



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-07217  
SSN: ----- )  
 )  
Applicant for Security Clearance )

Appearances

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

December 13, 2010

---

**Decision**

---

MOGUL, Martin H., Administrative Judge:

On June 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C for Applicant (Item 1). 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 responded to the SOR (RSOR) in writing on June 24, 2010, (Item 3), and he included additional documents. He also requested that his case be decided on the written record in lieu of a hearing.

On August 5, 2010, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to

Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on September 19, 2010. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on October 28, 2010.

In the FORM, Department Counsel offered five documentary exhibits (Items 1-5). No additional documents were offered by Applicant. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his RSOR (Item 3) Applicant admitted the SOR allegation under Guideline C. The admitted allegation is incorporated herein as a finding 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 additional findings of fact:

Applicant is 20 years old. He works for a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

#### **Paragraph 1 (Guideline C - Foreign Preference)**

1.a. It is alleged in the SOR that Applicant exercises dual citizenship with Canada and the United States by possessing a Canadian passport issued on May 9, 2008, with an expiration date of May 9, 2013, even though he is a United States citizen by birth.

In Applicant's Security Clearance Application (SCA), he stated that he was a dual citizen of the United States and Canada. He indicated that his father is a dual citizen of the United States and Canada, and his non-U.S. citizenship is due to the citizenship of at least one of his parents. He also averred that he has never renounced or attempted to renounce his foreign citizenship. (Item 4.)

In his Response to Interrogatories, Applicant stated that he was an intern at his place of employment, and he was requesting that his Facility Security Officer provide documentation showing that he did not need to have a security clearance. He stated, "The reason is that if I wish to proceed with my security clearance, I will be required to destroy my Canadian passport, which I do not wish to do at this time." He also explained that he currently had a Canadian passport because "my parents thought I should get it." (Item 5.) Applicant gave no information as to why his parents wanted him to have a Canadian passport, or why he continued to retain his Canadian citizenship and did not want to revoke his Canadian passport.

## Policies

When evaluating an applicant's suitability for a security clearance, 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 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 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 passport from a country other than the United States, raises Foreign Preference concerns under Disqualifying Condition AG ¶ 10 (a) “the exercise of the privilege of foreign citizenship... possession of a current foreign passport.”

Applicant continues to maintain his Canadian passport, for which he applied as a United States citizen, and he has indicated he is not willing to surrender or destroy his Canadian passport. Also, Applicant has given no indication that he is willing to renounce his Canadian citizenship. Therefore, 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 disqualifying evidence is present, and there is no mitigating evidence.

### **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) 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 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 under the whole-person concept. This decision must be based completely on the written record, as I did not have the opportunity to observe Applicant testify in this Administrative Determination. Since no evidence was submitted about Applicant’s background, including no letters of reference,

evaluations, scholastic records or any other information, there was no evidence to mitigate Applicant's case under the whole-person concept. Therefore, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security 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 B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

### **Conclusion**

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

Martin H. Mogul  
Administrative Judge