

KEYWORD: Foreign Influence

DIGEST: Applicant, a 55-year-old security specialist working on contract for the Department of State, effectively mitigated security concerns arising from a continuing romantic relationship with a Russian woman whom he met while on a project for his employer, by reporting the contacts and establishing his own extensive record since holding a security clearance received in 1988. Based on a whole person analysis, clearance is granted.

CASENO: 04-00109.h1

DATE: 11/30/2005

DATE: November 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00109

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 55-year-old security specialist working on contract for the Department of State, effectively mitigated security concerns arising from a continuing romantic relationship with a Russian woman whom he met while on a project for his employer, by reporting the contacts and establishing his own extensive record since holding a security clearance received in 1988. Based on a whole person analysis, clearance is granted.

STATEMENT OF THE CASE

On March 1, 2005, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, 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 which 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 security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated March 17, 2005, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on July 5, 2005, and a Notice of Hearing was issued August 26, 2005 for a hearing held on September 6, 2005. At the hearing, the Government introduced seven exhibits the last six of which were for administrative notice. Applicant introduced no exhibits but the record was left open for him to submit material and 11 exhibits were offered on October 12, 2005. All were accepted into evidence. The Applicant testified. The transcript was received on September 19, 2005.

FINDINGS OF FACT

Applicant admitted all of the specific facts alleged under Foreign Influence Guideline B with explanatory information provided for all. The 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 55-year-old employee of a defense contractor working as security specialist installing equipment in U.S. embassies and consulates. He has held a security clearance for 18 years. He has never had a security violation or been criticized for any security lapse. He is a widower with two grown sons. He served two years in the army including service in Viet Nam. He was honorably discharged in 1970 (Exh. K). Later he served in the National Guard with the rank of Staff Sergeant working on classified matters and holding a security clearance. He has a high school GED equivalency but has taken many courses in information technology to qualify for his present work.

While working in the Russian Far East for his employer in 2002 he met a 32-year-old Russian woman who works as an accountant for a farm co-operative. He reported the contact to the consulate and to his employer (Exh. A). He returned to conclude the project in May, 2003, saw her again and they developed a romantic relationship. He went on to other assignments but corresponded with her and has returned to visit twice on vacation, in November 2003, and in 2004, for periods of more than a month each time. He notified his employer of the later trips (Exh. I). He has sent money to her totaling \$6-7,000.00 since 2003, to help her and her 12 year-old daughter. They exchange e-mails almost daily. He considers marriage a possibility but has taken no steps to do so recognizing the difficulties of doing so. He plans to visit her again. She has never traveled from Russia to be with him.

Applicant has met his friend's sister and daughter but not her parents. He has no contact with her employer organization which has nothing to do with defense work. Someone in her employer organization who knew of and objected to her friendship with Applicant reported that she was spying for the U.S. The matter was investigated by the Russian Federal Security Service (FSB) and dismissed. The person who reported her contact with Applicant has now been enjoined from further contact with her.

One allegation in the SOR (Par. 1.b.) concerns an alleged spouse-like relationship with a former landlady in the U.S. with whom he had a romantic relationship. The government has stated that this matter is no longer of concern (TR. 8).

Applicant is highly regarded for his skills, dedication to his work, and good character (Exhibits A-G). He travels

extensively to embassies and consulates to perform work for his employer. His supervisors and customers are very complimentary of his abilities and work ethic. He takes great pride in his work, and contributions to national security, especially providing security for our foreign service personnel working abroad.

The Government has established by official documents of which I have taken official notice that Russia has engaged in espionage seeking economic and technical data.(Exh. 2-7). These are matters of serious concern regarding national security and they have been considered in the context of this case. Changes in Russia are occurring and improvements in our relations have been noted in recent U.S. Government policy statements noting new cooperative arrangements between the Russian Federal Security Service (FSB) and the U.S. Department of Homeland Security and the Federal Bureau of Investigation (Exh. 3 p. 51).

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.

CONCLUSION

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:

Conditions under Guideline B 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.) Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny him 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).

Mitigating conditions (MC) that might be applicable are a determination that the individuals 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 persons involved and the U.S.(E2.A2.1.3.1.), and contacts with foreign citizens are the result of official U.S. Government business (E2.A2.1.3.2.), contacts and correspondence with foreign citizens are casual and infrequent (E2.A2.1.3.3.), and the individual has promptly reported to proper authorities all contacts, requests, or threats from foreign persons or organizations, as required (E2.A2.1.3.4.).

Applicant's contacts with his Russian friend are not casual and infrequent so MC 3 would not be applicable and as to MC 1 she is possibly in a position to be exploited. MC 2 is applicable to the first two trips since he was traveling abroad on government business. It would not be applicable to the subsequent vacation trips. MC4 would be applicable since he reported the contacts and travel to appropriate authorities.

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 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. Applicant is a native-born U.S. citizen and

has strong and deep ties to the U.S. over many years of service and work as a member of the armed forces and as an employee of a defense contractor. Applicant is an impressive person of skills and dedication to his work who has dealt effectively with security issues for over a quarter of a century. There is no evidence to cause one to think his conduct would change now.

Applicant presents a highly credible case that he would not be influenced by anything anyone might seek him to do any acts contrary to the best interests of the U.S. His record of employment, his career as a trusted employee of a defense contractor, and his record while holding a security clearance including notices given to those in authority of his relationship that is the subject of this matter effectively refutes any likelihood that he would now take any action that would jeopardize national security.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance 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

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge