



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



In the matter of:)
)
) ISCR Case No. 11-12461
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted handling protected information security concerns, and he mitigated foreign influence security concerns, but he has not mitigated personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 25, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence), E (personal conduct), and K (handling protected information). The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 2, 2012, and requested an expedited hearing before an administrative judge. The case was assigned to me on October 31, 2012. DOHA issued a notice of hearing on November 1, 2012, scheduling the hearing

for November 7, 2012. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on November 15, 2012.

Procedural and Evidentiary Rulings

Evidence

The Government offered exhibits (GE) 1 through 6. GE 1, 2, 3, 5, and 6 were admitted without objection. Applicant objected to the admission of GE 4. I preliminarily admitted GE 4 over Applicant's objection and noted that a final decision would be made when I issued the decision.

Applicant testified and submitted Applicant's Exhibits (AE) A-1 through A-11, B-1 through B-4, C-1 through C-7, and D-1 through D-12. A-1 through A-4 and AE B-1 through D-12 were admitted without objection. AE A-5 through A-11 were offered based upon the preliminary admission of GE 4. I informed Applicant that I would not consider AE A-5 through A-11 if I decided against the admission of GE 4. Applicant also offered a hearing brief that was marked Hearing Exhibit (HE) I. Applicant adopted any factual assertions contained in HE I as part of his testimony. The record was held open until November 15, 2012, for Applicant to submit additional information. Applicant timely submitted a document that was marked AE E and admitted without objection.

GE 4 contains two memorandums from a military investigative agency reporting results of the agency's investigation of Applicant. Included was a discussion of a report by a reserve military member about an incident involving Applicant. The reserve military member is not named in the memorandums. AE A-1 through A-11 contained redacted portions of the agency's investigation obtained by Applicant through the Freedom Of Information Act. The name of the reserve military member is redacted, but Applicant stated that he knew the identity of the reserve military member. Applicant was informed that he could request the reserve military member as a witness, and I would ask Department Counsel to locate her and seek her testimony. Applicant was given until November 15, 2012, to decide whether he wanted the reserve military member to testify as a witness. Applicant responded that he would be happy for the reserve military member to appear as a Government witness subject to cross-examination, but he did not desire to call the witness.

Applicant requested to submit a brief objecting to the admission of GE 4. That request was approved. The request is marked HE II, and the brief is marked HE III. Additional e-mail correspondence is marked HE IV.

After considering the appropriate precedents,¹ the preliminary ruling regarding GE 4 stands and Applicant's objection is overruled. GE 4 and AE A-5 through A-11 are admitted in evidence.

¹ See e.g., ISCR Case No. 10-08390 (App. Bd. Mar.30, 2012); ISCR Case No. 08-06997 (App. Bd. Mar. 1, 2011); ISCR Case No. 06-06496 (App. Bd. Jun. 25, 2009).

Motion to Amend SOR

Department Counsel moved to amend the SOR by withdrawing SOR ¶ 1.c. The motion was granted without objection by Applicant. SOR ¶¶ 1.d and 1.e were renumbered as SOR ¶¶ 1.c and 1.d.

Findings of Fact

Applicant is 35 years old. He seeks to retain his security clearance, which has been administratively suspended pending the outcome of this decision. He has a bachelor's degree. He has never married, and he has no children.²

Applicant is a native-born U.S. citizen, as are his parents. He has worked extensively in the Middle East for government contractors. He also attended college for a semester in a Middle Eastern country. He traveled to a number of countries for work purposes and for vacations. He developed friendships and relationships with a number of individuals from foreign countries. In December 2009, he opened a bank account in the Middle Eastern country (Country A) where he worked. He maintains less than \$300 in the account.³

Applicant met an employee of the Syrian government while he was working for a government contractor in Country A. He met the Syrian national in about 2004 when Applicant went to the Syrian Embassy in Country A to obtain a visa to travel to Syria. He became friends with the Syrian national and the Syrian national's girlfriend, who was also a Syrian national. He did not report his contacts with the Syrian nationals because he did not believe they fit the criteria of what his company briefed as reportable contacts.⁴ He was trained by his company to report:

- Any attempt to solicit information: 1) Classified 2) Proprietary.
- Efforts by an individual, regardless of nationality, to obtain illegal or unauthorized access to classified or sensitive unclassified information or to compromise a cleared employee.
- Contacts with known or suspected intelligence officers.
- Contact which suggests target of an attempted exploitation by the intelligence services of another country.
- Suspected or actual incidents of espionage, sabotage, or subversive activities.⁵

² Tr. at 119-120; GE 1, 2.

³ Tr. at 57-62, 90-91, 113-114; GE 1-4, 6; AE A-1, A-2, C-1, C-2, C-4-C-7; HE I.

⁴ Tr. at 37-41, 100; GE 3, 4, 6; AE 10, B-1-B-4; HE I.

⁵ AE B-1.

Applicant was friendly with a reserve member of the U.S. military. She was on temporary duty to Country A in June 2009. She held a clearance in the military and also in her civilian job. She went to dinner one evening with Applicant and several other individuals. Applicant told her that the two Syrian nationals would meet them at a café. She asked him what they did, and he told her that the male worked for the Syrian Ministry of Foreign Affairs and the female had an office job. Applicant asked her if she was going to report her meeting with the two Syrians, and she responded that she probably would. Applicant told her that she did not have to report the contact as it was only necessary to report “intimate” contacts. The Syrian nationals arrived a short time later. There was only small talk during the evening, and the reserve member was not asked any sensitive or personal questions. As she walked to the car, Applicant again asked her if she was going to report the contact with the Syrian nationals. She again told him that she probably would. He asked her if she could at least not mention his name when she made her report.⁶

The reserve military member reported her contact with the Syrian nationals and that Applicant had introduced them. An investigation was conducted. She identified the two Syrian nationals from pictures on Applicant’s Facebook page. U.S. Embassy personnel in Country A were able to identify the female as a low-level attaché with the Syrian Ministry of Foreign Affairs and was not considered to be a known or suspected intelligence officer. Embassy personnel were not able to identify the male Syrian.⁷

Applicant admitted most of the above findings, but he denied that he told the reserve military member not to mention his name. He stated that she had a higher level clearance than he did and that her reporting requirements could have been stricter than his. He also stated that even if the comment was made, it is not relevant to his ability to hold and maintain a security clearance and to do his job.⁸ I did not find Applicant’s testimony credible. I find the conversation took place essentially as described by the reserve military member.

As part of the investigation, Applicant’s classified and unclassified computers were subjected to forensic examinations from November 2009 to March 2010. Classified information was not discovered on the unclassified computer. The investigating agency reported in August 2012 that the examination revealed the “discovery of classified documents on [Applicant’s classified] computer that were beyond the scope of his employment.” Applicant denied having classified documents on his computer that were beyond the scope of his employment. He submitted redacted portions of the original investigation that was conducted from November 2009 to March 2010. The original report noted that Applicant’s unclassified computer “was a shared workstation accessed by numerous users, including [Applicant]. A significant amount of

⁶ GE 4; AE A-10, A-11.

⁷ GE 4; AE A-10, A-11.

⁸ Tr. at 33-51, 100-110; HE I.

the information contained on the computer is unattributable to a specific user.”⁹ The original report noted about the forensic examinations of Applicant’s classified and unclassified computers:

No documents, messages, or files containing content blatantly outside the scope of [Applicant’s] assigned duties and responsibilities aboard [U.S. military installation in Country A] were identified. Several files of potential interest were recovered.¹⁰

Applicant submitted a Questionnaire for National Security Positions (SF 86) in September 2008. Section 14/15 asked for information about relatives and associates. The instructions stated: “Associate – include only foreign national associates with whom you or your spouse are bound by affection, obligation, or close and continuing contact.” Applicant did not list any of his foreign friends. He did not believe he was required to list any of his foreign friends, as he did not think their relationships fit the criteria of the question.¹¹

Applicant has not maintained contact with most of his foreign friends. The only foreign person he maintains significant contact with is a woman he dated off and on. She is an Egyptian citizen who works for a multi-national company in England. He sees her periodically in the Middle East, Europe, or the United States.¹²

Applicant submitted a number of character letters. The authors praised his conscientious handling of classified information, excellent job performance, loyalty, trustworthiness, reliability, professionalism, and honesty. He is recommended for a security clearance.¹³

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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According

⁹ Tr. at 63-85; GE 4; AE A-5-A-10.

¹⁰ AE A-7, A-8.

¹¹ Tr. at 51-54, 91-100, 111-119; GE 1, 3; HE I.

¹² Tr. at 58-62, 93-97, 117-118; GE 3; AE B-4; HE I.

¹³ AE D-1-D-11.

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.”

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 the applicant or proven by Department Counsel.” The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 7 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (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;
- (b) connections 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; and
- (d) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant connections to foreign girlfriends and to friends who work for foreign governments create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

The minimal amount of money in Applicant's foreign bank account is insufficient to subject him to a heightened risk of foreign influence or exploitation. AG ¶ 7(d) is not established. SOR ¶ 2.j is concluded for Applicant.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following is potentially applicable:

- (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 interest in favor of the U.S. interest.

I find that Applicant has such deep and longstanding relationships and loyalties in America that he can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

Guideline K, Handling Protected Information

The security concern for handling protected information is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an

individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

AG ¶ 34 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(b) collecting or storing classified or other protected information at home or in any other unauthorized location;

(d) inappropriate efforts to obtain or view classified or other protected information outside one's need to know;

(e) copying classified or other protected information in a manner designed to conceal or remove classification or other document control markings;

(f) viewing or downloading information from a secure system when the information is beyond the individual's need to know; and

(g) any failure to comply with rules for the protection of classified or other sensitive information.

The evidence has not established that there were classified documents on Applicant's computer that were beyond the scope of his employment and need to know. There are no applicable disqualifying conditions. SOR ¶ 3.a is concluded for Applicant.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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;

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of propriety information, unauthorized release of sensitive corporate or other government protected information;

(3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant may have felt that he was not required to report his contacts with foreign girlfriends and with employees of foreign governments. However, he had no right to attempt to convince the reserve military member not to report her contact with the Syrian nationals. His attempt to convince her to leave him out of her report amounted to a request for her to provide false information, or at a minimum, fail to completely fulfil what she believed was her duty to report the incident. Applicant showed questionable judgment, and his conduct created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(d) and 16(e) are applicable to SOR ¶ 1.a.

The evidence does not support a finding that Applicant intentionally provided false information on his SF 86. AG ¶¶ 16(a) and 16(b) are not applicable. SOR ¶¶ 1.b and 1.c are concluded for Applicant.

SOR ¶ 1.d cross alleges SOR ¶ 3.a, which was not established. SOR ¶ 1.d is concluded for Applicant.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant has not accepted responsibility for his conduct with the reserve military member. I found him evasive and less than completely forthcoming at the hearing. Without complete candor, I am unable to find that Applicant has learned from the experience and such behavior is unlikely to recur. No mitigating conditions 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):

(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. I have incorporated my comments under Guidelines B, E, and K in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's favorable character evidence and his work record in the defense industry. However, Applicant has not accepted responsibility for his conduct with the reserve military member. I have significant unresolved doubts about his judgment, honesty, and trustworthiness.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted handling protected information security concerns, and he mitigated foreign influence security concerns, but he has not mitigated personal conduct 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 E:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1d:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a-2.j:	For Applicant
Paragraph 3, Guideline K:	For Applicant
Subparagraph 3.a:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge