



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ADP Case No. 08-10922
SSN: -----)
)
Applicant for Public Trust Position)

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro se*

April 19, 2010

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Questionnaire for Public Trust Positions (SF 85P) (Item 5), on June 26, 2008. On March 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) (Item1) detailing the trustworthiness concerns under Guidelines C, B, and H 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR (RSOR) in writing on April 27, 2009 (Item 2), in which he requested that his case be decided on the written record in lieu of a hearing.

On July 15, 2009, Department Counsel issued the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant on

July 16, 2009, and in the FORM, Department Counsel offered nine documentary exhibits (Items 1-9). Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on September 27, 2009. Applicant submitted no additional response. The case was assigned to this Administrative Judge on December 4, 2009.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive information is denied.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts relating to the country of Lebanon. The request and the attached documents were admitted into evidence as Item 9. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his RSOR (Item 2) Applicant admitted all of the SOR allegations under Guidelines C, B, and H, with explanations. His admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including the FORM, Applicant's RSOR, and the other admitted documents, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 28 years old. He seeks to occupy an Information Systems Position, designated ADP-I/II/III to support a defense contractor.

Paragraph 1 (Guideline C - Foreign Preference)

The SOR lists four allegations, regarding Foreign Preference, under Adjudicative Guideline C. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. It is alleged in the SOR that Applicant exercised dual citizenship with Lebanon and the United States. In his RSOR, Applicant stated that he was born in Lebanon, to a Lebanese father and an American mother. SOR allegations 1.b. through d., which are examples of the exercise of Applicant's dual citizenship, will be reviewed below.

1.b. It is alleged in the SOR that Applicant possesses a current Lebanon passport, which will not expire until June 18, 2009. In his RSOR, Applicant admitted that this is correct.

1.c. Applicant conceded in his RSOR that he has used his Lebanese passport to travel to Lebanon, Jordan, and Saudi Arabia.

1.d. Applicant also conceded in his RSOR that he intends to renew his Lebanese passport, "because doing so facilitates entry into the country by bypassing the need for a visa." He also wrote in Item 2, "There is also a possibility that I may move back to Lebanon in the future to be closer to my family and my Lebanese citizenship would facilitate that immensely."

Paragraph 2 (Guideline B - Foreign Influence)

The SOR lists five allegations, regarding Foreign Influence, under Adjudicative Guideline B, which will also be reviewed in the same order as they were listed on the SOR. Again, Applicant has admitted all of the allegations listed under paragraph 2:

2.a. Applicant's father is a citizen and resident of Lebanon.

2.b. Applicant's step-mother is a citizen and resident of Lebanon.

2.c. Applicant attended college in Lebanon from 1999 to 2003.

2.d. Applicant was employed in Lebanon for three different periods of time; May 2001 to February 2002, June 2003 to December 2003, and March 2004 to August 2005.

2.e. Applicant has traveled to Lebanon, at least once a year, since he has lived in the United States, covering the years 2006 until at least 2009. As reviewed above, he has used his Lebanese passport for each trip that he has made to Lebanon.

Paragraph 3 (Guideline H - Drug Involvement)

The SOR lists five allegations, regarding illegal drug involvement under Adjudicative Guideline H:

1.a. The SOR alleges and Applicant has admitted that he used marijuana from approximately June 2006 to at least April 2008.

1.b. The SOR alleges and Applicant has admitted that he used hashish from approximately October 2002 to at least September 2005.

1.c. The SOR alleges and Applicant has admitted that he used cocaine in approximately January 2004 and December 2005.

1.d. The SOR alleges and Applicant has admitted that he used MDMA, also known as Ecstasy, in about September 2005.

1.e. The SOR alleges that Applicant would consider using drugs in the future. Applicant admitted this allegation in his RSOR, but he also stated "Although I had previously admitted to considering drug use in the future (Guideline H), subparagraph (e), I have since had a change of heart. Given the resulting questionable

nature of my character, it has become clear to me how destructive even recreational use can be and the degree to which it could potentially compromise work opportunities in the future.”

Current Status of Lebanon

I take administrative notice of the following facts regarding Lebanon. Lebanon became an independent country in 1943. Its history since independence has had periods of both political turmoil and prosperity.

Although Lebanon is a parliamentary republic, it has human rights problems. Americans have been the targets of numerous terrorist attacks in Lebanon, and the perpetrators of many of those attacks are still present in Lebanon and retain the ability to act. Furthermore, Palestinian groups hostile to the Lebanese Government and the United States operate largely autonomously inside refugee camps in Lebanon. Finally, Hizballah, a U.S. designated “Foreign Terrorist Organization,” has 14 elected officials in the Lebanese National Assembly and is represented in the cabinet and the Labor Minister.

Policies

When evaluating an Applicant’s suitability for a Public Trust Position, the Administrative Judge must consider the 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 sensitive 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 commonsense 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 sensitive 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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive 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 C, Foreign Preference

Under AG ¶ 9, the security concern involving Foreign Preference arises, “[W]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

Applicant’s application, receipt, and continuing use of a Lebanese passport, raises Foreign Preference concerns under Disqualifying Condition (DC) 10 (a), the exercise of the privilege of foreign citizenship.

Since Applicant continues to maintain his Lebanese passport, which he has used often in the past and plans to use in the future, and he is not willing to renounce his Lebanese citizenship, I do not find that any Mitigating Condition (MC) under this guideline applies to this case. After considering all of the evidence of record on Guideline C, I conclude that the disqualifying evidence substantially outweighs the mitigating evidence.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding Foreign Influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Those that could be applicable in this case include the following: (a) “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” Applicant’s relatives, who are citizens and residents of Lebanon, and who continue to have, by his own admission, very close bonds to Applicant, make AG ¶ (a) a concern to the Government. I find that AG ¶ (b) “connections to a foreign person, group government, or country that create a potential conflict of interest between the individual’s obligation . . . and the individual’s desire to help a foreign person, group, or country by providing that information” is also applicable in this case.

I do not find that any MC is applicable to this Applicant and this case. I therefore, conclude Guideline B against Applicant.

Guideline H, Drug Involvement

With respect to Guideline H, the Government has established its case. Applicant’s improper and illegal drug abuse, including the possession and use of several illegal drugs for many years, especially in light of his desire to have access to the nation’s secrets is a significant concern. Applicant’s overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement AG ¶ 25 (a) “any drug abuse”, and (c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.” Based on the totality of admitted evidence, including Applicant’s conflicting statements regarding his intention to use illegal substances again, I also find that AG ¶ 25. (h) “failure to clearly and convincingly commit to discontinue drug use” is applicable.

Based on the Applicant’s many years and recency of his drug usage, considered with Applicant’s conflicting statements about his future intention to use illegal substances, I can not conclude at this time that Applicant’s conduct comes within any MC.

Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a sensitive position 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) the 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 sensitive position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have considered the potentially disqualifying and mitigating conditions under Guidelines C, B, and H, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, as to why all of the Disqualifying Conditions apply and none of the Mitigating Conditions are applicable, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a sensitive position, under the whole person concept. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns.

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 C:	AGAINST APPLICANT
Subparagraphs 1.a through d.:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a through 2.e:	Against Applicant
Paragraph 3, Guideline H:	AGAINST APPLICANT
Subparagraphs 3.a through 3.e:	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 public trust position. Eligibility for access to sensitive information is denied.

Martin H. Mogul
Administrative Judge