

DATE: December 29, 2006

in re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21262

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a divorced 41-year-old senior systems engineer employed by a federal contractor. He conducted intimate relationships with three foreign nationals. He properly reported one, failed to report the second, and did not report the third until the relationship was concluding. He conducted an intimate relationship with his supervisor. He held a security clearance since 1984. He falsely answered one question on a security clearance application in 2001. He successfully mitigated the security concerns under Guideline B (Foreign Influence) and Guideline J (Criminal Conduct). He failed to mitigate the lack of judgement and security concerns under Guideline E (Personal Conduct). Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on April 20, 2004, detailing the basis for its decision - security concerns raised under Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on May 5, 2004, and elected to have a hearing before an administrative judge. The ready to proceed date from department counsel was July 11, 2006. The case was assigned to me on September 5, 2006. Notice of Hearing was issued on October 19, 2006. I convened a hearing on November 13, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The government offered seven exhibits, marked as exhibits 1-7. Applicant offered one exhibit, marked as exhibit A. DOHA received the hearing transcript (Tr.) on November 28, 2006.

FINDINGS OF FACT

Applicant admitted the allegations in SOR subparagraphs 1.a., 1.c, and 2.b. , and denied the remaining allegations. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a divorced 41-year-old senior systems engineer employed by a federal contractor. ⁽¹⁾ He has two children, both who reside with their mothers. ⁽²⁾ He has a bachelor's degree in information technology, and has completed about 65% of a master's degree in computer information systems. ⁽³⁾ From 1983 to 1987, he served in the United States Marine Corps, attaining the rank of E-4, specializing as an avionics technician, and he received an honorable discharge. ⁽⁴⁾ He has held a security clearance since 1984, currently designated top secret. ⁽⁵⁾ In the spring of 2007, he is engaged to be married to a uniformed federal agent. ⁽⁶⁾

Foreign Influence

From 1991 to 1998, Applicant lived in Panama. He had personal and telephonic contact, with varying frequency, with a Panamanian foreign national from 1995 to January 1999. He maintained biweekly telephonic contact with this person from January 1999 to November 2000. He reported this contact to the military Special Security Officer (SSO) stationed in Panama. ⁽⁷⁾ He and this woman were engaged to be married. She refused to emigrate to the United States and eventually contact ceased. ⁽⁸⁾

Applicant had personal, telephonic, and e-mail contact, approximately two to three times a week, with a foreign national from Russia for a two month period from December 1998 to February or arch 1999. ⁽⁹⁾ The Russian national was a software developer at a federal agency, and she was in the process of applying for US citizenship. He failed to report this foreign contact. ⁽¹⁰⁾

Applicant had personal and intimate contact, with varying frequency, with a foreign national from the People's Republic of China (PRC) from January 1999 to June 1999, and that person would spend occasional overnights at Applicant's residence, from June 18, 1999, to July 21, 1999. At the time, this individual was separated from her husband, who was an American citizen. ⁽¹¹⁾ Applicant never discussed his business with her, she never asked about his work, and he generally discussed computers with her because she was interested in obtaining an IT degree. ⁽¹²⁾ Applicant was unaware that she was a citizen of the PRC because she had an American driver's license. He discovered her citizenship status when she asked him if she should revoke her PRC citizenship. He then attempted to terminate his relationship with her. She acquired some of his email addresses and sent emails to several persons, including co-workers, in an effort to harass him. She apparently obtained access to his laptop computer at his residence, and he admits that unclassified information, on at least one project, was available to her. ⁽¹³⁾ When he was shown these messages, he then made his first report of his contact with her to his supervisor. ⁽¹⁴⁾ In the process of terminating his relationship with the PRC national, he commenced a relationship with his supervisor. ⁽¹⁵⁾ They have a four year-old daughter. ⁽¹⁶⁾ An investigation was conducted and closed, and Applicant was returned to work. ⁽¹⁷⁾

Personal Conduct

Applicant was issued an advisory letter in June 2000, for failing to report contact with foreign nationals, as set forth above. He contacted DSS about the letter and was told it was "a slap on the wrist." ⁽¹⁸⁾ Applicant falsified material facts on a security clearance application, executed by him on June 20, 2001, on which he was required to reply to the following question: "**YOUR EMPLOYMENT RECORD** Has any of the following happened to you in the last 10 years? - Fired from a job - Quit a job after being told you'd be fired - Left a job by mutual agreement following allegations of misconduct - Left a job by mutual agreement following allegations of unsatisfactory performance - Left a job for other reasons under unfavorable circumstances"; to which he answered "No"; whereas, in truth, he failed to disclose that he had been terminated by his employer on March 30, 2001, for misrepresenting his education on an application/resume. On his resume, he indicated a college degree, when in fact, he only had two years worth of college credits. ⁽¹⁹⁾ He admitted his mistake in not answering the question truthfully. ⁽²⁰⁾

Criminal Conduct

Applicant's making a false answer on his security clearance application constitutes a violation of 18 U.S.C. §1001, a felony.

POLICIES

"No one has a 'right' to a security clearance."⁽²¹⁾ 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."⁽²²⁾ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."⁽²³⁾ Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy."⁽²⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁵⁾

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽²⁶⁾ It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Foreign Influence

The government established its case under guideline B. Foreign Influence Disqualifying Conditions (FI DC) E2.A2.1.2.1. (*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. (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*), and E2.A2.1.2.4. (*Failing to report, where required, associations with foreign nationals*) are all applicable. Applicant had physically intimate relationships with foreign nationals from Panama and the PRC, and a non-physical intimate relationship with a citizen of Russia. He reported his relationship with the Panamanian national, he failed to report the relationship with the Russian citizen, and he did not report his relationship with the PRC national until that relationship was at its end. Although Applicant denied that the PRC national was cohabitating with him, she did on occasion spend overnights and was apparently familiar enough with his home to access his laptop and obtain e-mail addresses that she used to harass him.

Foreign Influence Mitigating Conditions (FI MC) E2.A2.1.3.1. (*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*) and E2.A2.1.3.3. (*Contact and correspondence with foreign citizens are casual and infrequent*) apply. There is no evidence that any of these foreign citizens were attempting to obtain classified information. Nor is there evidence that any were agents of foreign powers. These were amorous relationships. Because his relationship with the Russian national occurred nearly eight years ago, and his contacts with other foreign nationals ceased over six years ago, I conclude Guideline B for Applicant.

Personal Conduct

The government established its case under Guideline E. A security concern arises where it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment,*

or falsification of relevant 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) applies.

Here, the government questions Applicant's trustworthiness because he deliberately omitted from his SF 86 an adverse employment termination (SOR 1.a.) Termination from or leaving a job under unfavorable circumstances is not something that a person is likely to forget. Poor past performance is a material factor in determining an individual's reliability for employment and trustworthiness for a security clearance. Applicant demonstrated a lack of candor, dishonesty, and he admitted that he did falsify his security clearance application. Not only did he falsify his resume in trying to get a job, but he continued his deception on his SF 86.

Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.5. (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) is applicable. He has significantly reduced his vulnerability to coercion, exploitation, or duress from foreign nationals by his impending marriage to a uniformed federal agent.

Applicant has held a clearance since 1984, and has filled out several security clearance applications, and is someone who should know the importance of these applications and the responsibility to be truthful in answering the questions thereon. In plain and simple language, he lied. I conclude Guideline E against Applicant.

Criminal Conduct

The government established its case under Guideline J. Someone who willingly disregards the law may also disregard rules and procedures intended to safeguard classified information. Applicant's falsification of his SF 86 constitutes a violation of 18 U.S.C. § 1001. Because the government has established Applicant's deception, it has also established a *prima facie* case for disqualification for criminal conduct. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*) is applicable.

Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1. (*The criminal behavior was not recent*) is applicable as the conduct was about five and one-half years ago. Also applicable is CC C E2.A10.1.3.2. (*The crime was an isolated incident*). There is one act of making a false answer on a security clearance application. On balance, I conclude Guideline J for Applicant.

Whole Person Analysis

"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."⁽²⁷⁾ "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination."⁽²⁸⁾ In evaluating Applicant's case, in addition to the disqualifying and mitigating conditions, I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests.⁽²⁹⁾ I considered his age (41), his education, his employment, his military service, and what might motivate him to be less than truthful. Applicant supplied a false answer on a security clearance application. This is problematic because candor with the government about a person's negatives is the crux of a trustworthiness determination. It is assumed that if a person discloses the adverse information about himself, then he may be trusted with confidential or classified information.

Applicant has served in the U.S. Marine Corps, he has had his security clearance renewed several times since it was first issued in 1984, and he should have known that termination of his employment for submitting a false resume is leaving under unfavorable circumstances. Having physically intimate relationships with foreign nationals while holding a security clearance is an indication of poor judgment. His compliance with reporting contacts with foreign nationals is mixed, as he reported one, failed to report a second, and only reported the third after they relationship was almost over. Leaving a laptop computer unsecured, and without password protection shows a lack of discretion. Conducting an affair with a married woman, even though she is separated from her husband, displays a lack of common sense and judgment, as he subjects himself to the possibility of being called as a witness in the event a divorce case proceeds. And finally,

having an affair with your supervisor demonstrates a lack of perspicacity. The totality of the record raises reasonable and persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is not clearly consistent with the national interest to grant or continue Applicant's security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.a: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance Against Applicant. Clearance is denied.

Christopher Graham

Administrative Judge

1. Tr. at 10, 14

2. *Id.* at 11.

3. *Id.* at 12.

4. *Id.* at 13.

5. *Id.* at 14-16.

6. *Id.* at 58.

7. Applicant's Sworn Statement, dated October 1, 2001, at 2.

8. Tr. at 28-30.

9. *Id.* at 26.

10. Applicant's Sworn Statement, *supra*, note 6, at 3.

11. Tr. at 39.

12. *Id.* at 26.

13. Tr. at 42-48.

14. *Id.* at 30-31, 40-42.

15. *Id.* at 45-48.

16. *Id.* at 50.

17. Applicant's Sworn Statement, *supra*, note 6, at 5-6.

18. Applicant's Answer to the SOR, dated May 12, 2004, at 2.

19. Tr.at 22.

20. *Id.* at 23, 35.

21. ⁰*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

22. ⁰*Id.* at 527.

23. ⁰Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

24. ⁰Directive ¶6.2.

25. ⁰ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

26. ⁰*See* Exec. Or. 10865 § 7.

27. Directive ¶ E.2.2.1.

28. *Id.*

29. *Id.*