



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-03026
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Anthony H. Kuhn, Esq.

10/12/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and C (Foreign Preference). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 16, 2016. On December 20, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B and C. The DOD CAF acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on February 19, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 2, 2018, and the case was assigned to an administrative judge on August 7, 2018. On

August 13, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 13, 2018. The case was reassigned to me on September 4, 2018, due to the unavailability of the previously assigned administrative judge. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through T, which were admitted without objection. DOHA received the transcript (Tr.) on September 20, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted SOR ¶ 1.a in part and admitted SOR ¶¶ 1.b-1.e, 2.a, and 2.e. He denied SOR ¶ 2.b, denied ¶ 2.c in part, and denied ¶ 2.d. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 56-year-old employee of a federal contractor. He was born in the United Kingdom (U.K.), graduated from the U.K. military academy at Sandhurst, and served as an officer in the British Army and held a U.K. security clearance from 1980 to 2001, when he retired as a lieutenant colonel. While in the British Army, he served as an exchange officer with the U.S. Army from 1997 to 1999. He held a limited DOD security clearance while serving as an exchange officer. (Tr. 31.) He received two evaluation reports from U.S. Army officers while he was an exchange officer. His rater was a U.S. Army colonel and his senior rater was a U.S. Army brigadier general. Both reports gave him the highest possible rating. One report commented, "Every day he turns in an outstanding performance," and he "has made it hard for anyone else to be the best." The other report commented that he had "far exceeded all other majors and the vast majority of lieutenant colonels." (AX R.)

Applicant testified that he started thinking about "retirement and the next things in life" when he completed his exchange tour and returned to the British Army. When a U.S. defense contractor offered him a job in the United States, he and his family decided to "completely move." He submitted his application for early retirement at some time before March 2001 and retired in August 2001. Applicant and his wife sold their residence in the United Kingdom, and the entire family came to the United States in August 2001. Applicant has been employed continuously by federal contractors in the United States as a senior systems engineer from September 2001 to the present. (GX 2 at 16; AX S.)

Applicant and his family became permanent U.S. resident aliens, applied for U.S. citizenship as soon as they were eligible, and became naturalized U.S. citizens. Applicant, his wife, and one son became U.S. citizens in October 2013. His other two sons became U.S. citizens in July and December 2014. His daughter became a U.S. citizen in June 2014. His daughter lives in the western United States and is a recruiting manager for a major security company. One of his sons lives with his daughter. His oldest son is an

¹ Applicant's personal information is extracted from his security clearance application (GX 2) unless otherwise indicated by a parenthetical citation to the record.

investment banker working in the northeast United States. His youngest son works and lives in the southern United States. (GX 3 at 9-10; AX P; AX Q; Tr. 49-50.)

Applicant has a U.K. passport that was issued in January 2010 and will expire in January 2020. He has not used it for foreign travel since he became a U.S. citizen and obtained a U.S. passport. (GX 2 at 8-9; GX 3 at 8.)

Applicant receives a pension from the United Kingdom for his military service. When he and his wife reach age 67, they will qualify for retirement pensions from the United Kingdom, similar to U.S. Social Security.

Applicant's father is deceased. His mother is a citizen and resident of the United Kingdom. She is in failing health, suffers from dementia, and lives in an assisted living facility. Applicant and his brothers expected at one time to inherit his mother's home and assets, but the home has been sold. His mother's medical expenses are covered by the National Health Service in the United Kingdom, but the cost of living in an assisted living facility is not covered. (Tr. 61.) Applicant anticipates that his mother's estate will have some cash when she passes away, and it will be split among Applicant and his two brothers. (Tr. 41-42.)

Both of Applicant's brothers are citizens and residents of the United Kingdom. One is a security officer employed by an educational institution. The other is self-employed as a used car salesman. (GX 2 at 35-38; GX 3 at 10.)

