 as well as a trip to the United Kingdom from December 1997 to January 1998. (Exhibit G; TR 45-46, 50-51)

In the EPSQ completed in April 2002 to seek a top secret clearance Applicant again disclosed in response to Question 16 the same foreign countries she had visited: Cuba and Mexico from February 10 to 23, 2000 as well as a trip to the United Kingdom from December 1997 to January 1998. (Exhibit 1; TR 50-51)

In October 2002 Applicant was interviewed by the Defense Security Service (DSS) and asked to provide additional details about her travel to Cuba in February 2000. She declared when she made the decision to travel to Cuba she knew it was not legal<sup>(3)</sup> to travel to Cuba. Nevertheless she traveled there as she believed it was "common" for U.S. citizens to travel to Cuba through a third country. She knew a lot of people who had traveled to Cuba and did not think she would

be subject<sup>(4)</sup> to any of the stated regulatory sanctions, such as ten years in jail and a \$250,000 fine. She was motivated to go to Cuba because she wanted to see the art and architecture there. She gave the trip to herself as a graduation present. Applicant admitted she did not notify the U.S. State Department before her travel to Cuba, nor did she obtain a license from the U.S. Treasury Department to travel to Cuba. Through a website she determined she did not qualify for a license or official permit to travel to Cuba. Neither did she obtain a visa for travel to Cuba as she planned to enter Cuba from Mexico using her U.S. Passport. She provided a copy of her U.S. passport; however, it did not document her trips to Mexico and Cuba. Even though she showed it when she went through Cuban customs, it was not stamped. She has no plans to travel again to Cuba or to any other country that would be prohibited in the future because of the legal issues and ramifications involved since she has a security clearance. (Exhibits 1-3; TR 49-51, 53, 56-57, 66)

Even though she did not have a security clearance in February 2000 when she took her trip, Applicant acknowledges her trip to Cuba was "a very big mistake." (TR 47, 50) She would never travel to Cuba again as she understands that it's important not to create a situation where coercion might occur. (TR 52, 54)

### **References**

A management official from Company #1 testified concerning the company's past and current projects. This management official has had a security clearance since 1984 and has had a top secret clearance with her current firm for several years. (TR 29-35) Applicant was the first employee that this official hired in 1999 when she began the firm. She described Applicant as very thorough and careful in her work. She reported that in the five years that Applicant has worked for Company #1 she has never ignored or violated company rules and regulations. She stated that Applicant has also been reliable in handling classified information. (TR 35-37, 40) Although Applicant advised this official of her plans to travel to Cuba, at that point the company did not have a security clearance as they handled no classified projects; however she advised Applicant that "if and when we ever need to get [a] clearance for you this is going to be an issue." Applicant told the company official that she knew it was illegal to travel to Cuba but reportedly stated as a justification that "'a lot of people do it.'" (TR 38, 41) Subsequently, Applicant has never traveled to Cuba again. (TR 39) This company official does not have any doubt over Applicant's allegiance to the U.S. (TR 40) Company #1 applied for a security clearance in 2000 for the first time. (TR 41) (See also, Exhibit A)

An official of a U.S. agency who has overseen Applicant's work in an overseas project since late 2002 provided a favorable reference for Applicant. He has had a Top Secret clearance since 1986 and is aware of the importance of safeguarding classified information. He offered his views that Applicant could never be blackmailed into revealing any classified information. Applicant voluntarily revealed her travel to Cuba to him. He judged that her travel to Cuba was as a result of a lapse of judgment and observed that she feels "genuine remorse for not having followed proper procedures" for travel there. He concluded that her "disclosure of this trip to me is yet another indication that [Applicant] takes her personal behavior seriously." (Exhibit F)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole, I weighed relevant Adjudication Guidelines as set forth below :

### **Guideline E - Personal Conduct**

**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 and may be disqualifying also include:**

5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

**Conditions that could mitigate security concerns include:**

5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. The Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

### **CONCLUSIONS**

#### **Personal Conduct**

Applicant rebutted the Government's security concerns over personal conduct issues resulting solely from her travel to Cuba in February 2000 before she had been granted a security clearance. While the Government established that Applicant's conduct in traveling to Cuba in violation of U.S. regulations showed questionable judgment, the Government failed to establish that Applicant's isolated conduct fell within the security disqualifying conditions (DC) that could raise a security concern and may be disqualifying as the focal point under DC 5 instructs that personal conduct only becomes disqualifying when an individual demonstrates "A **pattern** of dishonesty or rule violations." (Emphasis added.) Her one instance of wrongdoing in 2000 was an isolated incident of poor judgment. In the subsequent four years, Applicant has not displayed any additional adverse incidents of any kind that would document a pattern of rules violation.

Even if one were to argue that her 2000 conduct is sufficiently troublesome to raise a security concern, she subsequently took several positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress and has mitigated<sup>(5)</sup> this security concern under MC 5. To her credit Applicant showed good judgment in meeting her duty to inform the Government about this 2000 travel to Cuba through Mexico. While Applicant concedes that her travel to Cuba in February 2000 without complying with the government regulations for travel there was "a very big mistake," she showed subsequent good judgment when she made redress by fully disclosing this travel to the Government when she initially applied for a security clearance in October 2000 to seek a Secret clearance. She unequivocally revealed in response to Question 16 all the foreign countries she had visited: Cuba and Mexico in February 2000 as well as a trip to the United Kingdom from December 1997 to January 1998. Significantly, even after this disclosure, the Department of Defense granted Applicant a Secret clearance in September 2001. She subsequently has handled classified information in sensitive projects in a reliable manner according to both a Company #1 official and a federal agency official with whom she has worked. Further, the company official testified that in the five years that Applicant has worked for Company #1 she has never ignored or violated company rules and regulations.

While the Government retains jurisdiction to review conduct that raises concerns, it is significant that it was not until after Applicant completed another security clearance application in April 2002 to seek a top secret clearance that her travel to Cuba in 2000 came under scrutiny as Applicant fully disclosed again in response to Question 16 the identical information she had previously disclosed in 2000: she had visited Cuba and Mexico in February 2000 and the United Kingdom from December 1997 to January 1998. While she admits her travel in violation of U.S. regulations did demonstrate poor judgment, she took corrective action both times she applied for a security clearance by her complete disclosures. As her passport was not stamped by the Government of Cuba, the U.S. Government in all likelihood would never have learned of this trip but for her good judgment in fully revealing this adverse information.

Further, Applicant now understands the importance of fully complying with Government regulations and has no intent to repeat this type of travel. Since she was granted a security clearance in September 2001, Applicant has consistently demonstrated that she understands the importance of complying fully with all rules and regulations. She has matured, and her current good work record and highly favorable references outweigh any security concerns over her earlier questionable personal conduct. For example, Applicant's manager considers Applicant as very thorough and careful in her work. Applicant has never ignored or violated company rules and regulations.

In addition, Applicant recently fully disclosed her previous travel to Cuba to an official of a U.S. agency who has overseen Applicant's work in an overseas project since late 2002. He also provided a favorable reference for Applicant despite her admitting to him that her travel to Cuba was as a result of a lapse of judgment. He observed that she feels "genuine remorse for not having followed proper procedures" for travel there. He concluded that her "disclosure of this trip. . .is yet another indication that [Applicant] takes her personal behavior seriously." While remorse by itself would not be a sufficient basis to mitigate, viewing Applicant as a whole person she has demonstrated consistent good judgement in her job for the past four years including reliably handling of classified information in sensitive projects since September 2001.

Consequently, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. under SOR Paragraph 1.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline E: FOR APPLICANT

Subparagraph 1.a.: For 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and by Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Applicant's counsel voiced an objection to ANI as the document offered for administrative notice was dated August 2001 which is after Applicant's February 2000 trip; however, he conceded that the regulations have not changed, so he withdrew his objection. Consequently, I accepted AN I for administrative notice. (TR 19-20)
3. The Government provided a Consular Information Sheet on Cuba which explained that Cuban Assets Control Regulations of the U.S. Treasury Department require that persons subject to U.S. jurisdiction be licensed to engage in any transaction related to travel to, from and within Cuba. "Transactions related to tourist travel are not licensable." The information sheet detailed the categories of travelers permitted to spend money for Cuban travel under a general license without the need to obtain special permission from the U.S. Treasury: U.S. officials traveling on official business, journalists, persons making a once-a-year visit to family relatives in circumstances of humanitarian need, full-time professionals whose do academic research, professionals who attend professional meetings, amateur or semi-professional athletes for competitions under the international sports federation. (AN I)
4. Applicant offered in her defense newspaper articles that report a large number of U.S. citizens who travel to Cuba and a study of the limited number of individuals in a sample week in July 2003 who had penalties assessed for such travel to Cuba. (Exhibits B, C, D)
5. **Conditions that could mitigate security concerns include:** 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; 4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.