



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-05826  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Department Counsel  
For Applicant: *Pro se*

November 4, 2013

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 17, 2011. (Government Exhibit 4). On June 4, 2013, the Department of Defense (DoD), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as amended), issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on June 14, 2013, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on August 23, 2013. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on August 30, 2013, and he failed to submit a response to DOHA. The case was assigned to the Administrative Judge for resolution on October 21, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## FINDINGS OF FACT

The Applicant is 36 years old, and married with two children. He holds an Associate's Degree from a Technical Community College. He is employed with a defense contractor as a Quality Control Manager and is seeking to obtain a security clearance in connection with this employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules and regulations that can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

The Applicant admitted the single allegation set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) In 2005, Applicant married a Mexican citizen who was, and continues to be, in the United States illegally. They reside together and have two children who were born in the United States. Applicant has worked for his current employer since 2005.

Applicant's wife came into the United States in 1994, at the age of seventeen to escape the crime and poverty in Mexico. She passed through the border checkpoints in Tijuana, Mexico without inspection. Once in the United States she lived with her brother who is a United States citizen. She then moved to another state and started working at a company where she met the Applicant in 1995. She and the Applicant started dating in 1997, and eventually married in 2005. Prior to their wedding, Applicant became aware that his wife was undocumented. Following the wedding, he consulted an attorney regarding her status and learned that in order for his wife to obtain a green card or visa, she would have to process outside of the country, which would require that she return to Mexico until her green card was granted. Although her paperwork could be done in the United States, she would have to return to Mexico for her interview. Once her interview was completed, she would have to wait there until her green card was issued. Applicant decided not to pursue this process since his wife was pregnant at the time. Applicant also believes that the process would be dangerous for her. Applicant now indicates that he is waiting to see if some laws pass or change that would allow his wife to adjust her status in the country without having to return to Mexico. Applicant's wife remains in the United States in an undocumented status. (See Applicant's Answer to SOR and Government Exhibit 5.)

## POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

#### Conditions that could raise a security concern:

16.(c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, and other characteristics indicating that the person may not properly safeguard protected information; and

16.(d) association with persons involved in criminal activity.

#### Conditions that could mitigate a security concern:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

a. The nature, extent, and seriousness of the conduct and surrounding circumstances;

b. The circumstances surrounding the conduct, to include knowledgeable participation;

c. The frequency and recency of the conduct;

d. The individual's age and maturity at the time of the conduct;

e. The extent to which participation is voluntary;

- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

## **CONCLUSIONS**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in instances of poor personal conduct, which demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case, the Government has met its initial burden of proving that the Applicant has displayed questionable judgment and poor personal conduct (Guideline E). The evidence indicates unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Under Guideline E disqualifying conditions 16.(c) *credible adverse evidence in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, and other characteristics indicating that the person may not properly safeguard protected information*, and 16.(d) *association with persons involved in criminal activity* apply.

Applicant's spouse has been in the United States illegally since 1994, and she remains in that status. Applicant resides with her in the United States knowing that she is undocumented. He explained that she could have gone through the process of obtaining a green card or a visa but the inconvenience was something they chose not to deal with. An Applicant who is involved in a relationship with an individual who is in the United States illegally displays questionable judgment because of his continuing association with a person involved in criminal activity. So long as the status of the Applicant's wife remains unchanged, there is no mitigating conditions that are applicable.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth above, when viewed under all of the guidelines as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented. It does not mitigate the negative effects of his personal conduct and the effects it can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has not overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:                      Against the Applicant.

Subpara. 1.a.                    Against the Applicant.

## **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge