

KEYWORD: Foreign Influence; Financial

DIGEST: Applicant is unable to successfully mitigate the foreign influence security concern. His wife is a dual citizen of the U.S. and Italy. She is employed by the Italian Embassy in the U.S., and she has a security clearance for her employment with the embassy. Applicant also has family ties to Italy via his parents-in-law who are citizens of and residents in Italy. In addition, Applicant's wife had a close relationship with a high-level official at the Italian Embassy. She used that relationship to borrow \$65,000 from the official so Applicant could lend the money to a friend involved in an overseas business venture, which was a scam resulting in an \$82,000 loss to Applicant. Clearance is denied.

CASENO: 04-02757.h1

DATE: 11/30/2005

DATE: November 30, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02757

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esq., Department Counsel

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the foreign influence security concern. His wife is a dual citizen of the U.S. and Italy. She is employed by the Italian Embassy in the U.S., and she has a security clearance for her employment with the embassy. Applicant also has family ties to Italy via his parents-in-law who are citizens of and residents in Italy. In addition, Applicant's wife had a close relationship with a high-level official at the Italian Embassy. She used that relationship to borrow \$65,000 from the official so Applicant could lend the money to a friend involved in an overseas business venture, which was a scam resulting in an \$82,000 loss to Applicant. Clearance is denied.

STATEMENT OF THE CASE

On November 5, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F for financial considerations and Guideline B for foreign influence. Applicant answered the SOR on or about November 15, 2004, and in December 2004, he requested a hearing.

Department Counsel indicated she was ready to proceed on July 27, 2005, and the case was assigned to me on August 4, 2005. Thereafter, on September 20, 2005, a notice of hearing was issued scheduling the hearing for October 19, 2005. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the 434-page transcript on November 3, 2005.

FINDINGS OF FACT

After a thorough review of the record evidence, I make the following findings of fact:

Applicant is a 42-year-old man seeking to retain a security clearance. He is employed as a program manager for a federal contractor. He has been working for federal contractors since his retirement from the Navy on September 30, 2001, when he retired as a first-class petty officer (pay grade E-6). He retired based on 20 years of honorable service and held a security clearance for most of those years. He has a service-connected disability that the Veterans Administration has rated at 70%.

He has been married to his current wife, his second, since September 1995. Applicant met her in Italy where he was stationed for several years, and he speaks Italian fluently. His wife was employed for several years as a local national hire at the U.S. Navy base. Her parents are citizens of and residents in Italy. She has regular (weekly or biweekly) contact by telephone with her parents. She became a naturalized U.S. citizen in February 2002, and she is a dual citizen of the U.S. and Italy. She has both U.S. and Italian passports.

Applicant's wife has been and continues to be employed at the Italian Embassy in the U.S. She is also a recently licensed realtor who is developing that part of her professional career. From about March 2000 to May 2002, she served as an executive aid to a high-level official at the embassy. This official left the U.S. in ay 2002, and returned to Italy where he assumed duties in the Ministry of Foreign Affairs. She continues to work for the embassy in a secretarial position. Her position is a contractor position, meaning she is considered a local hire paid by the embassy, not the ministry. As a contractor employee, she participates in the Italian equivalent of social security and she also receives health insurance through her employment.

While serving in the Navy, Applicant met and became a close friend with another Sailor hereinafter called John Doe. Their wives also became good friends. Shortly after Applicant's retirement from the Navy in September 2001, the long, close friendship between the two men resulted in Applicant and his wife lending \$82,000 to John Doe. The loan was for John Doe to use in an investment or business opportunity in an African country where he could earn 10% on a \$20 million transaction (\$2 million). This opportunity was a financial scam, which resulted in John Doe being unable to repay Applicant and his wife the \$82,000. Also, the scam resulted in a financial loss to another person from whom John Doe obtained about \$75,000. And according to John Doe (Exhibits A and T, pages 43 - 45), he lost \$230,000 to \$260,000 in the scam.

