

DATE: October 6, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-03974

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

**FOR APPLICANT**

Eric F. Adams, Esq.

**SYNOPSIS**

Applicant was born in France and worked for the French government on a joint international project with the United States. After serving with his native government for over 26 years he retired in 1996 and chose to remain in the United States. Applicant became a United States citizen in 2000. Applicant's mother, sister, and two sons are citizens and residents of France. Applicant owns real property, stocks, and has a bank account in France, and is entitled to a French government pension when he attains the appropriate age. Applicant formed a company in the United States and used his contacts in France to gain contracts. Applicant has dissolved the company and mitigated the outside activity security concerns. However, Applicant has failed to mitigate the foreign influence security concerns with regards to his family and financial interests in France. Clearance is denied.

**STATEMENT OF CASE**

On November 18, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline L, outside activities, and Guideline B, foreign influence.

In a sworn statement, dated December 16, 2004, Applicant responded to the SOR allegations, and requested a hearing. In his SOR response, Applicant admitted all the allegations under Guideline L, and all the allegations under Guideline B except subparagraphs 1.h. and 1.i.

The case was assigned to me on August 10, 2005. A notice of hearing was issued on August 29, 2005, scheduling the hearing for September 15, 2005. The hearing was conducted as scheduled. The government submitted four exhibits that were marked as Government Exhibits (GE) 1-4. The exhibits were admitted into the record without objection. Applicant testified, and seven witnesses testified on his behalf. Applicant submitted 14 exhibits that were marked as Applicant's Exhibits (AE) A-N. Government counsel objected to AE J and AE L. The objections was overruled and the documents were admitted. All other exhibits were admitted into the record without objection. The transcript was received on

September 27, 2005.

## **FINDINGS OF FACT**

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 61 years old and works for a federal contractor as a consulting engineer. Applicant was born in France and served his compulsory military service from 1969 to 1970, when he was discharged. He later was commissioned and served in a reserve capacity as a civil engineer with the French Ministry of Defense (FMD). He served from 1980 to 1996 and was discharged as a Major. As a reserve officer he could be called upon to serve as a civil engineer in a military status.<sup>(2)</sup> He was technically subject to recall until age 70, but Applicant resigned his commission in 2005, so as not to be subject to recall.<sup>(3)</sup>

In 1970 Applicant became employed with the FMD as a civil engineer contractor, in essence his position was similar to a civil servant with the French Government, and he was paid directly from the government.<sup>(4)</sup> In 1979, the United States and European allies, one being France, entered into a joint international project to develop military weapon systems. In 1981, Applicant started coming to the United States on temporary duty assignments, as part of his engineering duties with the French government to participate in the joint project.<sup>(5)</sup> In August 1985, Applicant was assigned to the United States full time to work on the program. Applicant worked for the FMD, in the United States with the joint program, until his retirement in 1996. He held a NATO secret security clearance until his retirement. Applicant lived in the United States during this entire period.

In 1996, subsequent to his retirement from the French Government, Applicant started his own business. His first contract was with the FMD. Under French rules in order to contract with a non-French, non-defense contractor, the contract must first go through a French defense contractor, who then contracts with the local contractor, in this case Applicant's company. Basically the French defense contractor is a conduit to the local company. The FMD is not permitted to contract directly with non-French contractors. The contract Applicant received from FMD, after going through the conduit French company, was to write-up follow-up reports on the joint international project that Applicant had been working on as a engineer with the FMD. There was no longer a liaison officer assigned from France in the program, so Applicant was awarded a contract to summarize the worth of the program.<sup>(6)</sup> His report was unclassified and a copy was provided to the United States government.<sup>(7)</sup>