Applicant and his wife purchased a plot of undeveloped property on a remote island in the Bahamas in 2001 for the equivalent of about \$8,000. They purchased the property as an investment. They have never visited the property and it remains undeveloped. (Tr. 39-40.)

Applicant maintains a bank account with a small balance in the United Kingdom, which he uses for convenience when he visits and to pay the expenses incurred for his mother's care. His British Army pension, which is about \$2,000 per month, is deposited directly into a bank account in the United States. (Tr. 35.) It was previously deposited in a U.K. bank, but he changed it to the U.S. bank in January or February 2018 after learning that a foreign bank account might cause a problem with his application for a security clearance. (Tr. 52.) He contributes the maximum allowable amount into a 401k retirement plan with his current employer. (Tr. 38.)

Applicant and his wife own their home in the United States. The market value of their home is about \$400,000, and they have equity in the home of about \$220,000 (Tr. 41; AX K.)

Applicant has infrequent contact with about ten of his fellow British Army officers. All have retired, except for one general who is still on active duty. (Tr. 41-44.) He maintains close contact with a retired British brigadier general, who was a classmate at Sandhurst. (Tr. 56.) He also maintains contact with a few former friends and neighbors in

the United Kingdom. He maintains occasional contact with a retired British Army officer in Nepal, who was his second in command in a squadron in a British Gurkha brigade. (Tr. 54-55.)

After Applicant submitted his SCA in May 2016, he was interviewed by a security investigator in February 2017. The summary of that interview includes the following:

Subject has loyalties to both countries, the U.S. and the U.K. He would say he has equal loyalty and doesn't value one over the other. Subject said the question of loyalty is next to impossible to answer one way or the other. If for some reason the U.S. and the U.K. were suddenly at war, Subject would choose the country whose values align with his own.

(GX 3 at 8.)

When asked in interrogatories in October 2017 to verify the accuracy of the interview summary, Applicant pointed out numerous errors. He admitted that the summary correctly reflected what he said about his divided loyalties. However, he also stated he called the investigator on the day following the interview and told her that his responses did not accurately represent his loyalties. He told the investigator that he meant to say:

My primary loyalty is to the United States of America. I am a U.S. citizen, as are all my immediate family. Our homes are here, our work is here, our lives are here. I have pledged allegiance to this country, and I believe in its values. If there were reason for war between the U.S. and the U.K., then my loyalty is to the U.S.

(GX 3 at 5.)

However, Applicant's requested changes to the interview summary were not incorporated in the report of investigation. In his answer to the SOR and at the hearing, he stated that his comments about loyalty were his attempted answer to a "ridiculous question" about a possible war between the United States and the United Kingdom, that he was "a little bit flunked" by the question, and that he unintentionally muddled "allegiance" with "affinity." In his answer to the SOR, he explained:

I have affinity to the U.K. as it is my heritage and much of my culture I like warm flat beer, rugby, cricket, and strange food like Marmite. I enjoy British humor. But that really is the extent of my relationship with U.K. I am, however, not willing to give up my U.K. citizenship, since I am entitled to a U.K. government pension at age 67 as a result of over 20 years of contributions to National Insurance (equivalent to U.S. social security payments). This is the main reasons for the choice to not renounce my U.K. citizenship. It would be foolish, from a financial standpoint, for me to do so. My allegiance is now to the United States of America. I vote only here. I will

resolve interests in favor of the U.S., based on values that I would expect the U.S. to uphold, and would expect the U.S. to counter any country (even the U.K.) with necessary means, if in the interest of the U.S.A. If I don't like the way the U.S. is going, then as a citizen it is my role and right to promote change in this country, as part of the political process of this democracy. I chose to make this my home almost 20 years ago and I have never [wavered] in that decision. (Emphasis in Applicant's written answer.)

(SOR Answer, Exhibit E at 3.) His testimony at the hearing included the same explanation for the difference between what he said during the interview and what he meant to say. (Tr. 27.)

Applicant's facility security officer (FSO) is also a part owner and vice-president of the company by whom Applicant is employed. He has worked closely with Applicant and has socialized with his family. He testified that Applicant has ties to his past military service and is proud of it, but he is also very proud of being a U.S. citizen. The FSO strongly supports Applicant's application for a security clearance. (Tr. 18-22.)

A retired U.S. Army colonel who worked with Applicant from 2001 to 2017 considers him a lifelong friend. He admires Applicant for his commitment to the success of the U.S. military. He considers Applicant to be honest, dependable, and sincere in his devotion to the United States. (AX H.)

Applicant's performance evaluation for the period ending in January 2018 rated him as exceeding expectations. He was commended for defining and developing systems-engineering processes and his "dogged determination to do the right thing," whether it was for a customer, the company, or another employee. (AX G.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr.20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence²

The SOR alleges that Applicant served as an officer in the British Army from 1980 to 2001 (SOR ¶ 2.a); that he expected to inherit a share of his mother’s property and assets located in the United Kingdom (SOR ¶ 2.b); that he maintained contact with “many

² I have discussed the applicable guidelines in the reverse order of the allegations in the SOR, because the legal analysis and application of the disqualifying and mitigating conditions under Guideline B affect my application of the disqualifying and mitigating conditions under Guideline C.

foreign nationals” due to his U.K. citizenship and service in the British Army (SOR ¶ 2.c); that he has friends and acquaintances who are serving in the British Military (SOR ¶ 2.d); and that he possessed a security clearance from the U.K. Ministry of Defense (SOR ¶ 2.e).

The security concern under this guideline 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 maybe 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 following potentially disqualifying conditions under this guideline are relevant:

AG ¶ 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;

AG ¶ 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; and

AG ¶ 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.

Department Counsel declined to submit any official government documents to support a request for administrative notice about the United Kingdom. He stated, “Department Counsel does not provide administrative notice where there’s no country conditions that are relevant to the larger, heightened-risk analysis [we] do not have administrative notice that is going to provide country conditions for countries we consider the neutral or friendly nations.” (Tr. 13.) He further explained, “[T]he Chief Department Counsel has determined that we’re not arguing country conditions and . . . administrative notice is not a requirement in every Guideline B case and should only be made when the Government believes it’s relevant to its case.” His final comment in response to my

question whether he was “willing to leave this in a vacuum” was, “Yes, Your Honor. We’re not providing the administrative notice for friendly countries. It wouldn’t be – amount to anything more than a travelogue of what it is.”³ (Tr. 15.)

Administrative judges do not have authority to make their own pronouncements about the relationships between the United States and other countries, nor do they have authority to adjudicate foreign policy or matters involving foreign relations. Administrative judges must rely on authoritative statements or documents made or issued by the President, appropriate federal departments and agencies, or official determinations from the Executive Branch on matters such as a country’s relationship with the United States or the history and nature of a foreign government. “DOHA practice or experience is not a substitute for information from authoritative sources.” ISCR Case No. 02-26976 at 4 (App. Bd. Oct.22, 2004).

In Applicant’s answer to the SOR and at the hearing, he denied that his connections to the United Kingdom made him vulnerable to manipulation, exploitation, or coercion; and he denied that they created a potential conflict of interest. He asserted that his comments reflected in the summary of the February 2013 security interview did not accurately reflect his loyalties. When, as in this case, Department Counsel affirmatively declines to submit matters for administrative notice, an administrative judge may order that such matters be submitted. However, administrative judges have limited authority to enforce such an order. They may abate the proceeding until counsel complies with the order, but they do not have contempt power.

While an administrative judge may *sua sponte* take administrative notice based on authoritative sources, after proper notice to the parties, an administrative judge has no obligation to gather information for either party in a case. The Directive makes it clear that it is responsibility of the parties to present evidence for the administrative judge’s consideration. ISCR Case No. 08-10170 (App. Bd. Jul. 8, 2011). The Directive does not authorize an administrative judge to act as an investigator for either party in a security clearance proceeding. ISCR Case No. 15-01515 at 3 (App. Bd. Aug. 17, 2016). In this case I concluded that it would be inappropriate for me to assume the role of an assistant department counsel and obtain evidence contradicting Applicant’s answer to the SOR and testimony at the hearing.

AG ¶¶ 7(a) and 7(f) require a finding of a “heightened risk.” Department Counsel declined to concede that “heightened risk” was not in issue. (Tr. 14.) However, notwithstanding the admonition in AG ¶ 6 that “[a]ssessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located,” Department Counsel submitted no evidence, by way of administrative notice, stipulation of fact, or otherwise, to show that Applicant’s family members, friends, former colleagues, or financial interests in the United Kingdom subject him to a “heightened risk” of foreign

³ Compare ISCR Case No. 17-03293 (administrative judge’s favorable decision on Jan. 31, 2018, affirmed by App. Bd. On Apr. 25, 2018) (administrative judge took administrative notice based on official documents and granted a clearance to an applicant who was a retired officer in the British Army).

inducement, exploitation, manipulation, pressure, or coercion. I have considered whether Applicant's status as a retired British Army officer and his continued association with active and retired members of his regiment, standing alone, is sufficient to show the required "heightened risk." However, Department Counsel presented no evidence that the government of the United Kingdom, the U.K intelligence services, or U.K.-based industries use retired military officers to obtain classified, sensitive, or proprietary information. He presented no evidence of attempts by the United Kingdom or U.S.-based industries to circumvent U.S. restrictions on export of military or dual-use technology. Hence, I conclude that these disqualifying conditions are not established. To conclude otherwise would amount to speculation not supported by evidence.

AG ¶ 7(b) requires a finding of a potential risk of a conflict of interest. Department Counsel argued at the hearing that Applicant's connections to the United Kingdom raise such a conflict, but he produced no evidence to support his argument. He produced no evidence of past, present, or potential future policy disagreements between the two governments, including military and intelligence services. He produced no evidence of activities by U.K.-based industries that would create a conflict of interest. There is no evidence that the likelihood of a conflict of interest between the United States and the United Kingdom is greater than it would be if his friends, family members, and former colleagues were citizens and residents of the United States and were approached by agents of a foreign power seeking to obtain economic or military intelligence or influence U.S. policy. I conclude that AG ¶ 7(b) is not established.

Even if any of the potentially disqualifying conditions were established, the evidence would also establish the following mitigating conditions:

AG ¶ 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;

AG ¶ 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

AG ¶ 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's mother and two brothers, with whom he has regular contact, are citizens of the United Kingdom. However, his family members are not in positions likely to cause a conflict of interest. His mother has dementia and resides in an assisted living facility, one brother works for an educational institution, and the other brother is a used-car salesman. Neither party submitted any evidence that the nature of the United Kingdom or its foreign policies raise a potential conflict of interest. Since Applicant's immigration to the United States in August 2001, he has developed deep and long-standing relationships and loyalties in the United States. Finally, whatever inheritance Applicant may receive after the demise of his ailing mother is substantially outweighed by his financial interests in the United States.

Guideline C, Foreign Preference

The SOR alleges that, during a February 2017 interview with a security investigator, Applicant told the investigator that his allegiance is split between the United States and the United Kingdom (SOR ¶ 1.a); that he receives a pension from the British Army of about \$1,500 per month (SOR ¶ 1.b); that he and his wife are eligible to receive a British pension of about \$2,000 per month based on working in the United Kingdom (SOR ¶ 1.c); that he and his wife own property in the Bahamas that they purchased in 2001 for \$5,000 (SOR ¶ 1.d); and that he has "at least one bank account" in the United Kingdom (SOR ¶ 1.e).

The concern under this guideline 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.

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, "the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions." ISCR Case No. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

The security concern under this guideline is not limited to countries hostile to the U.S. Under the facts of a particular case, an applicant's preference, explicit or implied, for a nation with which the United States has enjoyed long and peaceful relations, might pose a challenge to U.S. interests. ADP Case No. 07-14939 at 4 (App. Bd. Mar. 11, 2009).

However, the conclusion that a peaceful country might pose a challenge to U.S. interests may not be based on speculation. It must have an evidentiary basis, by way of administrative notice, stipulation of fact, or some other means. Department Counsel presented no evidence of any policies, programs, or other activities in the United Kingdom that might pose a challenge to U.S. interests.

The following potentially disqualifying conditions under this guideline are relevant:

AG ¶ 10(a): applying for and/or acquiring citizenship in any other country;

AG ¶ 10(d): participation in foreign activities, including but not limited to:

(1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and

(2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests; and

AG ¶ 10(f): an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

Applicant's dual citizenship establishes AG ¶ 10(a). The evidence of Applicant's military service in the British Army raises the concern in AG ¶ 10(d)(1). However, it does not establish AG ¶ 10(d)(2), because there is no evidence that his service in the British Army conflicted with U.S. national security interests or that his retired status conflicts with current national security interests. Applicant's initial statement to a security investigator about his divided loyalty between the United States and the United Kingdom falls short of the "act of expatriation" in AG ¶ 10(f). Applicant has plausibly and persuasively explained the unartful statements reflected in the summary of his February 2013 security interview.

The following mitigating conditions are potentially applicable:

AG ¶ 11(a): the foreign citizenship is not in conflict with U.S. national security interests;

AG ¶ 11(b): dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference;

AG ¶ 11(c): the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;

AG ¶ 11(d): the exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen;

AG ¶ 11(e): the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern; and

AG ¶ 11(f): the foreign preference, if detected, involves a foreign country, entity, or association that poses a low national security risk.

All the above mitigating conditions are established. AG ¶¶ 11(a) and 11(b) are established by Applicant's testimony, the concession by Department Counsel that the United Kingdom is a friendly country and the absence of evidence that the present or potential future interests of the United States and the United Kingdom are in conflict. AG ¶ 11(c) is established because, even though Applicant has not renounced his U.K. citizenship for economic reasons, there is no evidence that his dual citizenship is in conflict with U.S. national security interests. AG ¶¶ 11(d) and 11(e) are established for Applicant's military service in the British Army, his entitlement to a military pension, and his entitlement to the U.K. equivalent of U.S. Social Security, because they all occurred before he became a U.S. citizen, and there is no evidence that his continued receipt of these benefits presents a security concern. AG ¶ 11(f) is established, because Department Counsel conceded that the United Kingdom is a friendly country, and there is no evidence that the U.K. government presents a national security risk.

Whole-Person Concept

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d).⁴

I have incorporated my comments under Guideline B and C in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant served honorably in the British Army for 21 years, including two years as an exchange officer with the U.S. Army, during which he held a limited clearance from the DOD. While serving as an exchange officer, he developed an affinity for the United States. When presented with an opportunity to pursue a second career as a U.S. citizen, he and his family jumped at the opportunity, moved to the United States, and became U.S. citizens as soon as possible. As a U.S. citizen and the employee of a defense contractor, he has earned a reputation as a talented, honest, dependable, and loyal member of the U.S. defense establishment.

⁴ The factors are: (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.

After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his former life as a British military officer, his continued affinity for his former friends and fellow soldiers, his minimal foreign financial interests, and his family members residing in the United Kingdom.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline C (Foreign Preference): FOR APPLICANT

 Subparagraphs 1.a-1.e: For Applicant

Paragraph 2, Guideline B (Foreign Influence): FOR APPLICANT

 Subparagraphs 2.a-2.e: For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge