



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



In the matter of:)	
)	
)	ISCR Case No. 08-11787
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: none

February 26, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant failed, without reasonable cause, to appear at his security clearance hearing set for January 26, 2010. The case file is being forwarded to the Director, DOHA requesting a default decision and the automatic denial or revocation of Applicant's security clearance.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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.

Statement of Reasons (SOR) on June 30, 2009, detailing security concerns under foreign influence.

On July 13, 2009, Applicant answered the SOR, and requested a hearing. On December 22, 2009, I was assigned the case. On January 4, 2010, DOHA issued a notice of hearing scheduling the hearing which was held on January 26, 2010. The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant failed to appear. On February 3, 2010, the transcript (Tr.) was received.

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in ¶ 1.a of the SOR. Applicant's mother, as of March 2009, is a U.S. citizen. He admitted he has a brother and sister who are citizens of Lebanon residing in Saudi Arabia, he has a sister who is a citizen and resident of Lebanon, and he has another sister who is a citizen of Lebanon residing in the U.S. as a resident alien. Applicant admits he has approximately \$300,000 in a bank account in Lebanon, which he inherited from his father.

Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is 57 years old and has worked as a linguist supporting the U.S. Army in Iraq since September 2006. He had an interim secret clearance, which expired March 2009, and he is seeking to obtain a security clearance. Applicant has not been in Lebanon since July 2003, and he currently lives and works in Iraq. Applicant has a bachelor's degree in structural engineering from a U.S. university. (Tr.12) Applicant's assets exceed one million dollars. (Tr. 12)

Procedural Matters

On August 6, 2009, Department Counsel (DC) presented Applicant with the government's proposed exhibits and documents. Applicant responded to the material on August 21, 2009, he provided information and stated he would not be available to leave Iraq until mid-January 2010. On August 27, 2009, Applicant was offered the possibility of having the hearing conducted by video teleconference (VTC) allowing the Applicant to remain in Iraq. (Tr. 10) In September 2009, DC requested Applicant provide the January 2010 dates he would be in Texas. This request was renewed on November 10, 2010. (Tr. 11)

On December 23, 2009, Applicant was sent an e-mail indicating that Applicant's security clearance hearing would be held in Houston, Texas on January 26, 2010. The e-mail indicated his failure to respond and/or appear at the hearing without approval would result in a default decision and the automatic denial or revocation of his security clearance. (Tr. 5)

Applicant responded stating he would not be returning to the U.S. in January 2010 and did not know when he would return. He stated his work with the U.S. Army in Iraq did not require him to have a clearance.

On December 24, 2009, Applicant was informed that the case would proceed unless Applicant's company withdrew their request for Applicant to have a security clearance. He was informed the hearing date would remain unless: one, his company formally withdrew its request that Applicant have a security clearance, or, two, an alternate time, date, and location were arranged for an in-person hearing or VTC hearing. (Tr. 6) Applicant's company was provided a sealed envelope to be hand delivered and unopened to Applicant. The accompanying material stated that if the employee was no longer employed by the company or if the employee no longer required a security clearance for access to classified information, the envelope was to be returned unopened. (Tr. 7)

The company security officer acknowledged to DC that the hearing had been scheduled for January 26, 2010. (Tr. 7) DC indicated if Applicant no longer needed a clearance, the company should withdraw their request or make the Applicant available for either an in-person or a VTC hearing.

In a letter dated January 9, 2010, Applicant stated:

I cannot be present in the month of January in Houston for the hearing. I am canceling my interview. I do not need my clearance to be reinstated anymore. I am still in Iraq, and I have no intention to continue this line of work in the states. Thank you for your services. (Appellate Exhibit I, Tr. 8)

Revised Adjudicative Guideline (AG) ¶ 15 articulates the security concerns relating to personal conduct. Additionally, it states:

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperating with medical or psychological evaluation;

Analysis

Applicant was asked when he would be in the U.S. so that a security clearance hearing could be scheduled. He was given the option of remaining in Iraq and having the hearing conducted by VTC. He said he could not leave Iraq until mid-January 2010; therefore, the hearing was scheduled for January 26, 2010. Applicant responded and stated he no longer needed a clearance. He was informed he needed to be at the

hearing unless his company withdrew its request for him to have a clearance or an alternate hearing date was established. Applicant was informed that failing to appear without approval would result in a default decision and the automatic denial or revocation of his security clearance. Applicant failed to appear.

Conclusion

Applicant, without reasonable cause, failed to appear at his scheduled security clearance hearing. The file is forwarded to the Director, DOHA for the administrative termination of further processing for clearance eligibility.

CLAUDE R. HEINY II
Administrative Judge