



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-01305
)	
Applicant for Security Clearance)	

Appearances

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

December 12, 2008

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions (QSP), on February 21, 2006. On June 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines L, C and B 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 June 30, 2008. He answered the SOR in writing that same day, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on August 25, 2008. DOHA issued a notice of hearing that same day, and I convened the hearing as scheduled on September 11, 2008. The Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified on his own behalf

and submitted Exhibits (AppXs) A through N, without objection. DOHA received the transcript of the hearing (TR) on September 19, 2008. As the SOR was amended by the Government at the hearing, I granted Applicant's request to keep the record open for one month, until October 10, 2008, to submit additional matters. On September 21, 2008, he submitted Exhibit O, to which the Government made no objection, on October 7, 2008. The record closed on October 10, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding Subparagraph 1.b, alleging the following: "Since some time after March of 2006, you have been a contractor for the Australian government" (TR at page 32 lines 6~10). Applicant made no objection, but asked that the record be kept open for a month so that he might further address this new allegation. This request was granted (TR at page 34 lines 11~20).

Findings of Fact

In his Answer to the SOR, Applicant denied all of the factual allegations of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Outside Activities, Foreign Preference & Foreign Influence

The Applicant is a college professor, who does a lot of consulting work at the behest of the U.S. Government (TR at page 37 lines 7~17, GX 1 at page 2, and AppX A).

1.a., 2.a. and 3.a. Since about January of 2000, the Applicant has been a representative of the United Kingdom (UK) on an International Standards Organization (TR at page 48 line 23 to page 49 line 5, at page 51 line 15 to page 52 line 15, at page 60 line 6, and at page 76 lines 7~21). His participation is authorized by the U.S. Government (*Id*, and Tr at page 90 lines 7~14, and AppXs G, H and O). The Applicant's Temporary Duty Pay (TDY), vis-a-vis his representation, is also paid for by the U.S. Government (*Id*).

1.b. Since some time after March of 2006, the Applicant has been a contractor for the Australian government (TR at page 31 line 7 to page 32 line 8). His participation is also authorized by the U.S. Government (*Id*, and Tr at page 90 lines 15~18, and AppXs G, H and O). The Applicant's Temporary Duty Pay (TDY), vis-a-vis his contractor work, is paid for by the U.S. Government (*Id*).

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 L - Outside Activities

The security concern relating to the guideline for Outside Activities is set out in Paragraph 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” (Emphasis supplied).

The guideline notes several conditions that could raise security concerns. Subparagraph 37(a) arguably applies; i.e., “*any employment or service, whether compensated or volunteer, with: (1) the government of a foreign country.*” Here, the Applicant, at the behest of U.S. Government, works for the UK and Australia. This is clearly countered, however, by Mitigating Condition 38(a), an “*evaluation of the outside employment . . . indicates that it does not pose a conflict with an individual’s security responsibilities or with the national security interests of the United States.*” His participation as a representative of the (UK) on an International Standards Organization, is clearly sanctioned by the U.S. Government. His being a contractor with Australia is also sanctioned by the U.S. Government.

Guideline C - Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in Paragraph 9: “When an individual acts in such a way as to indicate a preference for a foreign country **over** the United States . . . ” (Emphasis supplied). I can find no applicable Disqualifying Condition here. What the Applicant does vis-a-vis the UK and Australia is at the behest of and sanctioned by the U.S. Government.

Guideline C - Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in Paragraph 6: “Foreign contacts and interests may be a security concern **if the individual has divided loyalties.** . . . ” (Emphasis supplied). Again, I can find no applicable Disqualifying Condition here. What the Applicant does vis-a-vis the UK and Australia is at the behest of and sanctioned by the U.S. Government.

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 Outside Activities, and perceived Foreign Preference and Foreign Influence.

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 L:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline B:	FOR APPLICANT
Subparagraph 3.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