



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



In the matter of:)
)
) ISCR Case No. 16-04107
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/11/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 19, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on June 14, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on January 26, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 5, 2018, scheduling the hearing for March 21, 2018. The hearing was cancelled because of weather. The hearing convened on March 29, 2018. DOHA received the hearing transcript (Tr.) on April 6, 2018.

Evidence

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. GE 5 and 6 were admitted over Applicant's objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about Russia, China, Israel, Turkey, and India. Without objection, I have taken administrative notice of the facts contained in the requests. The facts are summarized in the written requests and will not be repeated in this decision.

Findings of Fact

Applicant is 60 years old. He does consulting work for a defense contractor who is sponsoring him for a security clearance. He has held a security clearance for most of the last 40 years. He has a bachelor's degree, which was awarded in 1979. He is married with two adult children.¹

Applicant is the sole owner and only employee of a consulting company. He is one of about 350 professionals worldwide who are affiliated with and certified by an institute that is associated with a U.S. university. They provide consultations, appraisals, and training in the practices and processes adopted by the institute. Applicant and the other professionals are listed on the institute's website. Companies, including foreign companies, will contact the institute or the professionals directly to train their companies in those practices. Applicant has obtained business through the institute, including with foreign-based companies from the United Kingdom, Netherlands, the Republic of Korea, Belgium, Russia, China, Israel, Turkey, and India. He traveled to those countries to provide consulting work.²

Applicant's foreign consultations usually take about six weeks, but some of the work is much shorter. He then typically returns several years later to appraise how the processes have been implemented. His current clients include a Chinese company. He has not worked for a Russian company in about 15 years. His foreign business provides less than 5% of his annual income. He has more than \$1.6 million in investment and retirement accounts. Losing any or all of his foreign business would not adversely affect his finances. None of his foreign clients were in the defense sector.³

Applicant reported his foreign travel and business connections to the security officer for the company that is sponsoring his security clearance. He credibly testified that he has never been approached to provide classified or sensitive information, and

¹ Tr. at 28-29; GE 1, 4.

² Tr. at 23-26, 29-34, 40-48; Applicant's response to SOR; GE 1-6.

³ Tr. at 25-26, 34-42, 48-53; Applicant's response to SOR; GE 2; AE A-D, G.

that he would immediately report it if it occurred. He expressed his “deep and abiding loyalty to the United States.”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 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 national security eligibility will be resolved in favor of the 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.

⁴ Tr. at 40, 49; Applicant’s response to SOR; AE E.

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, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7 and mitigate those concerns under AG ¶ 8. The following are potentially applicable in this case:

7(a) contact, regardless of method, 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;

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

7(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

8(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 United States;

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

8(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has conducted business with foreign-based companies in Russia, China, Israel, Turkey, and India. The business was predominantly obtained through his affiliation with an institute associated with a U.S. university. None of his foreign clients were in the defense sector. The work is by nature limited in time and value. His foreign business provides less than 5% of his annual income. He has more than \$1.6 million in investment and retirement accounts. Losing any or all of his foreign business would not adversely affect his finances. He credibly testified that he has never been approached to provide classified or sensitive information, and that he would immediately report it if it occurred.

I find that Applicant's foreign business connections are small in comparison with his U.S. business and assets. They are far outweighed by Applicant's deep and longstanding relationships and loyalties in the United States. They could not be used effectively to influence, manipulate, or pressure him. They are unlikely to result in a conflict of interest, and Applicant can be expected to resolve any conflict of interest in favor of the United States. It is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of any foreign country. Any security concerns raised by Applicant's foreign business connections are mitigated.

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(d):

(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 Guideline B in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. Foreign influence security concerns are mitigated.

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.c:	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