In 1998 Applicant's business had another contract with the FMD to research an American company that was interested in doing business with the French. Applicant was required to find information about this company and what their interests were and supply it to the FMD.<sup>(8)</sup> Applicant completed the contract and has had no other contacts with the FMD or the French Government.<sup>(9)</sup> Additionally Applicant's had a contract with a French company that was not defense related.<sup>(10)</sup> Applicant's business entity essentially stopped doing business in 2002, but was not formally dissolved until 2005.<sup>(11)</sup> Applicant dissolved it because he believed it might effect his ability to obtain

a security clearance.<sup>(12)</sup> Applicant entered into personal contracts with United States defense contractors starting in 1997 and continuing to the present.<sup>(13)</sup>

Applicant has been married three times. His first wife is French and they were married from 1974 to 1990. She has worked for the Ministry of Education in France for thirty years. They have two grown sons (age 25 and 27) who are French citizens. Applicant was required to support his ex-wife by paying the rent on a condominium in Paris, where she and the sons resided.<sup>(14)</sup> He provided this support from 1990 to 2005. Applicant had contact with his ex-wife and sons on a regular basis during this period. Applicant has minimal communication with his ex-wife now that the support order has expired. Applicant maintains weekly contact with his younger son. His younger son graduated from college and is employed with a private company He no longer lives in the condominium in Paris and is self sufficient.<sup>(15)</sup> Applicant contacts his older son once every six months. The infrequent contact is because his older son is educated with a masters

degree, but has failed to secure full-time employment. He continues to reside in the condominium and Applicant pays the required dues and fees.

Applicant was married to his second wife from 1991 to 1994. She is an American citizen. He remarried in 1996 to his current wife. She is an American citizen and they live together in the United States. Applicant became a naturalized citizen of the United States in 2000.

Applicant's mother is a citizen and resident of France. She has never been employed. Applicant talks to her on the telephone once a month and visits her every time he goes to France, which is at least once a year.<sup>(16)</sup> Applicant's sister is a citizen and resident of France. She is a corporate attorney. Applicant visits her every time he goes to France. She has no work connections with the French government.<sup>(17)</sup> Applicant visits France at least once and sometimes more times a year.<sup>(18)</sup> He has made trips to France in February 1997, June 1997, September 1997, March 1998, May 1998, November 1998, April 1999, December 1999, June 2000, March 2001 and February 2002.

While working for the FMD Applicant knew other French officers, one was a Lieutenant Colonel of the FMD and another was a French citizen employed as a civil servant and Liaison Officer for the joint project. Applicant met the Lieutenant Colonel two or three times. When the Lieutenant Colonel completed his assignment in the United States he returned to France. That was several years ago. Applicant had a brief encounter with the Lieutenant Colonel in 2004, when he returned to the United States for the 25 Anniversary of the joint project. He has had no further contact since then. Applicant had contact with the French Liaison Officer when he was in the United States. He left two to three years ago and there has been no further contact.<sup>(19)</sup>

Applicant's owns stock in France that are worth approximately \$100,000 to \$150,000, depending on how the stock is trading. He received these stocks from his mother as part of her estate plan. One of the stocks is defense related and the rest are invested in commercial products. The condominium he owns in Paris was valued at approximately \$285,000 in 2002, and is likely worth more today. Applicant maintains a bank account in France so he can write checks to pay the condominium fees, and so dividends from his investments can be deposited directly into the account. There is approximately \$2,000 in the account. Applicant expects to receive retirement benefits from the French government when he is eligible. Applicant's 92 year old mother has assets of approximately over one million dollars. When Applicant's mother passes away he and his sister will inherit equal shares of her estate, pursuant to Applicant's understanding of French law.<sup>(20)</sup> Applicant owns a house in the United States.

Applicant has an outstanding reputation in the community. He is considered professional and a man of integrity and good character who is trustworthy, candid, dedicated and exercises good judgment. Applicant is considered unquestionably loyal to the United States. Applicant possesses important skills in his field of expertise. Applicant volunteers his time to the community and participates in re-enactments of American history, which is a peak area of interest to him. Applicant takes his oath of allegiance to the United States very seriously and has renounced any allegiance to his former country.

