



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



In the matter of:)
)
-----) ISCR Case No. 07-03431
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

February 27, 2008

Decision

BRAEMAN, Kathryn M., Administrative Judge:

History of the Case

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on June 7, 2007. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleged specific concerns over Foreign Influence (Guideline B) in paragraph 1, Personal Conduct (Guideline E) in paragraph 2, and Criminal Conduct (Guideline J) in paragraph 3 based on the revised Adjudicative Guidelines² issued on December 29,

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended and revised.

² A copy of the revised Adjudicative Guidelines was sent with his Statement of Reasons (SOR). (TR 13)

2005, and implemented by the Department of Defense, effective September 1, 2006. As discussed below, clearance is granted.

Applicant responded to these SOR allegations in a notarized Answer of July 10, 2007, where he admitted all of the allegations in paragraphs 1 and 2 and requested a hearing. He did not respond to the paragraph 3 allegations.

Department Counsel submitted a Ready to Proceed notice on November 26, 2007, and at the same time submitted a Memorandum for Administrative Notice with multiple attachments on Egypt and related matters, such as patterns of global terrorism, which Applicant received. (TR 12) Subsequently the case was assigned to me on December 3, 2007. A Notice of Hearing issued on December 21, 2007, set the matter for January 15, 2008.

At the hearing Department Counsel said the government would not proceed on allegation 1.b. as Applicant's grandmother has died; the allegation was withdrawn. (TR 13) He offered three documents (Exhibits 1-3) that were admitted into evidence without objection. He moved that the documents submitted for Administrative Notice be considered. (Exhibit I; TR 22-23) Applicant testified himself and called seven witnesses, and offered ten documents (Exhibits A to J) which were admitted into evidence without objection. The transcript (TR) was received on January 22, 2008.

Procedural Ruling

Department Counsel requested administrative notice of the facts concerning Egypt. Department Counsel also provided supporting documents to show the basis for such facts.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). I took administrative notice of the facts under subheading "Egypt" of this decision, which are derived from the documents Department Counsel provided.

Findings of Fact

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 30 years old, has been a research analyst and linguist for a defense contractor in State #1 from November 2004 to present. Applicant completed a Security Clearance Application (SF 86) to obtain a security clearance in November 2004.

Previously he worked as a linguist for other contractors and for the military and has a total of eleven years of service to the U.S. For a brief period between these positions he sold automobiles. (Exhibit 1; TR 122-123, 130-140)

Applicant served in the U.S. military from March 1996 to March 2001. He was granted a security clearance in 1997. Applicant worked as a linguist for a DoD agency on special assignment from 2001 to 2003. He was honorably discharged in 2003. (Exhibit 1; Exhibit G; TR 28-29; 115, 128-129, 141-142) In 1998 he received a rare commendation medal as an E2 because of his contributions to a military mission on a task force: he was commended for his "exceptionally meritorious achievement as an integral member" of an advance party. He received a Good Conduct Medal for his behavior from 1996 to 1999. He received a Military Excellence Award in April 2000. (Exhibits E, F; TR 29-30, 118) He received a Certificate of Appreciation in 2001. (Exhibit H; TR 31-32) He has maintained a security clearance in his defense contractor jobs from 2003 to present. (TR 7,142-144)

Applicant took university classes from 1996 to 1997 in State #2 but received no degree. He has not married. (Exhibit 1; TR 6,129)

Foreign Influence

Applicant was born in Egypt and came to the U.S. when he was four years old. Except for one year when he went to school in Egypt for the ninth grade, all of his schooling has been in the U.S. He became a naturalized U.S. citizen in July 1987 at the age of 9. He holds a U.S. passport. (Answer; Exhibits 1, 3; TR 113-114, 123-128) He was never a dual citizen of the U.S. and Egypt. (TR 119)

