



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



In the matter of:)
)
-----) ISCR Case No. 09-04594
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Michael Lyles, Esq., Department Counsel
For Applicant: *Pro se*

April 28, 2010

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for a security clearance to work in the defense industry. The record evidence shows Applicant is a dual citizen of the United States and Ireland. Born in Ireland, she immigrated to the United States with her family when she was a young child. She completed her education in the United States, and then served 26 years of honorable military service in the U.S. Air Force, retiring in 2005. She obtained U.S. citizenship in 2006. Several months later she renewed an Irish passport previously issued to her in 1996. She possessed the passport until April 2010, when it was destroyed in the presence of her company’s facility security officer. The record contains sufficient evidence to explain, extenuate, or mitigate any foreign preference security concerns. Accordingly, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on December 14, 2009, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guideline known as Guideline C for foreign preference. The SOR also recommended that the case be submitted to an administrative judge to decide whether to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion and requested a hearing. The case was assigned to me February 22, 2010. The hearing took place April 8, 2010. The hearing transcript (Tr.) was received April 13, 2010.

The record was kept open to allow Applicant to submit additional documentary evidence. On April 13, 2010, she made a timely submission, and the post-hearing matter is admitted, without objections, as Exhibit F.

Findings of Fact

Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 51-year-old employee of a federal contractor. She is widowed and has three children, two stepchildren (both adults) from her husband's previous marriage, and one child (an adult daughter) from her marriage. She has lived at the same address since 1998. She has worked as a registrar for a defense contractor since March 2009. Her duties as a registrar involve registering students for various training classes and processing related records for a special operations unit.

Applicant is a dual citizen of the United States and Ireland; she obtained U.S. citizenship in 2006. Born in Ireland, she immigrated to the United States with her family when she was a young child. She completed her education in the United States, and she then enlisted in the U.S. Air Force.

She served 26 years in the Air Force before retiring as a senior noncommissioned officer in 2005.² Of those 26 years, she served the last 23 years in

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), effective within the Defense Department on September 1, 2006, apply to this case. They replace the guidelines published in Enclosure 2 to the Directive.

² Exhibit D.

the field of education and training. She did not hold a security clearance because her military duties did not require it.³ Her certificate of release or discharge from active duty (DD Form 214) shows a successful military career, and it reflects decorations, medals, and military education consistent with her grade or rank and years of service. Her DD Form 214 is also consistent with the highly laudatory letters of recommendation submitted in support of Applicant's security clearance application.⁴

After retiring from the Air Force, Applicant was a full-time care giver for her husband. Like Applicant, her husband also served more than two decades of active duty in the Air Force. Her husband passed away in late 2008, and Applicant returned to the work force with her current employer in early 2009.

Applicant first obtained an Irish passport in 1996, when she traveled with family members to Ireland for tourism and to visit family. As an Irish citizen and a U.S. resident alien, Applicant applied for and obtained an Irish passport for the trip. Subsequently, she renewed the Irish passport in 2006. About four years later in 2010, she traveled with family members to a country in the Arab world to visit a sister.⁵ Her intent was to use her U.S. passport for the trip, but she carried both passports in case she needed the Irish passport while traveling overseas for safety purposes.⁶ She was required to use her Irish passport at an airport during the trip.⁷ Other than the trips to Ireland in 1996 and Egypt in 2010, Applicant has not used an Irish passport. In light of this proceeding, she had her current Irish passport destroyed in the presence of her company's facility security officer in April 2010.⁸

Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, the only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information.

It is well-established law that no one has a right to a security clearance.⁹ As noted by the Supreme Court in the case of *Department of Navy v. Egan*, "the clearly

³ Tr. 62.

⁴ Exhibits A, B, and C.

⁵ Tr. 47–49, 57–59.

⁶ Tr. 59.

⁷ Tr. 47.

⁸ Exhibit F.

⁹ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹¹ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹²

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹³ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁴ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁵ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁶ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁷ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁸

The Adjudicative Guidelines set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

A person granted access to classified information enters into a special relationship with the Government. The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified

¹⁰ 484 U.S. at 531.

¹¹ Directive, ¶ 3.2.

¹² Directive, ¶ 3.2.

¹³ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁴ Directive, Enclosure 3, ¶ E3.1.14.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ *Egan*, 484 U.S. at 531.

¹⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹⁹ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Analysis

Under Guideline C for foreign preference,²⁰ the suitability of an applicant may be questioned or put into doubt when that applicant acts in manner to evidence a preference for a foreign country over the United States. In particular, concern under Guideline C is that:

When 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.²¹

The guideline contains several disqualifying conditions, of which the most pertinent here is ¶ 10(a)(1). It applies because Applicant actively exercised a right or privilege of Irish citizenship after becoming a U.S. citizen by renewing, possessing, and using an Irish passport during 2006–2010. These actions may indicate a foreign preference.

The guideline also contains six conditions that may mitigate security concerns.²² The most pertinent here is ¶ 11(e). It applies because Applicant had the Irish passport destroyed in the presence of her company's facility security officer.

The facts and circumstances surrounding Applicant's renewal, possession, and use of an Irish passport no longer justify current doubts about her judgment, reliability, and trustworthiness. Her affirmative actions in ridding herself of the Irish passport—coupled with her longtime residence in the United States and her 26 years of honorable service in the U.S. Air Force—are sufficient to mitigate any foreign preference security concerns. These circumstances show her true preference is for the United States, and she is not prone to act in a manner that might be harmful to U.S. interests.

Following *Egan* and the clearly-consistent standard, I have no doubts or concerns about Applicant's fitness or suitability for a security clearance. In reaching this

¹⁹ Executive Order 10865, § 7.

²⁰ AG ¶¶ 9, 10, and 11 (setting forth the security concern and the disqualifying and mitigating conditions).

²¹ AG ¶ 9.

²² AG ¶ 11(a) – (f) (setting forth six mitigating conditions).

conclusion, I gave due consideration to the whole-person concept.²³ Applicant met her ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline C:	For Applicant
Subparagraphs 1.a–1.c:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

²³ AG ¶ 2(a)(1) – (9).