France has a long and public history of economic espionage against the United States.<sup>(21)</sup> France is listed as one of the top seven countries involved in economic espionage against the United States.<sup>(22)</sup> France has been involved in collecting secret information against commercial targets in the United States to gain an economic edge internationally.<sup>(23)</sup> Economic espionage is a priority in France and theft of information from large United States companies has been a long term French policy.<sup>(24)</sup> France actively recruits employees of big American companies to collect information against the interests of the United States.<sup>(25)</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline L, outside activities, and Guideline B, foreign influence considerations, with their respective DC and MC, apply in this case. Additionally, each

security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(26)</sup> The government has the burden of proving controverted facts.<sup>(27)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(28)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.<sup>(29)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(30)</sup>

No one has a right to a security clearance<sup>(31)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(32)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(33)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(34)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline L-Outside Interests are a security concern because involvement in certain types of outside employment or activities may pose a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

Guideline B-Foreign Influence is a concern because 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 obligations 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 interest 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, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline L and Guideline B.

Based on all the evidence, Outside Activities may be disqualifying if the applicant provides any service, whether compensated, or as a volunteer, or is employed with the following disqualifying categories. The Outside Activities Disqualifying Conditions (OA DC) that apply are, OA DC E2.A12.1.2.1 (*A foreign country*) OA DC E2A12.1.2.2 (*any foreign national*), and OA DC E2.A12.1.2.3 (*A representative of any foreign interest*). In this case, all three disqualifying conditions apply.

Applicant was employed by the FMD from 1970 to 1996. Applicant held a commission with the French military.

Applicant, through his company and contractually, provided a service to the French Government by preparing wrap-up reports, investigating the viability of an American company seeking to do business with the French, and working with a French company selling non-defense related equipment. Applicant was required to go through a conduit company, thereby having contacts with foreign nationals, to engage in business activities. (35) OA DC E2A12.1.2.1 and E2A12.1.2.2 apply. Applicant acted as a representative of France when he researched and advised the government on whether to do business with an American company, therefore, OA DC E2.A12.1.2.3 also applies.

I have considered both Outside Activities mitigating conditions (OA MC) E2.A12.1.3.1 (*Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities*), and OA MC E2.A12.1.3.2 (*The individual terminates the employment or discontinues the activity upon being notified that it is in conflict with his or her responsibilities*). Applicant was employed by FMD from 1970 to 1996. He has been retired from service since 1996. Applicant has resigned his commission in the French military and no longer has any duties or responsibilities related to the military, nor will he receive a military pension. Applicant's company has been dormant since 2002 and was officially dissolved in 2005, thereby eliminating any potential conflict Applicant may have encountered. OA MC E2.A12.1.3.2 applies in this case.

Based on all the evidence, Foreign Influence Disqualifying Condition (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*), FI DC E2.A2.1.2.3 (*Relatives, cohabitants, or associates who are connected with any foreign government*) FI DC E2.A2.1.2.8 (*A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.*) apply. Applicant's mother, sister, and two sons are citizens and residents of France. Applicant maintains close contact with all of them, telephoning them regularly and visiting them minimally annually. Applicant maintains weekly contact with his younger son and semi-annual contact with his older son. Although the contact with his older son is less frequent, Applicant provides financial support to him by way of paying the dues and fees on the condominium. Applicant anticipates receiving a French pension when he attains the required age for his years of service as a French government employee. Applicant owns real property, stock investments and has a bank account in France. He also anticipates a substantial inheritance from his 92 year old mother's estate.

I have considered all the mitigating conditions and especially considered Foreign Influence Mitigating Condition (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*), FI MC E2.A2.1.3.2 (*Contacts and correspondence with foreign citizens are casual and infrequent*), and FI MC E2.A2.1.3.5 (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.*)

Applicant's contact with his sons, mother and sister cannot be characterized as casual and infrequent. Applicant is a devoted father, son and brother, and is in frequent contact with his immediate family through phone calls and visits at least annually. Applicant continues to support his older son by paying the dues and fees on the condominium in which he resides. Applicant's family members in France appear to not have any more ties to the government than any other citizen of France. Although they may not be agents of a foreign government, and FI MC E2.A2.1.3.1 could be applied, it cannot be viewed in a vacuum. The fact is Applicant and his family remain close and that is controlling. FI MC E2.A2.1.3.2 does not apply. Applicant has failed to mitigate the security concerns with regard to his immediate family in France.

Applicant's contact with a Lieutenant Colonel of the FMD and a French Liaison Officer was casual at the time and he has not had any contact with them in several years. Applicant has mitigated the security concerns regarding these two people. FI MC E2.A2.1.3.2 applies.

Applicant's lists of assets, including real property, stocks, a bank account, and a future inheritance in France constitutes a substantial financial interest in France. Applicant also anticipates receiving a pension from the French government when he reaches the required age. Applicant does not intend on divesting himself of his acquired wealth. His financial interests could potentially make Applicant vulnerable to coercion, exploitation or pressure. Applicant has a lot at stake

with regards to his wealth and most of it is controlled within the borders of France. The combination of having close family ties and substantial wealth in France is a security concern. These factors, along with France's active and aggressive policy of economic espionage creates a serious security concern. These facts raise doubts about Applicant's ability to protect classified information unfettered by concerns about family members, his pension and his substantial financial interest that may be subject to the interests of a foreign government, and thus raise issues about his suitability for access to classified information. Applicant had a long career with the French government. He was more than just a French citizen. He was actively working for it in areas of high military interest. If granted a clearance Applicant would be vulnerable to exploitation.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that a person should be viewed by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case in evaluating Applicant's risk and vulnerability in protecting our national interest, including his work history, character references, volunteer contributions, and the testimony of numerous witnesses. This determination in no way reflects negatively upon Applicant's loyalty to the United States. I have considered the whole person and I find Applicant has mitigated the security concerns regarding outside activities, but failed to mitigate the security concerns regarding foreign influence. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline L is decided for Applicant and Guideline B is decided against Applicant.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

#### Paragraph 1 Outside Activities (Guideline L) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

#### Paragraph 2 Foreign Influence (Guideline B) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. Against the Applicant

Subparagraph 2.d. Against the Applicant

Subparagraph 2.e. Against the Applicant

Subparagraph 2.f. Against the Applicant

Subparagraph 2.g. Against the Applicant

Subparagraph 2.h. For the Applicant

Subparagraph 2.i. For the Applicant

Subparagraph 2.j. Against the Applicant

Subparagraph 2.k. Against the Applicant

Subparagraph 2.l. Against the Applicant

Subparagraph 2.m. Against the Applicant

Subparagraph 2.n. Against the Applicant

### **DECISION**

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

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. GE 2 at 1.

3. ,Tr. at 121; AE F.

4. GE 2 at 1; Tr. at 115.

5. Tr. at 115

6. Tr. at 122-123.

7. Tr. at 122-123; AE H.

8. Tr at 124.

9. Tr. at 125.

10. Tr. at 127.

11. Tr. at 127; AE K.

12. Tr. at 128.

13. AE I.

14. Tr. at 133.

15. Tr. at 134.

16. Tr. at 130.

17. Tr. at 130.

18. Tr. at 164-165.

19. Tr. at 137.

20. Tr. at 158.

21. GE 4 at 36-40.

22. GE 3.

23. GE 4 at 36-40.

24. *Id.*

25. *Id.*

26. ISCR Case No. 96-0277 (July 11, 1997) at 2.

27. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

28. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

29. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

30. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

31. *Egan*, 484 U.S. at 531.

32. *Id.*

33. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

34. Executive Order 10865 § 7.

35. SOR 1.d. alleges as an outside activity security concern that Applicant is employed by a United States Defense Contractor (DoD) and the contractor has requested he obtain a security clearance. No evidence was presented why a United States citizen being employed by a DoD contractor is a security concern under Guideline L, outside activities. I find for the Applicant on this allegation.