



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-15877
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

December 22, 2008

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on May 19, 2006. On July 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines E and K for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on July 15, 2008. He answered the SOR in writing on July 18, 2008, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on September 17, 2008. DOHA issued a notice of hearing that same day, and I convened the hearing as scheduled on September 25, 2008. The Government

offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AppX) A, without objection. DOHA received the transcript of the hearing (TR) on October 6, 2008. The record closed the date of the hearing, September 25, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in Subparagraph 1.a, of the SOR, with explanation. He denied the factual allegations in Subparagraphs 1.b, 1.c and 2.a of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

The Applicant is a 51 year old engineer, who has worked in the defense industry for 27 years, and has held a security clearance for "25/26 years" (TR at page 15 line 18 to page 18 line 14). During that time period, he has never had a security clearance violation (*Id*).

Guideline E - Personal Conduct

1.a.1. Through the auspices of an internet service, which he joined in 2006, the Applicant corresponded, about once a week, with a Cambodian national (TR at page 19 line 11 to page 23 line 23). He also spoke to her on one occasion by telephone (*Id*). In "about March of 2007," they terminated their communication (TR at page 19 line 11 to page 23 line 23). When corresponding with this foreign national, he did not report this foreign contact to his Facility Security Officer (FSO), but the Government has failed to show that Applicant has a responsibility to do so. He did, however, report his association with this foreign national after the fact, as evidenced by a Foreign Relative or Associate Interview (AppX A at Encl V).

1.a.2. Through the auspices of the same internet service the Applicant corresponded, about once a week, with a Philippine national (TR at page 23 line 24 to page 27 line 14). He also spoke to her on the telephone (*Id*). Again, in about March of 2007, they terminated their communication (TR at page 23 line 24 to page 27 line 14). When corresponding with this foreign national, he did not report this foreign contact to his Facility Security Officer (FSO), but the Government has failed to show that Applicant has a responsibility to do so. He did, however, report his association with this foreign national after the fact, as evidenced by a Foreign Relative or Associate Interview (AppX A at Encl VI).

1.a.3., 1.b. and 1.c. Through the auspices of the internet service the Applicant corresponded, "at least once a week," with a Vietnamese national (TR at page 27 line 15 to page 31 line 23). About every other week, he also spoke to her on the telephone (*Id*). In December of 2006, during a visit to Vietnam, the Applicant met this foreign national (TR at page 35 line 5 to page 42 line 6). The primary purpose of this trip was to

visit Vietnam, and not to visit this foreign national (TR at page 48 line 16~20). In about July of 2008, they terminated their relationship (TR at page 35 line 5 to page 42 line 6, and AppX A at Encl IV). The Applicant did report his trip to Vietnam to his FSO (AppX A at Encl III). He also reported his association with this foreign national after the fact, as evidenced by a Foreign Relative or Associate Interview (AppX A at Encl IV).

Guideline K - Handling Protected Information

2.a. The Applicant did comply with the National Industrial Security Program Operating Manual by reporting his December 2006 trip to Vietnam (TR at page 43 line 15 to page 44 line 22, and AppX A at Encl III).

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The

Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E - Personal Conduct

Paragraph 15 of the new adjudicative guidelines sets out the security concern relating to Personal Conduct: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”

The adjudicative guidelines set out certain conditions that could raise security concerns. Subparagraph 16(c) arguably applies and provides that “*credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*” may be disqualifying. Here, the Applicant corresponded by e-mail with three foreign nationals, spoke to them on the telephone, and visited one as part of his trip to Vietnam. This is clearly countered, however, by Subparagraph 17(e) as the Applicant “*has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.*” Here, the Applicant has terminated whatever relationship he had with the three foreign nationals.

Guideline K - Handling Protected Information

Under Paragraph 33 the “[d]eliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual’s trustworthiness, judgment, reliability, or willingness and ability to safeguard such information” Here, I can find no Disqualifying Conditions applicable under the facts of this case. The Applicant complied with the requirements of the National Industrial Security Program Operating Manual.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his foreign contacts and alleged failure to safeguard protected 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline K:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge