

KEYWORD: Personal Conduct

DIGEST: Applicant's failure to cooperate during his security clearance background investigation by refusing to provide information about his foreign-born live-in girlfriend who was not in the country legally raises questions about his judgment. Clearance is denied.

CASENO: 04-11365.h1

DATE: 05/18/2006

DATE: May 18, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11365

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's failure to cooperate during his security clearance background investigation by refusing to provide information about his foreign-born live-in girlfriend who was not in the country legally raises questions about his judgment. Clearance is denied.

STATEMENT OF CASE

On July 19, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. 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. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline E, Personal Conduct.

In a sworn statement dated August 12, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on February 17, 2006. A notice of hearing was issued on March 8, 2006, scheduling the hearing for March 30, 2006. The hearing was conducted on that date. The government submitted three exhibits that were marked as Government Exhibits (Gov. Ex.) 1-3 and admitted without objection. Applicant testified on his own behalf and submitted six exhibits which were marked as Applicant Exhibits (AE) A-F and admitted without objection. After the hearing, he submitted one exhibit that was marked as AE G and admitted without objection. DOHA received the hearing transcript (Tr.) on April 10, 2006.

FINDINGS OF FACT

In his SOR response, Applicant admits the allegations in subparagraphs 1.a and 1.c but denies the allegation in 1.b. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 35-year-old computer integrator with a Department of Defense contractor. He is single and has no children. From 1991 to November 2003, he was in the Air Force Reserves. In October 2001, he was called to active duty for ten months. From March 2002 to May 2002, he deployed to a location in the iddle East. [\(U\)](#) He separated from the

Reserves at the rank of Technical Sergeant (E-6).⁽²⁾ He has worked for his current employer since May 12, 2003.⁽³⁾ He has held a SECRET clearance for over 14 years.⁽⁴⁾

In October 1995, Applicant met a woman who would become his future girlfriend.⁽⁵⁾ She was an Iranian citizen who was in the United States illegally after her temporary work visa expired.⁽⁶⁾ Applicant was aware of his girlfriend's illegal status.⁽⁷⁾ Between October 1995 to June 2002, they dated on a sporadic basis.⁽⁸⁾ In June 2002, they began dating more seriously. At the time, Applicant lived in another city and would travel to where his girlfriend lived approximately once a month.⁽⁹⁾ At his girlfriend's urging, he eventually found a job in the city where his girlfriend resided.⁽¹⁰⁾

On April 15, 2003, Applicant submitted a security clearance application as part of a requirement for employment with his current employer.⁽¹¹⁾ He did not list his girlfriend on his security clearance application. In mid May 2003, Applicant moved to the city where his girlfriend resided and started the job with his current employer.⁽¹²⁾ In June 2003, he moved in with his girlfriend and her eight-year-old daughter.⁽¹³⁾

On September 29, 2003, Applicant submitted a security clearance application for a TOP SECRET clearance.⁽¹⁴⁾ He did not list his girlfriend or her daughter on this application. Although he acknowledges that the security questionnaire asked if he had a spouse-like relationship with someone he is living with, he claims that he did not think that his relationship with his girlfriend was that far along to be considered spouse-like.⁽¹⁵⁾ He also admits that he knew his security clearance would be in question due to this relationship.⁽¹⁶⁾

In November 2003, Applicant was interviewed by a Special Agent of the Defense Security Service during his background investigation. During the interview, he disclosed that he was living with his girlfriend and her daughter and that they were Iranian citizens. He was asked to provide additional information about his girlfriend's status and he refused. His girlfriend refused to cooperate and he made a decision to respect her wishes, in part, because he was afraid the INS would be contacted.⁽¹⁷⁾

At one point, Applicant approached his site manager and his project manager to inquire about postponing the adjudication of his TOP SECRET status until his girlfriend's citizenship issues were resolved.⁽¹⁸⁾ He was told there was no way to postpone the process.⁽¹⁹⁾

In February 2004, Applicant and his girlfriend broke up. His girlfriend and her daughter moved out of the apartment.⁽²⁰⁾ After the breakup, Applicant called the Defense Security Service and set up an additional interview. He initially requested to have his relationship with his former girlfriend stricken from the record. He was told the information could

not be removed so he requested an additional interview. He was interviewed on March 17, 2004. During this interview, he provided his former girlfriend's social security number and indicated that he has no intentions of continuing his relationship with her. ⁽²¹⁾ He decided to provide the information about his former girlfriend because he was worried about his career and wanted to make amends for not having done so in the beginning. ⁽²²⁾

He admits to not being completely forthcoming about his relationship with his former girlfriend because he knew it would be an issue during his security clearance background investigation. He did not list her on his security clearance application intentionally as a means to avoid the situation until her security clearance status was rectified. ⁽²³⁾ He and his girlfriend had planned to marry so that she could acquire legal status in the United States. ⁽²⁴⁾ He discovered that he could not get a marriage license until his girlfriend obtained her husband's death certificate. Her husband died in Iran in 2002. ⁽²⁵⁾ In response to the SOR and at hearing, Applicant testified he had no intentions of marrying his girlfriend. He was just looking into future possibilities. ⁽²⁶⁾

Applicant's site manager/facility security officer provided a statement on his behalf. He has worked with him since May 2003 and is impressed with Applicant's professionalism, strong work ethic, and honesty. ⁽²⁷⁾ His supervisor from May 2003 to October 2005, indicates he was highly professional and always helped other employees who needed assistance. He was the "go to" guy for solving tough problems. ⁽²⁸⁾ Several other co-workers and friends submitted letters on his behalf indicating he is a loyal friend and a dedicated and reliable worker. ⁽²⁹⁾

Applicant is currently involved with another woman who is a U.S. citizen. ⁽³⁰⁾ He states he has learned from the mistakes he made in the past. He hopes to prove he is a trustworthy and reliable person. ⁽³¹⁾

POLICIES

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." ⁽³²⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline E, Personal Conduct: 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. ⁽³³⁾

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"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." ⁽³⁴⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. ⁽³⁵⁾ An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 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. ⁽³⁶⁾

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. ⁽³⁷⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. ⁽³⁸⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. ⁽³⁹⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. ⁽⁴⁰⁾ It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline E, Personal Conduct.

Applicant's refusal to provide additional information about his live-in girlfriend to a Special Agent of the Defense Security Service supports the application of Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.1.2: (*Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination*). The Special Agent's questions about his foreign national girlfriend were lawful and pertinent to a determination of his security-worthiness. Applicant acknowledges that he was aware that his relationship with his girlfriend would cause security concerns. He refused to cooperate because he chose to respect his girlfriend's wishes rather than disclose information that was relevant to his security background investigation.

PC DC E2.A5.1.2.2: (*The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies with respect to Applicant deliberately failing to list his live-in girlfriend on his security clearance application dated September 29, 2003. He admits that he intentionally left her name off his security clearance application as a means to avoid the situation until her citizenship status was rectified. [\(41\)](#)

Since Applicant was not living with his girlfriend when he submitted his first security clearance application dated April 14, 2003, he had no duty to list on her on his security clearance application. He did have a duty to list her on his September 29, 2003, security clearance application since he was living with her despite his recent claims that he did not consider the relationship "spouse-like." I do not find his claims that he believed the relationship was not spouse-like credible since he initially indicated that he planned to marry her so she could become a legal immigrant. He also had looked into what was required to get a marriage license.

The personal conduct concern can be mitigated. I find that none of the Personal Conduct Mitigating Concerns (PC MC) apply. Applicant exercised extremely poor judgment when he refused to cooperate with the DSS agent conducting his background investigation. He decided that his personal preferences were more important than his duty to be completely forthright and honest during his background investigation. His conduct raises issues pertaining to his judgment, reliability, and trustworthiness. His refusal to cooperate indicates an unwillingness to follow procedures if it might have an adverse impact on his personal life. Such conduct raises questions about whether he would be willing to follow procedures for safeguarding classified information.

Applicant has served in the Air Force Reserves for over 12 years and held a security clearance for the entire time. He was an experienced and mature adult at the time he refused to cooperate during his background investigation. His experience as an Air Force reservist should have given him greater insight as to the importance of cooperating in security background investigations.

His decision to cooperate after he and his girlfriend broke up does not mitigate his initial refusal to cooperate. His decision to cooperate was not so much a change of heart but rather a change of situation. If an Applicant refuses to cooperate during a security background investigation, it normally results in an unfavorable clearance action.⁽⁴²⁾ Applicant's refusal to cooperate raises doubts about his ability to protect classified information. He has not mitigated the personal conduct security concern. I find against him with respect to Guideline E.

I carefully considered all of the circumstances in light of the "whole person" concept. Despite Applicant's favorable recommendations from friends and co-workers, I conclude that his refusal to cooperate during his background investigation and his deliberate lack of candor on his September 29, 2003, security clearance application raises a sufficient security concern to make him ineligible for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Erin C. Hogan
Administrative Judge

1. Tr. at 22-23; 27.
2. Tr. at 4; 21; 50.
3. Tr. at 30.
4. Tr. at 4.
5. Tr. at 24; Gov. Ex. 3.
6. Gov. Ex. 3.
7. Gov 3 at 3.
8. Tr. at 25-27.
9. Tr. at 28.
10. Tr. at 29.
11. AE G.
12. Tr. at 33.
13. Tr. at 27.
14. Gov. Ex. 2.
15. Answer to SOR at 2; (The actual question pertaining to spouse-like relationships does not show up on the final version of the SF 86. *See* Gov. Ex. 2, question 9. The Government did not offer a copy of the actual questions in the security questionnaire computer program into the record. However, Applicant admits that he read a question asking him to list individuals with whom he had a spouse like relationship.).
16. Gov. Ex. 3 at 2; Answer to SOR; Tr. at 44.
17. Tr. at 35-39; Gov. Ex. 3 at 3.
18. Gov. Ex. 3 at 3; Tr. at 40.
19. Gov. Ex. 3 at 3.
20. *Id.*
21. Gov. Ex. 3.
22. *Id.* at 4; Tr. at 44.
23. *Id.* at 3.

24. *Id.*
25. *Id.*
26. Tr. at 45-47; Answer to SOR.
27. AE A.
28. AE B.
29. AE C - AE F.
30. Tr. at 48-49.
31. Answer to SOR.
32. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
33. Directive, ¶ E2.A5.1.1.
34. Directive, ¶ E2.2.1.
35. *Id.*
36. *Id.*
37. Directive, ¶ E3.1.14.
38. Directive, ¶ E3.1.15.
39. Directive, ¶ E.2.2.2.
40. Exec. Ord. 10865, § 7.
41. Gov. Ex. 3 at 3.
42. Directive, ¶ E2.A5.1.1.