



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



In the matter of:)	
)	
)	ISCR Case No. 11-15263
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

04/25/2013

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On October 10, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and E (personal conduct). 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 DOD on September 1, 2006.

Applicant answered the SOR on November 1, 2012. He did not state whether he wanted a hearing before an administrative judge or the case decided on the written record in lieu of a hearing. On November 24, 2012, Department Counsel requested a

hearing.¹ The case was assigned to me on January 30, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 29, 2013, scheduling the hearing for April 15, 2013. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on April 24, 2013.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Pakistan. The request and the attached documents were not admitted into evidence but were included in the record as HE II. Applicant did not object, and I have taken administrative notice of the facts contained in HE II. The facts are summarized in the written request and will not be repeated in this decision.

Evidence

Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since January 2011. He does not hold a security clearance. He attended college for a period, but he did not obtain a degree. He is married with two minor children.²

Applicant was born in Afghanistan to Afghan parents. His parents took him and fled to Pakistan in about 1984. They remained in Pakistan until they immigrated to the United States in 1988. Applicant became a U.S. citizen in 1994. Applicant's parents and three siblings also became U.S. citizens.³

Applicant's wife was also born in Afghanistan. She is now a U.S. citizen. Their two children were born in the United States. Her parents and one of her siblings are citizens of Afghanistan, living in Pakistan. Another sibling is a citizen and resident of Afghanistan. Two other siblings are U.S. citizens. None of Applicant's in-laws have any association with the Pakistan government.⁴

¹ (Hearing Exhibit (HE) I.

² Tr. at 21-25, 65; GE 1-5.

³ Tr. at 22, 26, 33, 64; GE 1-5.

⁴ Tr. at 22-33; Applicant's response to SOR; GE 1-5.

From about January 2003 to January 2004, Applicant worked as the assistant manager at a charitable organization's retail store. The charitable organization accepts donations, including clothes and other items, and distributes them or sells them in their retail stores. In January 2004, Applicant took a box of baseball cards that had been donated to the organization. The next day, he was confronted about the missing cards. He returned them and he was terminated from his job.⁵

Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) on October 13, 2008. Under the employment question, he listed that he worked for an employer from June 2001 to June 2004 and another employer from June 2004 to June 2005. He never listed that he worked for the charitable organization. He answered "No" to Question 12 of the SF 85P, which asked if any of the following happened in the previous seven years:

- 1 – Fired from a job
- 2 – Quit a job after being told you'd be fired
- 3 – Left a job by mutual agreement following allegations of misconduct
- 4 – Left a job by mutual agreement following allegations of unsatisfactory performance
- 5 –Left a job for other reasons under unfavorable circumstances⁶

Applicant submitted a Questionnaire for National Security Positions (SF 86) on January 17, 2011. He listed his employment with the charitable organization from January 2003 to January 2004. Section 13C asked if in the last seven years, his employment ended under unfavorable circumstances. He answered "No."⁷

Applicant completed a Counterintelligence-Focused Security Screening Questionnaire on January 26, 2011. It appears that much of the questionnaire was completed by someone asking the relevant questions to Applicant and then filling in the answers for him. Applicant reported his employment with the charitable organization from January 2003 to January 2004. The interviewer noted that Applicant stated that he left the position because he thought he could make more money in another job and that he regretted leaving the position.⁸

Applicant was interviewed for his background investigation by an Office of Personnel Management (OPM) investigator on February 17, 2011. A signed statement was not taken, but the interview was summarized in a report of investigation (ROI). The investigator confronted Applicant with the fact that he was terminated from the

⁵ Tr. at 34-39; GE 5.

⁶ GE 3.

⁷ GE 1.

⁸ GE 2.

charitable organization for stealing a box of baseball cards. Applicant denied stealing the baseball cards, and he denied being terminated from the charitable organization.⁹

Applicant telephoned the OPM investigator shortly after his interview on February 17, 2011. He told the investigator that he lied about being fired from the charitable organization. He also admitted that he had lied about stealing the baseball cards. Applicant told the investigator that he was embarrassed because he had never stolen anything before. He stated that he did not report this information on his security questionnaire because he was embarrassed.¹⁰

The OPM investigator re-interviewed Applicant in person on February 18, 2011. Applicant told the investigator that he took the baseball cards to his car. He stated that he returned the cards back to the charitable organization, and he was told not to come back.¹¹

In his response to the SOR and in his hearing testimony, Applicant denied stealing the baseball cards, and he denied intentionally providing false information on any of his forms and during his interviews. He stated that he would often sit in his car during breaks. He admitted that he took the baseball cards to his car, but he stated that he was just looking at the cards, and he had no intention of stealing the cards. He stated that he accidentally left the cards in the car overnight. He stated the cards were returned the next day when he was confronted about the missing cards. Applicant stated that his failure to list his employment at the charitable organization on the SF 85P was a simple mistake, and he did not list his termination from the charitable organization because it was beyond the seven-year period requested on the forms.¹²

I did not find Applicant's testimony credible. After considering all the evidence, I find that Applicant stole the baseball cards within the common law definition of larceny.¹³ I further find that he intentionally provided false information about his employment at the charitable organization on the 2008 SF 85P; in the January 2011 Counterintelligence-Focused Security Screening Questionnaire; and during his OPM interview on February 17, 2011. There is insufficient information for a determination that Applicant intentionally provided any other false information during his interview of February 17, 2011. I find that Applicant was truthful with the OPM investigator when he called the investigator after his interview on February 17, 2011, and when he was re-

⁹ GE 5.

¹⁰ GE 5.

¹¹ GE 5.

¹² Tr. at 34-63, 72-74.

¹³ The unlawful taking and carrying away of someone else's personal property with the intent to deprive the possessor of it permanently. *Black's Law Dictionary, Ninth Edition.*

interviewed on February 18, 2011. I find that Applicant again intentionally provided false information in his SOR response and during his hearing.¹⁴

There is insufficient information for a determination that Applicant intentionally provided false information on the SF 86 he submitted on January 17, 2011. His termination by the charitable organization occurred either outside the seven-year period of the question, or so close to being outside that seven-year period as to preclude a finding of intentional falsification.

Applicant has been a linguist for a defense contractor since January 2011. He has worked under combat conditions in Afghanistan for almost two years. The U.S. military personnel he worked with praised his abilities and service to the mission.¹⁵

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 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

¹⁴ Applicant's false statements in his SOR response and during the hearing were not alleged in the SOR, and they will not be used for disqualification purposes. They may be considered when assessing Applicant's credibility, in the application of mitigating conditions, and in analyzing the "whole person."

¹⁵ Tr. at 65; AE A-C.

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 ¶ 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.

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) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's parents-in-law are citizens of Afghanistan and residents of Pakistan. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a), 7(b), and 7(d) have been raised by the evidence.

Applicant's wife is a U.S. citizen. There are no disqualifying conditions raised by her status. SOR ¶ 1.a is concluded for Applicant.

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

(a) the nature of the relationships 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.;

(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; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

I considered the totality of Applicant's family ties to Pakistan. Applicant has lived in this country for 25 years, and he has been a U.S. citizen for almost 20 years. His parents, siblings, wife, and children are all U.S. citizens. Applicant has worked overseas under dangerous conditions in support of the national defense. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."¹⁶ AG ¶¶ 8(a), 8(b), and 8(c) are applicable.

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

¹⁶ ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

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;

(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, or other characteristics indicating that the person may not properly safeguard protected information; 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 was terminated from his position with a charitable organization in 2004 when he stole a box of baseball cards. That conduct showed poor judgment and an unwillingness to comply with rules and regulations. It also created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

Applicant intentionally provided false information about his employment at the charitable organization on the 2008 SF 85P; in the January 2011 Counterintelligence-Focused Security Screening Questionnaire; and during his OPM interview on February 17, 2011. AG ¶¶ 16(a) and 16(b) are applicable.

There is insufficient evidence for a determination that Applicant intentionally provided false information on his 2011 SF 86. Except for his false statement about his employment at the charitable organization, there is insufficient information for a determination that Applicant intentionally provided any additional false information during his interview of February 17, 2011. SOR ¶¶ 2.b and 2.f are 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 did not correct the falsifications on his 2008 SF 85P or on his January 2011 Counterintelligence-Focused Security Screening Questionnaire before being confronted with the facts. He did correct his false statements to the OPM investigator on February 17, 2011, before being confronted with the facts. AG ¶ 17(e) is applicable to the false statement made on February 17, 2011. It is not applicable to any of his other false statements.

Unfortunately, after being truthful in February 2011, Applicant again provided false information in his SOR response and during his hearing. There are no other applicable mitigating conditions.

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 and E 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 work overseas and the dangers involved in that work. However, he cannot be trusted to be honest and truthful.

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

Edward W. Loughran
Administrative Judge