It is beyond the scope of this proceeding to determine if John Doe was a scam victim or was engaged in fraud by obtaining the \$82,000 from Applicant, so I make no finding in this regard. Also, it is unnecessary to untangle and decipher the precise actions and motivations of John Doe and Applicant. Instead, set forth below are the key factual findings necessary to decide this case:

1. Applicant's wife was at all times relevant to this case an Italian citizen employed by the Italian Embassy in the U.S., and she held an Italian security clearance in this capacity.
2. Applicant's wife had a close relationship with her boss, a high-level official at the embassy, as the official saw her as a daughter (Transcript at p. 272).

3. In 2001, Applicant and his wife agreed to lend money to John Doe to help him in an overseas business venture. They lent the money based on their trust in and long friendship with John Doe and his wife.

4. During October and November 2001, in a series of four transactions, Applicant and his wife lent \$82,000 to John Doe.

5. Of the \$82,000, Applicant and his wife obtained \$17,000 from a line of credit or credit card cash advances, or a combination of the two. This money was provided to John Doe in two transactions of \$4,000 and \$13,000, respectively.

6. The balance of the \$82,000 was obtained by Applicant's wife borrowing \$65,000 from the high-level official at the embassy. In obtaining the money, Applicant's wife actually wrote the checks payable to her and then the official signed the checks (Exhibit 5). This money was provided to John Doe in two transactions of \$15,000 and then \$50,000, respectively.

7. Initially, John Doe promised Applicant repayment within a couple of weeks. As events unfolded, more money was needed and John Doe then promised Applicant a considerable return in addition to repayment of principal. By the time of the fourth transaction when Applicant lent John Doe \$50,000, John Doe promised Applicant a cumulative return of \$1 million.

8. As the business venture was a scam, John Doe has not repaid Applicant any monies. Applicant and his wife have taken various actions, including a civil lawsuit, to force John Doe to repay the money, but their efforts to date have been unsuccessful.

9. Applicant and his wife decided to repay \$65,000 to the high-level foreign official by paying \$1,000 monthly from the wife's paycheck or account. They made 26 monthly payments until the foreign official decided to waive or forgive the remaining balance of \$39,000.

10. Since the foreign official's return to Italy, Applicant's wife no longer has regular contact with him. Her last contact with him was several months ago when the loan balance of \$39,000 was waived or forgiven.

The government presented testimony from a Defense Security Service special agent with expertise in counterintelligence matters who participated in the investigation of Applicant's case. Concerning the \$39,000 loan balance that was forgiven by the high-level foreign official, the agent opined this could indicate a *quid pro quo* (this for that) expected at some point in the future. The agent conceded, however, he found no evidence of a *quid pro quo* during his part of the investigation.

Although Applicant and his wife lent John Doe money they did not have, there is no evidence showing they were delinquent on the line of credit or credit card accounts. Applicant presented an incomplete credit report, dated October 5, 2005 (Exhibit L), which shows he has no collection accounts, public records, or missed payments. The report also shows Applicant has a FICO score of 733 out of 850 (the higher the better) meaning lenders view Applicant as a good credit risk.

Applicant presented several favorable character witnesses supporting his application for a security clearance. The character witnesses uniformly believe Applicant is an honest and trustworthy individual who is suitable for a security clearance.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. 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.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security

clearance is not a determination of an applicant's loyalty.⁽²⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than a preponderance of the evidence.⁽⁶⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

1. Guideline F-Financial Considerations

This case brings to mind the saying, "If it sounds too good to be true, it probably is." Under Guideline F, a security concern typically exists for two different types of situations--significant unpaid debts and unexplained affluence. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Here, based on the record evidence as a whole, the government established its case under Guideline F. This case is rather unusual, because it does not involve the type of indebtedness or delinquency common in these proceedings. Nevertheless, a security concern was raised because Applicant lent \$82,000 he did not have to John Doe for use in an overseas business venture that turned out to be a scam. The vast majority of the \$82,000 was borrowed from a high-level foreign official based on the strength of Applicant's wife's relationship. By lending the \$82,000, Applicant financially overextended himself. These circumstances, although unusual, constitute a financial problem linked to an issue of security concern--borrowing a large sum of money from a high-level foreign official--within the meaning of DC 5.⁽¹²⁾

I reviewed the mitigating conditions under the guideline and conclude Applicant has successfully mitigated the security concern. Although Applicant used questionable judgment in lending such large sums of money, he did so in reliance on his long and trusting friendship with John Doe. As events unfolded, Applicant found himself in a situation where he could walk away or come up with more money to recover the money he had already lent. Perhaps enticed by the possibility of a windfall profit, he elected not to walk away and ended up with an \$82,000 loss when the scam revealed itself. Given these facts and circumstances, the scam was a condition or circumstance beyond Applicant's control within the meaning of MC 3.⁽¹³⁾ Once aware of the scam, Applicant and his wife repaid \$26,000 of the \$65,000 to the high-level foreign official who then waived or forgave the balance. They made the necessary payments on the line of credit and credit card accounts to keep those accounts in good standing. And they have taken action, although without success, to recover the money from John Doe. Together, these actions amount to a good-faith effort to repay or otherwise resolve debts within the meaning of MC 6.⁽¹⁴⁾ Accordingly, Guideline F is decided for Applicant.

2. Guideline B-Foreign Influence

Under Guideline B, a security concern 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 not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

Here, based on the record evidence as a whole, the government established its case under Guideline B. I have reviewed the DC under the guideline and conclude as follows: (1) DC 1⁽¹⁵⁾ applies because Applicant's wife is a citizen of Italy; (2) DC 1 also applies because Applicant has in-laws who are citizens of and residents in Italy; (3) DC 2⁽¹⁶⁾ applies because Applicant resides with his wife who is an employee of a foreign embassy, and she holds a security clearance for her employment with the embassy; (4) DC 3⁽¹⁷⁾ applies because Applicant's wife is an employee of a foreign embassy; (5) DC 3 also applies because Applicant is associated, through his wife, with a high-level foreign official who is now assigned at the foreign ministry; and (6) DC 6⁽¹⁸⁾ applies because by obtaining \$65,000 in loans from a high-level foreign official, Applicant engaged in conduct that had the potential to make him vulnerable to a foreign government. The remaining DC do not apply based on the facts and circumstances here.

I reviewed the mitigating conditions under Guideline B and conclude that only MC 5⁽¹⁹⁾ applies. Applicant receives some credit under MC 5 because neither he nor his wife has substantial business or financial interests in Italy. The remaining MC do not apply based on the facts and circumstances here.

Viewing the record evidence as a whole, this is not a case where Applicant's connections or ties to a foreign country are nominal, *pro forma*, or insignificant. Instead, the record evidence demonstrates he has significant and ongoing

connections to Italy. His wife is a dual citizen of the U.S. and Italy, she works for the Italian Embassy, and she holds a security clearance for her employment. She has immediate family members in Italy and it is presumed Applicant has close ties given that his wife has close ties to her parents. Of equal concern is Applicant's association, through his wife, with a high-level foreign official who was willing to lend Applicant's wife \$65,000 and then forgive repayment of \$39,000. This situation speaks volumes about the strength of that tie or connection. Cumulatively, given these circumstances, I conclude Applicant is unable to successfully mitigate or extenuate the foreign influence security concern. Accordingly, Guideline B is decided against Applicant.

During the hearing, Applicant made claims about the actions or inactions of security officials who conducted the investigation in his case, and he also suggested he was the victim of retaliation after bringing his case to the attention of a U.S. Senator from his state of residence. Based on the record evidence, I have seen nothing to support his claims other than his personal belief or conjecture. Moreover, as an administrative judge, I have no authority over investigative personnel or how they conduct investigations in this or any other case. At bottom, Applicant's claims had no effect, one way or the other, on how I decided his case.

Although I decided this case against Applicant, this decision should not be construed as an indictment of his loyalty and patriotism to the U.S., as those matters are not at issue. Indeed, I gave favorable consideration to Applicant's 20 years of honorable military service. Instead, the clearly-consistent standard--which is a demanding standard--requires I resolve any doubt against Applicant, and his significant and ongoing ties to Italy create such doubt. To conclude, Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: For Applicant

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

SOR ¶ 2-Guideline B: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: 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 Applicant. Clearance is denied.

Michael H. Leonard

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. Executive Order 10865, § 7.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

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

11. *Egan*, 484 U.S. at 528, 531.

12. E2.A6.1.2.5. Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

13. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation).

14. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

15. 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.

16. E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.

17. E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government.

18. E2.A.2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

19. E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.