

KEYWORD: Sexual Behavior; Personal Conduct

DIGEST: Applicant clearly does not want his wife and two children to find out about his long term extramarital relationship with another woman. This fact increases his vulnerability to coercion, exploitation and duress, and makes it impossible to conclude it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

CASENO: 04-03055.h1

DATE: 03/18/2005

DATE: March 18, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03055

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Edward O. Lear, Esq.

SYNOPSIS

Applicant clearly does not want his wife and two children to find out about his long term extramarital relationship with another woman. This fact increases his vulnerability to coercion, exploitation and duress, and makes it impossible to conclude it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On July 27, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as administratively reissued on April 20, 1999), 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on August 26, 2004. The case was assigned to me on September 15, 2004. A Notice of Hearing was issued on January 11, 2005, setting the hearing for February 17, 2005. Applicant requested a continuance. His request was granted, and the hearing was continued to March 2, 2005. The transcript was received on March 14, 2005.

FINDINGS OF FACT

Applicant is 50 years of age. He has been married for over 20 years, and has two children.

From the 1980s until very recently, applicant was having a consensual extramarital relationship with his secretary.

Applicant has been honest with the Government about the relationship. In fact, he voluntarily disclosed the existence of it while being questioned about the secretary as part a routine security clearance background investigation of the woman.

Although two of applicant's siblings and two or three people at his office (out of hundreds) are aware of the relationship, neither his wife nor his two children are aware of it. Applicant testified that he considered telling his wife but decided that "this [security clearance] process should not be what drives how I conduct my relationship or to hurt her or anything else. It's not right for me to do that" (TR at 33). He added that, "My wife is a good person. She's a loving person . . . To hurt her for my private purposes here, I just don't think that should drive the decision" (TR at 35).

Applicant testified that he could not be blackmailed about this relationship. This belief is shared by the woman with whom he was having the relationship (Exhibit C).

Applicant's net worth is approximately \$10,000,000.00. He testified, in essence, that if his wife found about the affair, and divorced him, the potential loss of half his net worth would not bother him. I found this testimony to be credible and worthy of belief.

The evidence establishes that, except for this extramarital relationship, applicant's conduct has been exemplary.

CONCLUSIONS

Applicant has been married for over twenty years. For most of that time he was having a consensual extramarital relationship with his secretary. Neither his wife nor his two children are aware of this relationship.

The fact that applicant's wife and children are unaware of applicant's extramarital relationship clearly leaves him vulnerable to coercion, exploitation and/or duress. His testimony regarding why he has not told his wife about the relationship seemed sincere; however, the fact he chose not to tell his wife about the relationship before the DOHA hearing, a disclosure that would have removed most of the Government's security concerns, speaks volumes about his strong, continuing desire to keep his wife and children in the dark about this relationship.

When applicant's strong desire to keep this relationship from his wife and children is balanced against his long history of responsible behavior and his testimony that he would not submit to blackmail, it is impossible to predict how he would react to an attempt to pressure, coerce or blackmail him. However, the Government need not prove that applicant would mishandle classified information in response to such an attempt. All the Government must prove is that facts and circumstances exist which indicate applicant is at risk for mishandling classified information. *See, e.g.*, ISCR Case No. 98-0265 (March 17, 1999). The Government clearly met its burden.

Once the Government established that applicant is at risk for mishandling information, the burden shifted to applicant to demonstrate reform, rehabilitation, or changed circumstances sufficient to warrant the conclusion that it is clearly consistent with the national interest to grant him access to classified information. *See*, ISCR Case No. 01-03132 (August 8, 2002). Considering the evidence as a whole, and applying the pertinent guidelines, including those set forth in Section E.2.2. of Enclosure 2 of the Directive, I have no choice but to conclude that applicant did not meet his burden.

With respect to Guideline D, Disqualifying Conditions E2.A4.1.2.3 (*sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress*) and E2.A4.1.2.4 (*sexual behavior of a public nature and/or that which reflects lack of discretion or judgment*) apply to this case. Because applicant's questionable judgment is limited to this relationship, Mitigating Condition E2.A4.1.3.3 (*there is no other evidence of questionable judgment, irresponsibility, or emotional instability*) is applicable.

With respect to Guideline E, Disqualifying Condition E2.A5.1.2.4 (*personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*) is applicable.

The corresponding Mitigating Condition (i.e., E2.A5.1.3.5) is not applicable because applicant has not taken positive steps to *significantly* reduce or eliminate his vulnerability to coercion, exploitation or duress.

FORMAL FINDINGS

GUIDELINE D: AGAINST THE APPLICANT

GUIDELINE E: AGAINST THE 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.

Joseph Testan

Administrative Judge