His mother is a U.S. citizen who has worked in the U.S. government. She is married to his father who is a U.S. diplomat. His father has a Top Secret/SCI security clearance. For a period while his father was assigned to Syria, Applicant's mother lived with her mother in Egypt in 2005 with the permission of the U.S. State Department. Her mother had suffered four strokes and needed help. His mother took care of his grandmother until her death in January 2007. (Answer; Exhibit 1; TR 113-114) Applicant's mother subsequently returned to live with her husband, who for a period in 2007 was in the U.S. and now is assigned to the U.S. Embassy in Syria. (TR 144-145)

Applicant's father is a U.S. citizen who served ten years in the U.S. military and held a security clearance; he continued to maintain his security clearance for subsequent jobs. He currently works for the U.S. Department of State and has had various assignments in countries in the Middle East. (TR 113, 145-146)

Applicant has two maternal aunts and two uncles who are citizens and residents of Egypt. Another maternal aunt is a Egyptian citizen, who lives in the Netherlands. One aunt living in Egypt does administrative work in a courthouse. Another aunt living in Egypt works in the media and has been a broadcaster. One uncle living in Egypt is a school teacher, and the other is a professor at a university. The uncle employed at a university has retired from the Egyptian Air Force; previously he received military

training in the United States. Applicant has always disclosed those links to his relatives in Egypt during the last eleven years while he has held a security clearance. He has no contact with them except when he visits Egypt and on holidays when he calls them. (Answer; Exhibit 1; TR 146-150, 168)

Applicant got permission from the security officer at his place of duty before he traveled to Egypt in 1996, June 2003, and August 2006. He travels there to maintain contact with his family in Egypt. (Answer; Exhibit 1; TR 114, 122, 154-157) His last trip to Egypt was in May 2007; he saw his aunts, and briefly saw one uncle. (TR 148, 151)

Applicant challenged the accuracy of documents submitted for Administrative Notice that suggest Egypt is a threat as Egypt has never attacked the U.S. (TR 122)

A DoD agency denied him a Sensitive Compartmented Information (SCI) security clearance in August 2005. (Exhibit 3; TR 137) In response to questions during a polygraph examination for a SCI clearance, Applicant made clear that, based on his experience in intelligence assignments, he did not believe he would be allowed to work on any material relating to Egypt. He reached this conclusion based on his understanding of safeguards in the intelligence community. (Exhibit 3; TR 151-151)

Applicant challenged the accuracy of the statements he made about his family in Egypt as were reported in the Clearance Decision Statement. He did not make a statement that "he would contact his extended family if he came across information that would indicate a threat or danger to their safety." Instead, he had stated he would discuss any issues involving Egypt with his supervisor. He has always put the military mission first. He would never reveal classified information. His loyalty is exclusively to the U.S. (Exhibit 3; TR 152-153, 169-171)

Egypt

Egypt is a republic that obtained its independence from Great Britain in 1922. Its population is about 79 million, making it the most populous country in the Arab world and the second-most populous country in Africa. Egypt and the U.S. enjoy a strong and friendly relationship based on shared mutual interest in Middle East peace and stability, revitalizing the Egyptian economy and strengthening trade relations, and promoting regional security. Egypt remains a close military and strategic partner of the United States. Egypt is a key partner in the search for peace in the Middle East and resolution of the Israeli-Palestinian conflict. Egypt has never attacked the United States. However, Egypt has a poor human rights record and like the United States has been subject to terrorist attacks. Egypt is not a known collector of U.S. intelligence or sensitive economic information. Egypt is not known to target U.S. citizens to obtain protected information.

Personal and Criminal Conduct

Punishments are not permitted under Article 15, Uniform Code of Military Justice (UCMJ) unless an offense against a punitive UCMJ article has been committed. Thus all infractions punished under Article 15 are criminal offenses. The traffic violations, not

punished under Article 15, UCMJ, are not criminal offenses, unless a particular misdemeanor under state law is alleged and established.

Applicant received a series of Article 15s while he was in the military but they were never part of his Official Military Personnel File (OMPF)³ He did not list them on his SF 86, as he was told they need not be listed.⁴ He had no intent to falsify. He disclosed them during a polygraph examination in order to give “all the information” he had. He explained the background of his minor military infractions. When he first entered the military as a linguist, he was on “phase status,” which meant he had to comply with strict rules and guidelines. His last Article 15 was in 1999 for a speeding ticket on the military base where he was given restricted driving privileges and was not supposed to drive on base. When he drove again on base, his driving rights were suspended for five years. He was only 19 years old at the time of these incidents of poor judgment. (Answer; TR 115-118, 119-120, 159-161, 166) None of the Article 15s were considered serious enough to significantly impede his progress and promotions in the military. (TR 167) He received multiple awards as detail above.

Applicant also admitted a series of civilian speeding tickets where he has paid his fines and was put on probation. He subsequently violated his probation, committing an additional offense. (Answer; TR 116, 161-162) He had other traffic violations since June 2005 because he turned right on red when it was prohibited. He received another speeding ticket, and he used a 24-hour HOV lane, when he was not eligible to do so. (TR 162-163) His driver’s license has never been suspended. He currently has no restrictions on his license. (TR 171)

During his polygraph for a job at another DoD agency, Applicant admitted that in 2005 he had switched price tags at a department store on four occasions. He was unemployed at the time, but offered that as an explanation, not as a defense. He was never arrested, but voluntarily disclosed the incidents in a polygraph examination. Theft, is of course, criminal conduct. (Answer; Exhibit 3; TR 120-121; 163-164, 167)

Applicant stated that his positive accomplishments as a soldier and contractor employee should outweigh these misdemeanors. He has been given multiple awards and served in roles which he fulfilled as he was highly skilled and dependable. (TR 166-167)

References

A site manager for a defense contractor where Applicant works reported that he has known Applicant since February 2006 and served as his supervisor from April 2006 to present. He stated he never observed any signs that Applicant was a security risk. While he was born in Egypt and has relatives there, the supervisor observed that “he never indicated any preference for Egypt or exhibited any signs of favoritism for his birth

³ Army Records of nonjudicial punishment may or may not be designated for filing in the Performance Fiche of the OMPF. See Army Regulation 27-10, *Military Justice*.

⁴ The SOR does not allege that he falsified his SF 86.

country.” In addition, Applicant followed all security guidelines. He worked on multiple projects but never discussed these sensitive matters outside of the cleared space nor with other members who had no need to know. He always followed directives issued to him. When he disagreed, he would tell his supervisor but accepted the supervisor’s authority. Thus he concluded that Applicant does not lack respect for authority. In conclusion, he noted that Applicant “utilized his language skills to make numerous contributions to the United States government over the past 2 years.” His supervisor highly recommended that his performance be credited. (Exhibit I)

A military officer provided a commendation for Applicant as they served together while deployed to Iraq from February to July 2003. He had daily contact with Applicant who provided critical linguistic support during ground combat and other highly stressful and life threatening operations. At all times he demonstrated a mature and professional demeanor that belied his youth. His conduct and performance were always outstanding and had a direct impact on, and contributed significantly to mission success.” Applicant’s personal courage and selfless performance saved U.S. lives. He concluded that “his loyalty, maturity, dedication, and professionalism are above reproach.” (Exhibit J)

Mr. M, a retired military counter intelligence officer who has worked with Applicant for 18 months on a contract at his current employer observed that Applicant has acted as a translator and interpreter for a counter intelligence field activity. He was evaluated in 2006 and given a small raise as they were pleased with his performance. He testified that Applicant has acted responsibly on classified matters. He is not Applicant’s direct supervisor; he was two levels up in the company. He stated it is helpful for linguists to have contract with their birth country in order to maintain cultural and religious expertise. He has known Applicant since August 2006 when he started managing this contract. He stated that at the time of the hearing Applicant was on unpaid leave after the company discovered in January 2008 that his access had been suspended. They had previously not been advised by the government agency who denied him access in August 2005. (TR 38-51)

Mr. F, a work colleague and friend who supervised Applicant in fall 2002 on a overseas military project, testified on his behalf and concluded that his cultural background was an asset for their sensitive classified assignments during the period when Applicant worked on a military project for Mr. F. He worked as a special agent and testified that Applicant was “the best contract analyst” assigned as he had the language capability, and also was very integrated into American and Government culture so he was “very easy to work with.” He has acted responsibly on classified matters on a highly sensitive assignment. After they worked together they became friends. He recommended Applicant for a security clearance based on his experience as a counter intelligence officer and on their friendship (TR 53-56, 56-58, 58-59, 59-63)

Mr. L, who was in the military for 26 years and later worked in the civil service, has known Applicant for two and a half years since he’s engaged to his god-daughter. Mr. L expressed that he had “no suspicions” over Applicant’s loyalty. (TR 65-71)

Mr. O., a work colleague who has known Applicant since February 2003, testified that after he retired from the military they were both working for a defense contractor and deployed to Iraq together. Later he was Applicant's manager on a U.S. project and supervised him for over a year. He evaluated him as "outstanding" and found him loyal to the U.S. Applicant always conducted himself within the law. He was always willing to deploy and was committed to a tough mission. When he supervised Applicant, he recommended him for a salary increase based on his performance. (TR 72-75, 75-80, 80-82)

Mr. S. is a linguist and intelligence analyst who met Applicant when they were in military training together over 12 years ago. They never worked together on missions as they specialized in different languages. He views Applicant as loyal to the U.S. In the time he's known Applicant he has seen that he always does the work assigned and is the first to volunteer on missions. (TR 83-85, 86-89, 89-92)

Ms. L., who is a certified facility security officer, now works for a contractor for a federal agency as a security clearance adjudicator. Altogether she has twelve years of military and government experience. She has known Applicant since 2001 when she was his supervisor. She assessed Applicant as being loyal to the United States. When she supervised Applicant as his program manager, she believed he was "one of the exceptional workers" out of 30 linguists that she supervised. The customers were very satisfied with his performance and he received letters of appreciation. She highly recommended him. (TR 93-95, 95-104)

Mr. T., who has been a close friend for twelve years, met him at the military language school in 1996 or 1997. Mr. T. has experience both in the military and with a defense contractor. He sees him on a daily basis and assesses Applicant as loyal to the U.S. (TR 105-108, 108-110)

Policies

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the mere presence or absence of any adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the relevant Revised Adjudication Guidelines, and determined the following security concern was relevant to my determination:

Foreign Influence

Paragraph 6 of the adjudicative guidelines describes foreign influence security concerns:

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 to whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Personal Conduct

Paragraph 15 of the adjudicative guidelines sets out personal conduct security concerns:

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.

Criminal Conduct

Paragraph 30 of the adjudicative guidelines expresses the security concern pertaining to criminal conduct

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁵

⁵ "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." An adverse decision reflects that an applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

Analysis

Foreign Influence

Paragraph 7 indicates conditions that could raise a security concern and may be disqualifying in this case include:

- (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;
- (c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;
- (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;
- (e) 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;
- (f) failure to report, when required, association with a foreign national;
- (g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and,

(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant's travel to Egypt and his ties and communication with his aunts and an uncle, who live in and are citizens of Egypt raise security concerns under paragraphs 7(a) and 7(b). (SOR 1.c. and 1.d.) None of the other disqualifying conditions under paragraph 7 apply. His maternal aunts and uncles either have worked or do work for various agencies of the Egyptian government. Also, Department Counsel presented a series of documents for Administrative Notice to establish the concern that Egypt is a foreign country that presents a "heightened risk" because of the security environment in the country even though they are an ally of the U.S. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). His connections to his Egyptian relatives also create a potential conflict of interest because his relationships are sufficiently close to raise a security concern about his potential desire to help his aunts and uncle by providing sensitive or classified information.

On the other hand, no security concerns are raised by the fact that Applicant's mother's time resided in Egypt in 2005 to nurse her ill mother as her residence there was authorized by the U.S. State Department. Applicant's father is a U.S. diplomat assigned to the Middle East; both of his parents now live in Syria on assignment for the State Department. (SOR 1.a.) The allegation over his ties to his grandmother in Egypt was withdrawn as she has subsequently died. (SOR 1.b.)

While I have considered these security concerns, I conclude Applicant has presented evidence to partially meet the burden of mitigating those circumstances under the mitigating conditions (MC) outlined in the revised guidelines.

Paragraph 8 lists six conditions that could mitigate security concerns including:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and,

(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.

Paragraphs 8(a) and 8(c) do not apply. Applicant did not establish "it is unlikely [he] will be placed in a position of having to choose between the interests of [his aunts and an uncle] and the interests of the U.S." His frequent contacts and close relationships with his Egyptian family members could potentially force him to choose between the United States and his Egyptian family members. He did not meet his burden of showing there is "little likelihood that [his relationships] could create a risk for foreign influence or exploitation."

Paragraph 8(b) partially applies because Applicant has "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." He has lived in the United States for all but the first four years of his life. He served on active duty in the Army for five years, and served the U.S. government overseas in combat. His father served for 10 years in the U.S. Army and currently works overseas for the Department of State. Applicant is a naturalized U.S. citizen who was educated here. Given Applicant's deep ties to the United States, there is no credible evidence that he would have any motivation to put the interests of his relatives in Egypt over the interests of the United States.

Indeed he has demonstrated repeatedly that he made substantial and life-saving contributions when he volunteered for important U.S. missions. While he might have suggested otherwise in a polygraph interview where he disclosed his ties to his relatives, I conclude that he was credible when he questioned the accuracy of the Statement in Exhibit 3. No formal statement was taken during the polygraph that he had an opportunity to review for accuracy. Further, he made clear that the issues he raised over his ties to his relatives there were in the nature of a disclosure (and in

recognition that counter intelligence would disqualify him from sensitive work involving Egypt), and not to suggest he would actually be responsive to foreign influence.

Paragraph 8(f) partially applies because he has no interest in property in Egypt, and his property is in the United States. Although these two mitigating conditions are partially applicable, they are insufficient to fully overcome the foreign influence security concerns. The foreign interest security concerns are fully mitigated under the whole person concept, where his strong character references and his service to the United States in combat receive their proper weight and consideration.

Personal Conduct

Paragraphs 16(c), 16(d)(1) and 16(e)(1) of the revised Adjudicative Guidelines provide for three potentially disqualifying conditions, which may be applicable to this case:

(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;

(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 . . . (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 (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The Government established security concerns over Applicant's military and civilian personal misconduct from 1997 to 2005. Traffic violations, offenses punished under Article 15, UCMJ, driving on post, while his on post driving privileges were suspended, and theft by changing price tags are all rule violations (and some are criminal offenses). Moreover, such conduct, if known, adversely affects one's personal, professional and community standing.

When Applicant was initially in military service from 1997 to 1999, he engaged in a series of minor criminal violations of the UCMJ and received Article 15s to punish his conduct.⁶ He also has had a series of traffic related offenses from 2003 to 2007 for speeding. He was placed on probation in 2004 and again was arrested for traffic violations and was found to have violated probation in March 2005 and in January 2005. He recently was again arrested for minor traffic offenses. Most importantly, he voluntarily admitted that he switched price tags on items at a store in order to save money. Thus, the acts alleged in SOR paragraph 2 establish Paragraphs 16(c), 16(d)(1) and 16(e)(1) of the revised Adjudicative Guidelines for Personal Conduct.

Paragraph 17 lists seven conditions that could mitigate security concerns:

(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;

⁶ Arguably, AG ¶ 16(d)(3) does not apply to the Article 15 offenses in SOR ¶¶ 2.a to 2.d, the violation of Article 92, UCMJ in SOR ¶ 2.e, and the thefts in SOR ¶ 1.I, because this criminal conduct could have been alleged, and was alleged under Guideline J. Moreover, the conduct in SOR ¶¶ 1.a through 1.e is partially mitigated under AG ¶ 16(c) because it happened over seven years ago under unique conditions (while Applicant was on active duty), and as such the conduct is unlikely to recur. However, the conduct in SOR ¶¶ 1.a through 1.e cannot be considered piecemeal. The Judge is required to evaluate the record evidence as a whole and reach a reasonable conclusion as to the recency of an applicant's conduct. ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When the active duty misconduct is considered in connection with the 2005 misconduct, the personal conduct in SOR ¶¶ 1.a through 1.e cannot be fully ted under AG ¶ 16(c). The misconduct on active duty continues to cast some doubt on Applicant's current reliability, trustworthiness, or good judgment, and may only be mitigated under the "Whole Person Analysis," *infra*.

(f) the information was unsubstantiated or from a source of questionable reliability; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

The SOR does not allege that he falsified any documents. He has admitted all of the conduct alleged in SOR paragraph 2. He did not associate with persons involved in criminal activity. Thus, paragraphs 17(a), 17(b), 17(f) and 17(g) are not applicable.

Paragraphs 17(c), 17(d), and 17(e) are partially applicable. The offenses are all relatively minor. The majority of the offenses occurred from 1997 to 2003. There were, however, seven offenses in 2005. He switched price tags on four occasions (a shoplifting or theft-type offense). The other offense involve misuse of his vehicle: he spun the wheels on his vehicle; he was speeding; he made an illegal left turn, and failed to display his registration; and his traffic violations violate his driving probation. The offenses at this point are probably somewhat unique, as they have not recurred, and he now recognizes the security and employment impact of such conduct. They do not cast doubt on the individual's reliability, trustworthiness, or good judgment because they are unlikely to recur. Applicant has "acknowledged the behavior" and recognized the negative consequences of such conduct. Based primarily on the lack of misconduct after June 2005, I conclude he has matured and such behavior is unlikely to recur. Finally, he has reduced or eliminated "vulnerability to exploitation, manipulation, or duress" through disclosure of his misconduct to security officials (especially the four thefts, even though there was no criminal record of such conduct). He expressed regret for this misconduct and presented character evidence to establish that this misconduct was out of character.

Although Applicant did not mitigate his conduct under the specific mitigating conditions in paragraph 17, he has presented sufficient evidence to meet the burden of mitigating those circumstances by the whole person analysis discussed below. See n. 6, *supra*. The whole person analysis is the portion of this decision where his commendations, awards and service in a combat zone can be fully weighed and given appropriate consideration.

Guideline J, Criminal Conduct

Paragraphs 31(a) and 31(c) set forth two conditions that could raise a security concern and may be disqualifying, "multiple lesser offenses," and "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

An Article 15, UCMJ offense, as listed in SOR ¶¶ 2.a to 2.d, and the violation of Article 92, UCMJ in SOR ¶ 2.e, violate the punitive articles of the UCMJ, and as such are criminal offenses. The thefts in SOR ¶ 1.1 violate state criminal law. The fact that

none of the conduct in SOR ¶¶ 2.a to 2.e and 2.I, resulted in criminal charges or a conviction is not dispositive under paragraph 31(c), which notes a possible security concern without formal, prosecution of the offense. I therefore conclude that paragraphs 31(a) and 31(c) apply to SOR ¶¶ 2.a to 2.e and 2.I,

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and,

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32(a) – 31(c) do not apply. Though he was never arrested, Applicant's four thefts occurred in 2005, which is somewhat recent. It casts doubt on Applicant's current reliability, trustworthiness and good judgment. He was not pressured or coerced into committing the offenses. He admitted the offenses, and the offenses in SOR ¶¶ 2.a to 2.e and 2.I, are substantiated.

AG ¶ 31(d) partially applies. There is some evidence of successful rehabilitation, including the passage of about 2-3 years, depending on when in 2005 he committed the thefts, without recurrence of criminal activity. He expressed his remorse. He has received some job training, and has an outstanding employment record serving in Iraq. However, his post-offense behavior is insufficient to fully mitigate the multiple acts of misconduct in this case. Security issues are more appropriately resolved in this case under the "whole person analysis" which permits a broad review of all relevant circumstances.

Whole Person Analysis

I evaluated Applicant under the whole person adjudicative process guidelines under paragraph 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 voluntariness of the participation; (6) the presence or absence of

rehabilitation and other pertinent 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.

The Appeal Board previously recognized the importance of combat service on behalf of the United States, as well as strong connections to the United States in mitigating foreign influence security concerns, sustaining approval of a clearance in ISCR Case No. 04-12363 at 2-3 (App. Bd. Jul. 14, 2006). That Appeal Board decision states in pertinent part:

In her whole person analysis in this case, the Administrative Judge relied on numerous unchallenged findings of facts which cumulatively support the Judge's ultimate conclusion that Applicant has sufficiently strong ties to the United States to overcome the government's security concerns. Applicant has been a naturalized U.S. citizen since 1998. His immediate family members (wife, child, mother, sister and two brothers) are legally located in the U.S., as are all of his financial ties. Applicant is a member an ethnic group that suffered under the Taliban, and he and his family are supportive of U.S. involvement in Afghanistan. Applicant has not sought to continue any ties to Afghanistan except to use his expertise as a translator to advance the interests of the U.S. Two Americans in Afghanistan provided evidence for Applicant including a credible U.S. government official who viewed Applicant as invaluable in the war on terrorism in Afghanistan, and noted that Applicant had participated in interrogations of the Anti-Coalition Militia (ACM) and gathered information from ACM detainees which developed a greater understanding of ACM activities to further support U.S. operations. Applicant was careful to follow all security guidelines while in Afghanistan. He did not tell his family where he was working in Afghanistan in order to comply with security regulations, and he did not attend his father's funeral in Afghanistan because his priority was maintaining his security clearance.

The Administrative Judge also found, based upon the government's evidence, that Afghanistan had made great strides towards building democracy and rebuilding the country, that it had embraced democracy and pluralism in the context of Afghan and Islamic traditions, and that it had reversed its long history of serious human rights abuses under the previous regime. There were no findings that the government of Afghanistan possesses an aggressive or hostile intelligence/security profile *vis-a-vis* the U.S., or is otherwise engaged in efforts to acquire classified or sensitive economic information from the U.S.

See *also* ISCR Case No. 05-03846 at 5-6 (App. Bd. Nov. 14, 2006) (remanding denial of security clearance because decision did not discuss combat service on behalf of the United States). Also, ISCR Case No. 07-00034 (App. Bd. February 5, 2008) affirmed a decision to grant a clearance to an individual who "put his life in danger on at least one occasion to protect American lives and interests in Afghanistan."

Consequently, the Board concluded that the Judge had articulated a detailed, rational explanation for her favorable decision under the whole person concept and sustained it. In this case, Applicant has similarly put his life on the line and his military contributions have been recognized by his civilian and military supervisors and by multiple military awards. For example, a military officer who served together with Applicant while deployed to Iraq from February to July 2003 attested that Applicant provided critical linguistic support during ground combat and other highly stressful and life threatening operations. At all times he demonstrated a mature and professional demeanor that belied his youth. His conduct and performance were always outstanding and had a direct impact on, and contributed significantly to mission success. Applicant's personal courage and selfless performance saved U.S. lives. He concluded that "his loyalty, maturity, dedication, and professionalism are above reproach." In 1998 Applicant received a rare commendation medal as an E2 because of his contributions to a military mission on a task force: he was commended for his "exceptionally meritorious achievement as an integral member" of an advance party. He received a Good Conduct Medal for his behavior from 1996 to 1999. He received a Military Excellence Award in April 2000.

A Guideline B decision concerning Egypt must take into consideration the geopolitical situation in Egypt, as well as the dangers existing in Egypt.⁷ Egypt is a close military and strategic partner of the United States. Egypt is a key partner in the search for peace in the Middle East and resolution of the Israeli-Palestinian conflict. Egypt has never attacked the United States. However, Egypt has a poor human rights record and like the United States has been subject to terrorist attacks. Egypt is not a known collector of U.S. intelligence or sensitive economic information. Egypt is not known to target U.S. citizens to obtain protected information.

Applicant mitigated the Government's security concerns over possible foreign influence raised by his visits to Egypt to see relatives as he did so only on a limited and infrequent basis. He travelled with the permission of the military and defense contractors. Further, he did so in part because of a mission-related need to maintain a cultural understanding of the area, which was established by several of his witnesses who know his responsibilities as a linguist. In addition, he always disclosed his foreign links to relatives in Egypt during the last eleven years while he has held a security clearance.

⁷ In ISCR Case No. 04-02630, the Appeal Board remanded the decision granting a clearance stating:

[T]he Judge's failure to make findings concerning the geopolitical situation within Afghanistan impairs his analysis, both of Guideline B and of the whole person. Therefore, we remand the case to the Judge for a new opinion, under Guideline B and the whole person. The new opinion should include a more detailed whole person analysis, which takes into account the dangers existing in Afghanistan insofar as they have a bearing on the potential for coercion. Also, as appropriate, it should detail and explain Applicant's pertinent qualities, characteristics, and circumstances which are the basis for the Judge's ultimate decision.

Applicant's family ties to Egypt are his mother's brothers and sisters with whom he has intermittent visits and holiday conversations. Applicant's close ties of affection to Egyptian citizens are limited. 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. Thus, despite the security concerns over Egypt's human rights record, and the possibility of terrorism, I conclude any risk would appear to be low.

Several of Applicant's witnesses praised his commitment to mission and his loyalty to the United States, as demonstrated during his military service and his duties with a defense contractor. Applicant has strong endorsements from supervisors and work colleagues as to the high quality of his work, of his loyalty, and of his willingness to volunteer repeatedly for sensitive and important missions that put the interests of the United States ahead of his own. His linguistic expertise and cultural sensitivity is grounded in his historic ties to Egypt and provide the context allowing him to be highly effective on military assignments.

Significantly, Applicant is recommended for a security clearance by numerous military and corporate officials who have known him for a substantial period of time. His supervisors, past and present, uniformly assess him as "outstanding" and being a dedicated, honest, loyal and responsible individual who has volunteered for important and challenging missions which led to American lives being saved.

Looking at all of these circumstances, I conclude Applicant has overcome foreign influence security concerns. Given his strong and lengthy ties to the U.S. since he has lived in the U.S. since he was four years old and became a U.S. naturalized citizen in 1987, his relationship to the United States clearly outweighs his relationship to Egypt. After review all of the evidence, I conclude, even if there were potential for pressure, coercion, exploitation, or duress on Applicant or his family members, he would make the choice of acting in the best interests of the United States by reporting the attempted pressure or coercion to security officials.

I also considered the personal and criminal conduct security concerns in my whole person analysis. He has matured, and except for minor traffic offenses has not committed any offenses or rule violations since 2005. Based on all the facts discussed in the whole person analysis, I conclude the personal and criminal conduct is mitigated.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a through 1.d in Applicant's favor.

Based on Applicant's credible testimony and review of him as a whole person, I also conclude that Guideline E, allegations 2.a through 2.l in favor of Applicant as they were minor and are outweighed by the strength of his character evidence.

Given the minor nature of the offenses, the government failed to establish security concerns over criminal conduct, so I also conclude Guideline J, allegations 3 and 3.a favorably to Applicant.

Formal Findings

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	Withdrawn
Subparagraphs 1.c. to 1.d.:	For Applicant
Paragraph 2. Guideline E	FOR APPLICANT
Subparagraphs 2.a. to 2.l.:	For Applicant
Paragraph 3. Guideline J	FOR APPLICANT
Subparagraph 3.a.:	For Applicant

Decision

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

KATHRYN MOEN BRAEMAN
Administrative Judge