

DATE: March 18, 2005

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 03-11357

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Amy Neveln, Personal Representative

SYNOPSIS

Applicant is a 58-year-old computer programmer for a defense contractor working with medical information for military hospitals concerning appointments. She has worked for her present employer for 18 years and has held a security clearance since that time. Applicant came to the U.S. from Taiwan in 1986 to join her sister who had emigrated earlier. Two brothers and one sister remain in Taiwan. One brother works for the government in Taiwan in a non-sensitive position. She traveled annually to Taiwan for ten years before her father died. Initially, she did not report all of the trips but did so later voluntarily. She has mitigated the allegations. Eligibility is granted.

STATEMENT OF CASE

On October 18, 2004, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified; DoD Regulation 5200.2-R; 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 trustworthiness determination for an ADP clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether eligibility should be granted, continued, denied, or revoked.

On November 1, 2004, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on January 14, 2005, and a notice of hearing was issued the same day for a hearing to be held on February 8, 2005. It was held that day and the Government introduced six exhibits and the Applicant introduced nine. All of the exhibits were admitted into evidence. The Applicant testified and two witnesses testified on her behalf. The transcript was received on February 22, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to her family members but denied the allegations relating to information supplied on her SF 85P concerning travel to Taiwan. Those admissions are incorporated herein as findings of fact.

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 58-year-old computer programmer for a major defense contractor who works with medical information for hospitals including military hospitals. Her particular area concerns medical appointments information to facilitate management. Thus, she is required to have an ADP trustworthiness determination. She has worked for her present employer for 18 years and has held a security clearance since that time.

Applicant came to the U.S. from Taiwan in 1986 to join her sister who had emigrated earlier. Her entire family emigrated from Shanghai to Taiwan in 1948 when the communists came to power. She has two twin brothers and one sister who remain in and are citizens of Taiwan. Only one of the three works for the government and he is in a minor position for the Department of Labor Affairs of the Taiwan government, the Republic of China. He is involved in labor statistics and has no professional interest in her work nor she in his. She is in communication with her siblings on a regular basis but is not particularly close to them.

Applicant traveled to Taiwan yearly between 1991 and 2001 while her father was alive to celebrate his birthday which was a strong family tradition. He died in 2001. She has had only one occasion since to travel to Taiwan and that was in 2002 after the SF 85P was submitted when a brother-in-law was terminally ill with cancer.

Applicant disclosed her 2001 trip to Taiwan on her SF 85P and a subsequent affidavit but not the yearly trips for the ten previous years. She did voluntarily disclose those trips in an later interrogatories (Exhs. 3 and 4) even though she had not been asked about them.

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.

Based on the Guideline and evidence of record, including Applicant's admissions, the Government established reasons to deny her a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and

demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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:

The applicable guideline in the SOR concerning Foreign Influence-Guideline B provides as a Disqualifying Conditions (DC) that a security risk may exist when an individual's immediate family are not citizens of the United States or may be subject to duress. Such facts could create the potential for foreign influence that could result in the compromise of classified information.

Conditions that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1) Such security concerns could be mitigated by a determination "that the immediate family members 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." (E2.A2.1.3.1)

Based on the Guideline and evidence of record, including Applicant's admissions, the Government established reasons to deny her a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant is an intelligent woman who has many family ties in the United States including her immediate family and fellow workers with whom she has been associated the past 18 years. She has held a security clearance during that time, a time during which she had the same relatives that are now alleged to raise security concerns plus her father who is now deceased. Her contacts with her relatives in Taiwan are regular but there is no indication that such creates a security concern. Her travels were for a specific reason but since the death of her father is no longer likely to occur with the same frequency. There has been no evidence during the time that she has held a clearance that she had the slightest inclination of loyalty to the Republic of China over that to the United States. The testimony of Applicant and her witnesses was persuasive.

Her supervisor testified as to her devotion to her work, her dedication to the U.S., and her candor in telling her employer about the trips she took to Taiwan over the past years. Her brother-in-law, a chief of his medical specialty at a leading West coast hospital, who is married to the sister who brought her to the U.S., testified as to her interests, values, trustworthiness, and his belief of her value to the country and her loyalty to it. I conclude that she has sufficiently established facts to apply mitigating condition 1.

The other applicable Guideline cited in the SOR concerns Personal Conduct Guideline E relating to 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 include 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. (E2.A5.1.2.2.)

Conditions that could mitigate security concerns include the fact that the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. (E2.A5.1.3.2.) A second mitigating condition is that the individual made prompt, good faith efforts to correct the falsification before being confronted with the facts. (E2.A5.1.3.3.)

While she did not reveal all of her trips to Taiwan on her SF 85P and her affidavit of February 13, 2003, she did

volunteer the information on two subsequent interrogatories (Exh. 3 and 4) and gave plausible reasons for the omission from the SF 85P. The government conceded at the hearing that she had voluntarily come forth with the information even though it had not been specifically requested. Thus, I conclude that the omissions were not deliberate as required by the guideline.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that she is trustworthy and reliable and that it is clearly consistent with the national interest to grant a favorable trustworthy determination to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B: FOR Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2 Guideline E: FOR Applicant

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility to occupy a sensitive position requiring an ADP clearance for Applicant.

Charles D. Ablard

Administrative Judge