



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-01224  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

October 3, 2008

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**Decision**  
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LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 8, 2006. On March 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B (Foreign Influence) and Guideline L (Outside Activities) 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 May 14, 2008. He elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on June 9, 2008. Applicant received a complete file of relevant material (FORM) on June 20, 2008, and was provided an opportunity to file

objections and submit material to refute, extenuate, or mitigate the Government's case.<sup>1</sup> Applicant submitted additional information. The case was assigned to me on September 10, 2008. Based upon a review of the case file, eligibility for access to classified information is denied.

### **Request for Administrative Notice**

Department Counsel did not submit a formal request that I take administrative notice of certain facts relating to Canada. Documents were included in the record as Items (5-6) concerning the Canadian university and research center. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, dated May 14, 2008, Applicant admitted the factual allegations in ¶¶ 1.a-b and 2.a of the SOR. He submitted additional information to support his request for eligibility for a security clearance.

Applicant is a 67-year-old computer science professor employed at a research institution in Canada. He is also a consultant for a defense contractor. He was born and raised in the United States. He received his undergraduate degree and a PhD from a university in the U.S. in 1983. He submitted a security clearance application on December 8, 2006. He has been granted a secret security clearance several times in his career (Item 4).

Applicant served in many academic positions in the U.S. as a professor and research consultant during his long career. He served as an expert witness for various research projects (Item 3). He has lectured abroad for many years.

Applicant is married with two adult children. He sold his home in the U.S. in 2005, but still has substantial financial holdings in the U.S., including property. The home that he owns in Canada is a small portion of his net worth (estimated value of the Canadian residence is \$464,000).

Applicant moved to Canada in 2005 for employment. He accepted a professorship in a research institution that is partially funded by the government of Canada. Additionally, he holds the Chair for Research in Privacy and Security at the university (Item 5). This position is sponsored and funded by the government of Canada. Applicant's salary and the funding for his research project is provided by the government of Canada to a great degree. The research program was developed by the government of Canada to develop a national strategy to make "Canada one of the world's top countries for research development" (Item 5). The research lab received \$815,000 in a research award from the U.S. Department of Homeland Security (DHS).

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<sup>1</sup>The Government submitted six items in support of its contentions.

Applicant discussed this professorship in Canada within the Department of Defense (DoD) community before accepting the position. He learned that U.S. and Canadian security clearances are generally considered interchangeable in joint Canadian-U.S. commands. He met with joint U.S. and Canadian commands. He was unaware of any conflict of interest with such an appointment.

He has continued his service work with National Academies in the U.S. and has worked with DoD as a workshop leader for training of security analysts who work with DoD network data. He is in the process of negotiating a cooperative research and development agreement for access to that data. He serves in an advisory capacity to the U.S. Department of Homeland Security (DHS). He recently obtained research funding from DHS for a new project (Response to FORM, dated September 2008).

Applicant's salary is paid by the Canadian government through the University. He receives research funding from the Canadian government and private industry.

When Applicant learned about the investigation of his security clearance and the government's concern about a potential conflict of interest, he decided to leave the Canadian university as soon as reasonable. He could not leave immediately due to a research contract. He also has an age discrimination suit against the university. He searched for and obtained an offer for a professorship in a university in the U.S. Applicant has accepted a position beginning in January 2009. He is taking a leave of absence in January 2009 from the Canadian university and resignation will be effective in June 2009.

Applicant has his home in Canada on the market for sale. He will sell the house as soon as possible. He and his wife have recently purchased a house near property that they own in the U.S. They plan to move their possessions to this house during the fall of 2008 or early winter 2009.

I take administrative notice of the following facts. Canada is an ally of the U.S. Canada and the U.S. share a lengthy border, that is remarkable for its peaceful history for well over 150 years. Canada and the U.S. have a long history of collaboration on matters related to the security of both nations. They share computer science research at both classified and unclassified levels.

### **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 B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG & 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a

way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns. Under AG & 7(b), a connection to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information," may create a security concern. Similarly under AG & 7(e) "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation," may raise security concerns. Applicant is a professor and researcher in an institution funded by the government of Canada. He has lived in Canada since 2005 and owns a home there. He receives a salary and funding for his research from the Canadian government in part. The evidence is sufficient to establish these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." Applicant's work has been partially funded by the U.S. Department of Homeland Security. He is working on a project that is in collaboration with the U.S. Applicant has been an academic and research professor in the U.S. for many years. He has held a security clearance during his long career. He is returning to the U.S. to resume his work. The evidence supports application of this mitigating condition.

Under AG & 8(b), it may be mitigating where "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." As noted above, Applicant has longstanding, academic ties with the U.S. Any loyalty to Canada is outweighed by his loyalty to the U.S. I am confident that any conflict that arise will be resolved in favor of the U.S. I find this potentially mitigating condition applies in this case.

## **Guideline L, Outside Activities**

The security concern relating to the guideline for Outside Activities is set out in AG ¶ 36:

Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 37(a)

any employment or service, whether compensated or volunteer, with:

- (1) the government of a foreign country;
- (2) any foreign national, organization, or other entity;
- (3) a representative of any foreign interest;
- (4) any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology.

Under AG ¶ 37(b) "failure to report or fully disclose an outside activity that is required."

The guideline also includes examples of conditions that could mitigate security concerns arising from outside activities. Under AG ¶ 38(a), the disqualifying conditions may be mitigated where "evaluation of the outside employment by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States." This mitigating condition does not apply because no such evaluation has been included in the record evidence. If such an evaluation occurs, Applicant could be eligible for a clearance.

Under AG ¶ 38(b), the disqualifying conditions may be mitigated where "the individual terminated the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities."

Given the mitigation of the foreign influence guideline, this disqualifying condition appears partially redundant. However, once Applicant returns to the U.S. and ends his Canadian employment, he will be eligible to hold a clearance.

## **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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born and raised in the U.S. He received his undergraduate and graduate degrees from a university in the U.S. Applicant worked many years in the academic field. He was a research consultant and held a security clearance over a long period of time. Applicant accepted a position in 2005 in Canada and had his salary funded in part by the Canadian Government. He is now returning to the U.S. and will continue research projects for the U.S. government. He has property in the U.S. and will live in the U.S. with his wife.

Provided Applicant moves to the U.S. and ends his receipt of funds from the Canadian government as planned, I see no reason why his clearance would not be approved in 2009. I am persuaded by the totality of the evidence that it is not clearly consistent with the interests of national security to grant Applicant a security clearance. In reaching my decision, I considered the evidence as a whole, including the appropriate factors and guidelines.

Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from foreign influence, but not outside activities.

### **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 B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline L:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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NOREEN A. LYNCH  
Administrative Judge