



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



In the matter of:)
)
) ISCR Case No. 15-06190
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Foreign preference security concerns are not established. Eligibility for access to classified information is granted.

Statement of the Case

On March 2, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C, foreign preference. Applicant responded to the SOR on March 21, 2016, and elected to have the case decided on the written record in lieu of a hearing.

The Government's written case was submitted on August 1, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 5, 2016. As of September 30, 2016, he had not responded. The case was assigned to me on June 7, 2017. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is a 72-year-old employee of a defense contractor. He has worked for his current employer since 2014. He has a bachelor's degree, which was awarded in the United Kingdom (UK) in 1967. He also has a master's degree and a doctorate, both awarded in the United States in 1999. He married in 1969 and divorced in 1979. He married his current wife in 1979. He has four adult children.¹

Applicant was born in the United Kingdom. His first wife is a UK citizen, and his four children were born in the United Kingdom. Three of his children now live in the United States, and are U.S.-UK dual citizens. Applicant worked in the United Kingdom for an extended period, and he also worked in the Netherlands for about three years. His current wife was born in the Netherlands. She became a U.S. citizen in 2001. Applicant came to the United States in 1992, and he became a U.S. citizen in 2001, while retaining his UK citizenship.²

Applicant has a U.S. passport, which he uses to travel. He renewed his UK passport in 2007, with an expiration date of early 2017. He receives retirement benefits, including monthly payments, from the United Kingdom and the Netherlands. The monthly payments are deposited into a UK bank account. He maintains the equivalent of about \$50,000 in the bank account, and transfers the rest to U.S. accounts. He maintains funds in his UK account for when he travels there. He pays taxes in the United States.³

Applicant reported his UK passport, foreign retirement benefits, and UK bank account on his Questionnaire for National Security Positions (SF 86), which he submitted in January 2015. There is no evidence that the retirement benefits or the UK bank account are dependent upon Applicant's UK citizenship.⁴

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

¹ Items 4, 5.

² Items 3-5.

³ Items 3-5.

⁴ Items 4, 5.

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(a), 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 C, Foreign Preference

The security concern for foreign preference is set out in AG ¶ 9:

When 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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's

judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following are potentially applicable in this case:

- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.; and
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law.

Applicant reported the UK passport, foreign retirement benefits, and UK bank account on his SF 86. He uses his U.S. passport to travel. There is no evidence that the retirement benefits or the UK bank account are dependent upon Applicant's UK citizenship or are in violation of U.S. law.

The concern under AG ¶ 9 is that "[f]oreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it." There is no evidence that Applicant's foreign involvement is "in conflict with U.S. national interests" or that he acted to conceal it. I find there are no applicable disqualifying conditions under AG ¶ 10 and no general concerns under AG ¶ 9. Foreign preference security concerns are not established.

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 C:	For Applicant
Subparagraphs 1.a-1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge