

DATE: October 30, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 03-25400

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Lynette Andresen, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's foreign family ties do not pose a security risk. His two security violations in 1997 have not been repeated and have been mitigated by additional security training and demonstrated rehabilitation. Sufficient mitigation is shown. Clearance is granted.

**STATEMENT OF THE CASE**

On October 4, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on June 21, 2005, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM), to the Applicant on June 19, 2006, consisting of ten Government Exhibits referred to in the record as Government Exhibits 1 through 10. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 6, 2006, and he submitted a reply dated July 27, 2006. The case was transferred to the undersigned for decision on September 19, 2006.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the contents of the Form and the Applicant's reply to the FORM. The Applicant is 57 years of age and married. He is a Senior Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Taiwan, Republic of China, (ROC) in 1949. He and all of his family members, except his mother, immigrated to the United States. All of his family are United States citizens and reside in the United States, except his mother. His mother is a citizen and resident of Taiwan (ROC). She is ninety-three years old with limited physical and mental abilities. She is not an agent of the government of Taiwan and has no contacts with anyone that is. She does not know what the Applicant does for a living. The Applicant has no regular contact with her.

The Applicant traveled to Taiwan in 1998, 1999, 2000 for company business which was paid for by his employer. He traveled to Taiwan in 2001, 2002, and 2003, to either attend his father's funeral or to visit his mother in the hospital. On each occasion that he traveled to Taiwan, the Applicant reported his foreign travel to his security department and was debriefed.

Paragraph 2 (Guideline K - Security Violations). The Government alleges that the Applicant's noncompliance with security regulations may raise doubts about his trustworthiness, willingness, and ability to safeguard classified information.

On February 10, 1997, the Applicant failed to properly secure classified materials in violation of his company's security manual dated November 1995, specifically Section 13.1 and Section 13.2. (*See Government Exhibit 7*). The Applicant also violated paragraph 5-100 of DoD 5220.22-M, the National Industrial Security Program Operating Manual (NISPOM) (*See Government Exhibit 8*). The Applicant handled confidential materials as unclassified which resulted in them being improperly handled, stored and processed by an uncleared vendor. He explained that he was cutting a piece of a confidential test sample and allowed an uncleared vendor to process the sample under the supervision of a cleared person, which is against all security policies and procedures. (*See Government Exhibit 6*). This was an intentional improper handling of the classified test sample. The Applicant was counseled by his security department following this violation.

Four months later, in June 1997, secret documents under the Applicant's accountability were discovered as being improperly stored. The Applicant placed classified documents outside of the Controlled Program area. (*See Government Exhibit 6*). The Applicant was charged with violating the same NISPOM and company security manual procedures as he did in February. The Applicant gave several excuses for this violation. First, he did not want to go back and forth between program areas to review the documents as his workload at the time was overwhelming. He also believed that the documents were being stored in an approved security container. In his answer to the SOR he stated that the document may have been caught by a paperclip and then mistakenly locked in his safe with other documents. The Applicant was again counseled by his security department following this violation.

The Applicant stated that since these two security violations in 1997, he has received additional security training that has made him more aware of security policies which has helped him to avoid additional security violations or episodes of carelessness. He has had no further security violations since 1997.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

The Applicant's two security violations in 1997 violated his employer's security manual provisions and the governments regulations for handling and safeguarding classified information which indicates poor judgment and untrustworthiness.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every

case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

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.

#### Condition that could raise a security concern:

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 in, a foreign country;

#### Conditions that could mitigate security concerns:

1. A determination that the immediate family member(s), cohabitant or associates(s) in question would not constitute an unacceptable security risk;
2. Contacts with foreign citizen are casual and infrequent.

### Security Violations

Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.

#### Conditions that could raise a security concern:

1. Unauthorized disclosure of classified information;
2. Violations that are deliberate or multiple or due to negligence.

#### Conditions that could mitigate security concerns:

2. Were isolated and infrequent;
4. Demonstrates a positive attitude towards the discharge of security responsibilities.

### Guideline E (Personal Conduct)

#### Condition that could raise a security concern:

None.

#### Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence), Guideline K (Security Violations) and Guideline E (Personal Conduct) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## **CONCLUSIONS**

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign influence, security violations and personal conduct have a direct and negative impact on his suitability for access to classified information.

With respect to Guideline B, the Applicant has no contact with anyone in Taiwan, (ROC, except his mother. His contacts with her are very limited, casual and infrequent. She is elderly, not an agent of the Taiwanese government, and not aware of what the Applicant does for a living. The Applicant's visits to Taiwan were either solely for business purposes or to visit his elderly mother and to attend his father's funeral. On each occasion, his security department was made aware of his foreign travel and the Applicant was debriefed. All of his other family are citizens of and reside in the United States. The Applicant is a naturalized citizen of the United States. The Applicant has no foreign ties or contacts that could potentially influence him. The Applicant understands the responsibilities that come along with holding a security clearance and promises that he will protect the national interest of the United States at all times no matter what. Considering all of the documentary evidence in the record, I find the Applicant to be credible and honest.

Under Foreign Influence, Disqualifying Condition (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 in, a foreign country* applies. However, Mitigating Conditions (1) *A determination that the immediate family member(s), cohabitant or associates(s) in question would not constitute an unacceptable security risk, and (2) Contacts with foreign citizen are casual and infrequent* also applies. There is no situation that could create the potential for foreign influence that could result in his compromise of classified information. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B.

Under Security Violations, Disqualifying Conditions (1) *Unauthorized disclosure of classified information, and (2) Violations that are deliberate or multiple or due to negligence* apply. However, Mitigating Conditions (2) *Were isolated and infrequent, and (4) Demonstrates a positive attitude towards the discharge of security responsibilities* are also applicable. The Applicant's two security violations in 1997, were in fact careless, irresponsible or deliberate. There is no acceptable excuse for these security violations. Since then, however, the Applicant has demonstrated that he is responsible and can be trusted with the national secrets. He has received additional security training that has proved to be quite beneficial. He has not had any security violations in the past nine years. He has learned a valuable lessons for his past security violations, and has reset his priorities between engineering and security responsibilities. He understands security rules and regulations and the importance of protecting classified information. He is very careful to follow all security rules in every instance and he does not take any short cuts even if his job tasks are overwhelming. Accordingly, Guidelines K and E are found in favor of the Applicant.

In addition to the Disqualifying and Mitigating conditions, I have also considered the "whole Person" concept. The Applicant is a naturalized American citizen whose entire family, except his elderly mother, are citizens and residents of the United States. He is mature, experienced and serious about his security responsibilities. He has obviously learned from his past security violations and has protected classified, and properly followed all security rules and regulations, for the past nine years. He states that his supervisor and co-workers also consider him to be responsible and trustworthy.

Considering all the evidence, the Applicant has met the mitigating conditions of Guidelines B, K and E of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B, K and E.

## FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

Paragraph 2 : For the Applicant.

Subparas. 2.a.: For the Applicant.

2.b.: For the Applicant

Paragraph 3 : For the Applicant.

Subparas. 3.a.: For the Applicant.

**DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge