

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Applicant is 46 years old, married with one child, and works for a defense contractor as an Arabic translator in Iraq. His family comes from Palestine and lives in Egypt, Jordan, and Qatar. Applicant and his wife are naturalized U.S. citizens. Applicant did not disclose a job termination and three felony charges on his security clearance application. Applicant did not mitigate the foreign influence and personal conduct concerns. Clearance is denied.

CASENO: 04-03278.h1

DATE: 05/16/2006

DATE: May 16,2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03278

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 46 years old, married with one child, and works for a defense contractor as an arabic translator in Iraq. His family comes from Palestine and live in Egypt, Jordan, ad Qatar. Applicant and his wife are naturalized U.S. citizens. Applicant did not disclose a job termination and three felony arrests on his security clearance application. Applicant did not mitigate the foreign influence and personal conduct concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 15, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on August 2, 2005. Applicant requested his case be decided on the written record in lieu of a hearing.

On September 26, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on October 27, 2005, within the 30 day time allowed that would have expired on November 12, 2005. The case was assigned to me on February 10, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough

review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 46 years old, married, has one child, and works as an arabic language translator for a defense contractor. He immigrated the U.S. in 1980, and became a naturalized U.S. citizen in October 1991. Applicant's wife is a citizen of the U.S. since April 2004. (Items 3-5, 7)

Applicant's family are Palestinian refugees whose passports are issued by the Egyptian government. His parents reside in Qatar. Two sisters live in Qatar, and one sister lives in Jordan. His four brothers reside in Qatar and have Egyptian travel documents or passports. His wife's parents also are Palestinian refugees, have travel documents issued by the Egyptian government, and reside in Egypt. Applicant listed Israel on his SCA as his family's country issuing their passports because they were from Palestine that is now part of Israel, and his employer's security officer told him to list that country instead of any other one. He contacts his family members two or three times per year. (Items 4-7)

Applicant lived and worked in Qatar from 1997 to 1999 after becoming a U.S. citizen in 1991. He lived and worked in the United Arab Emirates (UAE) from 1992 to 1997. He traveled to Egypt in August and November 2004, and April 2005, to visit his wife and child who resided there while he worked as a translator in Iraq for a defense contractor. He traveled to Qatar from July 2004 to May 2005, and the UAE from January 21-25, 2005. (Items 3-7, FORM Response)

Applicant completed a security clearance application (SCA) for his employer. One SCA is dated April 5, 2003, but is not signed. The second SCA is signed and dated April 30, 2004. On these SCA Applicant in answer to Question 20 (Job terminations in the past seven years) disclosed two job terminations but not a third termination for a company in Qatar. He quit all three jobs. There is no legal case pending against him in Qatar for embezzlement of money from the Qatari company where he worked in human resources. (Items 3-6, FORM Response)

Applicant did not disclose in answer to Question 21 of the SCA (Your police record-felony offense) that he was arrested in 1987 for fraudulent use of a credit card, theft, and fraud. The charges are felonies under the state laws where Applicant was arrested. The charges were dismissed by the local prosecutor in July 1988 because he could not prove the charges beyond a reasonable doubt. (Items 4-12, FORM Response)

Applicant has character and work quality statements from military and civilian personnel with whom he works in Iraq. He is rated highly for his competence and trustworthiness, his ability to communicate with Iraqis of all social standing, and his calmness while under enemy fire during patrols with the U.S. Army forces. (Item 7)

Applicant works in Iraq, traveled to Egypt and Qatar to visit his immediate family, and lived and worked in Qatar and the United Arab Emirates (UAE) in the 1990s. This region is an area of safety and concern for American citizens because of terrorist activities, armed conflicts, and Palestinian and Israeli conflicts enduring for the past 50 years. Industrial espionage has also occurred against the U.S. by certain countries in the area. (Items 19-26)

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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. See Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the

President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

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 not citizens of the United States or 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. E2.A2.1.1

Guideline E: Personal Conduct: The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. E2.A5.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant admitted the allegations under Guideline B, and denied the Guideline E allegations.

Regarding the foreign influence security concern, the Disqualifying Conditions (DC) 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. E2.A2.1.2.1), and DC 6 (Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government E2.A2.1.2.6) apply. Applicant's family members live in three countries in the middle east, and are Palestinian refugees with Egyptian or Jordanian passports or travel documents. Applicant contacts his family members two or three times a year. He has close ties to them, and to his wife and child who live in Egypt while he works in Iraq. His work and their locations make him vulnerable to coercion by several governments or terrorist organizations, and more so because of his work as an arabic translator.

The burden is on the Applicant to show the Mitigating Conditions (MC) in the guideline apply to his situation. Applicant has not met that burden. While his family may not be agents of any foreign power, he has not provided any information about their work and contacts in the countries in which they live. Applicant merely described where they live and that they are considered by him to be Palestinian refugees. He also has not shown they are not in a position to be exploited by one or more foreign powers in ways that could force Applicant to choose between loyalty to the U.S. and loyalty to his family. Therefore, I find no MC apply and conclude this security concern against Applicant.

Under the personal conduct security concern, DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2) applies because Applicant did not disclose in Questions 20 and 21 relevant and material facts necessary for the Government to know before deciding whether to grant a security clearance to him. He did not disclose his termination from a job in Qatar, nor did he disclose his felony arrests in 1987.

His legal difficulties in Qatar he explains as the result not agreeing with the management style of his employer who later falsely accused him of embezzlement. Applicant presented notarized statements from co-workers that he quit the company voluntarily, and an official document from the Qatar Supreme Court that between January 1, 1999 and July 25, 2005 there was no legal case on file against Applicant in the courts of Qatar. I conclude this allegation in subparagraph 2.a. of the SOR is unsubstantiated and MC 1 (The information is unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability. E2.A5.1.3.1) applies.

Applicant dismisses his felony arrests by stating they were later dismissed. He does not disclose anything in detail about those arrests and the facts surrounding them. No MC apply to that allegation in subparagraph 2.b. of the SOR, and I conclude it against Applicant. Therefore, I conclude the personal conduct security concern against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of

national security to grant or continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).