

DATE: December 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16537

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's conduct in willfully falsifying both his educational and experience credentials on his employment application raises security concerns. His defense for his falsification, while understandable, is not credible as he put his own interests in getting a job ahead of his duty to be honest. On the other hand, he mitigated security concerns over foreign influence resulting from his mother's and siblings' citizenship in Vietnam - seven live in Vietnam and one in Japan. As none of the family members have any ties to the government, I conclude there is no substantial likelihood that they would be subject to duress and thus exercise foreign influence over Applicant. Given his limited contact, it is improbable that foreign pressure on his family would create a situation that could result in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on February 9, 2004. 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 the Applicant.⁽¹⁾ The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1 and personal conduct (Guideline E) in paragraph 2. Applicant replied to the SOR allegations in an Answer notarized on February 21, 2004, and requested a hearing.

The case was assigned to Department Counsel who attested it was ready to proceed on May 4, 2004, and the case was assigned to me. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on May 10, 2004, set the matter for May 25, 2004. At the hearing the Government introduced two exhibits for Official Notice (ON I and II) and four exhibits which were admitted into evidence (Exhibits 1-4). Applicant testified and offered seven exhibits (Exhibits A through G) which were admitted into evidence. He requested that I leave the record open so that he could submit an additional document. As Department Counsel did not object, I left the record open until May 25, 2004, when Applicant submitted evidence regarding his work performance (Exhibit H). (TR 54) Department Counsel

reviewed the document on May 28, 2004 and indicated that she had no objection to the document being admitted into evidence. Exhibit H was admitted and the record closed. The transcript (TR) was received on June 7, 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, a 33-year-old employee, began working for a defense contractor (Employer #1) in State #1 in May 2001. In July 2001 and again in August 2001 he completed a Security Clearance Application (Standard Form 86) and requested a security clearance which he needs for the position. (Exhibits 1, 2; TR 13-14)

Born in Vietnam, Applicant completed high school and university in Vietnam in January 1993. He left in 1997; he became a naturalized U.S. citizen in November 2000 and holds only a U.S. passport. He obtained a GED in the U.S. in September 2000 and has additional technical training. When he first came to the U.S., he worked as an assembler. He is married to a naturalized U.S. citizen. (Exhibits 1, 2, 3; Exhibits A, F; TR 35, 36-37, 40, 42, 46-47)

Applicant completed a master's degree program at a U.S. university in 2003. He has received certificates of excellence as a certified professional systems engineer and as a professional database administrator. (TR 37, 48-53; Exhibits B, C, D, E, G) In September 2001 Applicant received a Certificate of Achievement from his employer as the "Outstanding Employee of the 3rd Quarter." (Exhibit H)

Foreign Influence

Applicant's mother, four brothers and three sisters are citizens and residents of Vietnam. One brother is a citizen of Vietnam and a resident of Japan. (Exhibits 1, 2, 3; TR 28) His mother is retired and recently came to the U.S. to visit Applicant for two and a half months. He sends money to help support her and pays for her trips to the U.S. When he first came to the US, he contacted her almost every other week by telephone; now he contacts her less often, usually by e-mail to his brothers. Sometimes he asks one brother for advice when he has problems with computers as his brother has some expertise. (TR 29-31, 36) He has limited contact with his brothers; none work for the government but have various jobs: air traffic controller, assembler, and other jobs. (Exhibit 3; TR 32-33) One sister lives with his mother so he has limited contact with her and with his other sister. (TR 33) He returned to Vietnam in 1998 and 1999 for a visit. His most recent visit to visit his mother was in January 2004 when he stayed for two weeks; he accompanied her when she returned home to Vietnam. (TR 29-31, 34)

Personal Conduct

Applicant was looking for a job for more than six months and was discouraged. As he had no unemployment insurance, he needed to work. Applicant thus chose to falsify his background and invent some work and school references in order that he could obtain a job to support himself. He believed at the time "if I get a job, I try to do the best I can and it doesn't hurt anyone." For example he said that he had gone to the university #1; he planned to go to that university but was not admitted as they required "too many tests." He made up the names of supervisors and companies to list on his application even though he had never worked there. (TR 27-28; 41-42) He asked the Defense Security Service (DSS) Special Agent who interviewed him if she could forgive him for these mistakes. She reported the falsifications on his application to his employer. (TR 43-45)

He admits he falsified relevant and material facts on his application for employment that he submitted to Employer #1 in April 2001: he falsified his experience at three other employers when in fact he had not worked for any of those companies; and he falsified his educational background at a state university that he had never attended. When he signed the application, he certified that "the answers given herein are true and complete to the best of my knowledge." Further he was advised that "In the event of employment, I understand that false or misleading information given in my application or interview may result in discharge." (Answer; Exhibit 4) He thought "if I just lie a little bit on my resume" he would then get a chance to take his "first step" at a company. (Answer)

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 in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline B - Foreign Influence

The concern: 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.

Conditions that could raise a security concern and may be disqualifying include:

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;

Conditions that could mitigate security concerns include:

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;

3. Contact and correspondence with foreign citizens are. . . infrequent;

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, 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:

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 status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Conditions that could mitigate security concerns include:

None

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. Then 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

Foreign Influence

Applicant has mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of a foreign country: he has a mother and siblings who are citizens of Vietnam - seven who live in Vietnam and one who lives in Japan. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family are citizens of, or resident or present, in a foreign country. These situations could create the potential for foreign influence that could result in the compromise of classified information. The Government submitted two documents on Vietnam to document the concerns over possible pressure being placed on Applicant.

While I have considered these concerns, I conclude Applicant has presented sufficient evidence to meet the burden those circumstances present. These security concerns are mitigated as Applicant's family have not in the past been subject to pressure. Any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable as his family there have no ties to the government of Vietnam. I conclude that there is no substantial likelihood that they would be subject to duress and thus exercise foreign influence over Applicant. Applicant has limited contact with his siblings; his frequent visits to Vietnam do not equate to him being subject to pressure. Given Applicant's history of responsible conduct as evidenced by his performance award, I conclude it is highly unlikely that any of his family members living would be subject to pressures or create a situation that could result in the compromise of classified information. I conclude Applicant is not vulnerable to duress merely because of these family ties.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.c. in Applicant's favor.

Personal Conduct

Applicant falsified relevant and material facts about his background when he applied for employment; he falsified both his employment background and his educational credentials. These failures to disclose led the Government to raise security concerns over personal conduct issues. Applicant's omission of relevant and material information reflect questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information. The employment form made clear that honest answers were critical. When he signed the application, he certified that "the answers given herein are true and complete to the best of my knowledge." Further he was advised that "In the event of employment, I understand that false or misleading information given in my application or interview may result in discharge."

Applicant's explanation that he needed a job and had been looking unsuccessfully for six months does not provide a legitimate defense. His defense for his falsification while understandable is not credible as he put his own interests in getting a job ahead of his duty to be honest. Thus, he failed to rebut and overcome these Government's security concerns and failed to mitigate ⁽²⁾ this concern. There is no evidence in the DSS statement that Applicant made prompt, good-faith efforts to correct the omissions before being confronted with the facts. Instead, at the DSS interview Applicant asked for forgiveness and explained that he falsified as he had been unsuccessful in getting a job without the proper experience and educational credentials. He falsified willfully, not because he had misunderstood the question. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a. under SOR Paragraph 2.

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 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

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 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 Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. 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.