



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 11-08313
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

04/11/2016

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On April 4, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence) and Guideline E (Personal Conduct).<sup>1</sup> In a response signed April 28, 2014, Applicant admitted all allegations and requested a hearing based on the written record. On August 20, 2015, the Government prepared a file of relevant material (FORM) which included nine attachments (“Items”). Applicant did not respond to the FORM. I was assigned the case on December 1, 2015. Based on a thorough review of the case file, I find that Applicant failed to carry his burden in mitigating security concerns arising under both Guideline B and Guideline E.

**Findings of Fact**

Applicant is a 71-year-old man who is presently not working while his security clearance is updated. He has earned a high school diploma. He was divorced in 1998

<sup>1</sup> 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 DOD on September 1, 2006.

and is now estranged from a subsequent spouse. Facts about this estranged female are unclear, although it appears she is from Russia, where she currently resides with or near family. He provided incomplete information on his security clearance application (SCA) about his family and children. Other discrepancies appear throughout his investigatory record. Applicant presently lives in another country with a female foreign national in order to reduce the costs he would otherwise expend living in the United States while awaiting a return to work.

At issue in the SOR are the following facts: Applicant has a wife who is a citizen and resident of Russia.<sup>2</sup> They are estranged, but Applicant has no plans to divorce his foreign wife because he no longer believes in divorce. He has a daughter who is a citizen of the United States and is currently a resident of Russia, where she is a university student. He also has parents-in-law who are citizens and residents of Russia. Applicant met them in about July 1998 on a visit to their home. He again saw them on a subsequent trip to Russia with his wife. He has had no other contact with them and does not know how often his estranged wife currently has with her parents now that all three are in Russia. His father-in-law and mother-in-law are a teacher and a gynecologist, respectively. Applicant assumed they were Communists because the Communists were in power when he met them. As of 2015, Russia is one of the two leading state intelligence threats to United States interests, based on their capabilities, intent, and broad operational scopes.<sup>3</sup> Applicant admits the Guideline B SOR allegations, but did not address them in any manner in his SOR Response.

In completing SCAs in both August 3, 2009, and March 23, 2013, Applicant failed to list multiple names he has used, places of former residence, periods of unemployment, relatives, and foreign contacts. He told an investigator in 2010 that he had no problems while working with a particular employer, but later conceded he was involved in a harassment suit while working there. Despite a 2010 claim to the contrary, he failed in 2007 to file an appropriate contact with foreign nationals report regarding the foreign woman with whom he currently cohabitates. Applicant admits these allegations.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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

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<sup>2</sup> In some records within the FORM, Applicant indicated that his estranged wife became a naturalized citizen in 2007 or 2008 and now resides in the United States, but the discrepancies are never resolved. (See FORM, Item 6)

<sup>3</sup> FORM, Item 9, at 3.

factors listed in the adjudicative process. The administrative judge's overarching 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 safeguard 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).

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern relating to the Guideline B is set out in AG ¶ 6:

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.

Applicant remains married to the female of Russian origin at issue. Therefore, it can be assumed he maintains some level of affection for this woman, the mother of his child. It can also be assumed he maintains a bond or ties of affection for their child, who is now studying at a Russian college. As for his in-laws, while their contact with Applicant is negligible, it can be assumed his estranged partner has ties of affection with her own parents. Those ties are routinely attributed to the spouse (Applicant) in these cases. Given these facts, disqualifying conditions AG ¶¶ 7(a) and (b) apply:

AG ¶ 7(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; and

AG ¶ 7(b) connection to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

In finding disqualifying conditions applicable, I specifically note that AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise a disqualifying condition is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Russia is one of the two leading state intelligence threats to United States interests. In addition, foreign family ties can pose a security risk even without a connection to a foreign government. This is because an applicant may be subject to coercion or undue influence when a third party pressures or threatens an applicant's family members. Under these facts, while unlikely, a third party coercion concern potentially exists in Russia. Therefore, there is sufficient evidence to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, and find the following are relevant:

AG ¶ 8(a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and

AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests.

The mere possession of close family ties to persons in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

Here, Applicant provided scant information about his estranged wife, daughter, and in-laws. Indeed, information about his in-laws is more abundant than information about his child and her mother. While his personal ties to his in-laws may be weak, their impact on Applicant cannot be discerned without more information about his wife and child. Under these limited facts, no mitigating conditions weigh in Applicant's favor.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, where the significance of conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations is defined (*[p]ersonal conduct 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.

In completing his 2009 and 2013 SCAs, Applicant's answers in many areas were either deficient or in conflict. His answers in a 2010 interview were either intentionally or negligently incomplete with regard to past workplace problems and the reporting of a foreign cohabitant to his former employer. If these inaccuracies were intentionally incorrect, such facts could give rise to:

AG ¶ 16(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities, and

AG ¶ 16(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant admitted all three allegations raised under Guideline E and provided no explanations or commentary. While his admission to the SCA discrepancies could be discounted and his discrepancies found to be the product of negligence, this guideline could be found in his favor. In admitting allegations that he knowingly withheld information and denied having had problems while employed at a place where he was involved in a harassment suit, however, the facts tend to indicate that these answers – without more – were intentionally false or misleading. This is particularly true in the

absence of some explanation claiming forgetfulness or another basis for having provided a negligently entered SCA answer. Therefore, given his admissions, none of the mitigating conditions at AG ¶ 17(a) – (g) apply.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant failed to do more than admit the allegations raised in the SOR. He then requested a judgment based on the written record. It is that very record that is full of discrepancies and contradictions that contributed to the security concerns at issue. There are simply insufficient facts to evaluate Applicant’s foreign kin, the SCA and interview inaccuracies, or even the Applicant as an individual. This is simply the result of a deficiently supplemented record. Without more, there is insufficient information to rebut, refute, or mitigate the security concerns raised under the foreign influence and personal conduct guidelines.

### **Formal Findings**

FOREIGN INFLUENCE	AGAINST APPLICANT
Allegations 1.a-1.c:	Against Applicant
PERSONAL CONDUCT	AGAINST APPLICANT
Allegations 2.a-2.c:	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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge