

NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

TO: AIGI	File Number: I95120053	Date: 17 March 2002
Subject: Closeout Memo		Page 1 of 1

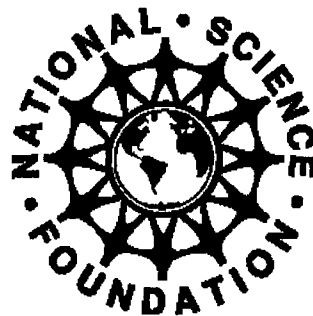
There was no closeout written at the time this case was closed. The following information was extracted from the file in conformance with standard closeout documents.

Our investigation determined that the subject¹ was a full time employee of an institution² and ineligible to receive support for the first six months of the NSF award. Our investigation also determined that the subject represented data in the NSF final report as that obtained during the NSF project, when in reality, it was obtained prior to the NSF project for an unrelated federal project. We forwarded a report of investigation to the US Attorney's Office³ recommending that action be brought against the subject and/or his company under 31 USC 3729, Civil False Claims Act.⁴ The US Attorney's Office began settlement discussion with subject's company. The subject and his company agreed to pay \$75,000.00 to the United States.

Accordingly this case is closed.



Name:	Prepared by:	Cleared by:		
	Agent:	Attorney:	Supervisor:	AIGI
Signature & date:				



REPORT OF INVESTIGATION

National Science Foundation
OIG Case Number I95120053

This document is loaned to you FOR OFFICIAL USE ONLY. It remains the property of the Office of Inspector General. It may not be reproduced. It may be disclosed outside of NSF only by the Inspector General, pursuant to the Freedom of Information and Privacy Acts, 5 U.S.C. §§ 552, 552a.

Investigation Report

Case No. I95120053

I. Violations

Based on the evidence gathered during this investigation, we have determined that president of , knowingly and intentionally caused three false claims totaling \$49,032 to be paid by the National Science Foundation (NSF) to , violating 31 U.S.C. § 3729, *civil False Claims Act*.

II. Background: The National Science Foundation

The National Science Foundation (NSF) is an independent federal agency that was created in 1950 to provide financial and other support for research, education, and related activities in science, mathematics, and engineering. Annually, NSF designates approximately \$3 billion for over 18,000 individual grants.

III. Background: The Small Business Innovation Research Program

There are 11 federal agencies (including NSF) that have the Small Business Innovation Research (SBIR) program. The program objectives are to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research needs, increase the commercial application of federally supported research results, and encourage participation by minority and disadvantaged persons in technological innovation.

The SBIR program is divided into three phases. Phase I objectives are to establish the feasibility of an innovative scientific concept proposed to address the goals of a solicitation for SBIR projects. Phase I awards are currently limited to a six-month time period and \$75,000 made in three payments: the first being three weeks after the effective date of award, the second being three months after the effective date of the award, and the third upon the submission of a final report. Phase II is the principal research effort and awards last as long as 24 months and may total as much as \$300,000. Phase III is conducted by the small business using non-federal funds to pursue commercial applications based on its government-funded SBIR activities.

IV. Basis for Investigation

On October 12, 1995, our office received an allegation from a I) employee that Principal Investigator (PI) on NSF SBIR Phase I grant had not paid for subcontracted services used by

during the course of this grant. This employee also alleged that [redacted] used data from previous experiments in the final report he submitted to NSF. Additional review by our office also determined that, in violation of NSF regulations, [redacted] was a full-time employee of [redacted] during a significant portion of the SBIR Phase I period of the grant. Based on these allegations and our initial findings, we opened an investigation into [redacted] s conduct on the NSF SBIR award.

V. Investigative Findings

On December 22, 1995, [redacted] received NSF SBIR Phase I award [redacted] for \$49,032. The effective dates of this grant were from the period of January 1, 1993 to September 30, 1993, and included a three month unfunded flexibility period. [See Attachment #1]

The Phase I award was made based on [redacted] s submission of a proposal on June 13, 1992 to NSF, entitled, "[redacted]" which proposed to "[redacted]"

[redacted] submitted the final report for this project to NSF on September 30, 1993. [See Attachment #2] A subsequent Phase II proposal was submitted to NSF on October 29, 1993 but was declined funding by NSF on July 13, 1994.

Elements of a False Claim:

False Statement

Knowingly and Willfully

Falsifies or Conceals

Material Fact

Motive

was Ineligible to Receive the NSF Award

Based on the NSF regulations set forth in the 1992 NSF SBIR program solicitation, clearly [redacted] was ineligible to receive the NSF award. This solicitation (Section 2.2) states:

If a principal investigator is employed by an academic institution or has full-time status with an academic institution at the time the proposal is submitted, he or she is considered to have primary employment with that institution and must take full-time leave to be eligible for SBIR (emphasis added). [See Attachment #3]

However, [redacted] was a full-time employee of [redacted] during the effective time-period of the NSF SBIR grant, January through June 1993.¹ An August 25, 1992 letter of offer addressed to [redacted] from [redacted], Provost, [redacted] [See Attachment #4], stated:

This is to confirm your reappointment to the indicated position without tenure. . . . During the fiscal year beginning July 1, 1992, your salary will be at the following rate.

Position Title:	Research Associate in Radiology	FTE:	100%
Monthly Salary:	\$4,375.00		

As further evidence of [redacted] activities, on August 16, 1993, [redacted] signed and submitted a semi-annual "Personnel Activity Report" (PAR) for the period representing January 1993 through June 1993. In this document, [redacted] states that, during this time period, 81% of his time was spent working on [redacted] while 19% of his time was spent working on "Departmental Research, [redacted]" certified in this document:

I confirm the above activity distribution represents a reasonable estimate of effort expended by me during the period stated. [See Attachment #5]

In addition, during an interview with NSF OIG agents on December 18, 1996, [redacted] admitted that he received an NSF Phase I award (SBIR) in January 1993 but that he did not start work on this award until March or April 1993 [See Attachment #6]. He further admitted that up until March or April 1993 he worked nearly full-time on [redacted]'s NIH prosthetic award.³ In a notarized affidavit submitted to NSF OIG special agents after the interview, [redacted] also stated:

I did not start any substantial work on the NSF Phase I award until March or April 1993. Up until March or April 1993 I worked primarily on a research project funded by NIH relating to a prosthetics fitting systems ("NIH Project"). [See Attachment #7]

During this interview [redacted] also admitted that he did not notify the cognizant NSF grant or program officials for his award about his delayed start date. [See Attachment #6] Bhatia explained

¹ The period from July through September of 1993, during which time [redacted] was on unpaid leave from [redacted] constituted the unfunded flexibility period of award, to be used in the completion of the final report.

² This grant was awarded to Dr. [redacted], [redacted]'s supervisor at [redacted], and was used to support [redacted]'s employment there.

³ During this interview, [redacted] signed two affidavits and refused to sign two others that NSF OIG special agents had drafted.

that at one point during his award (he stated he could not remember exactly when) he contacted the NSF SBIR office and inquired about submitting his final report late. [redacted] alleged that he was told (he was stated that he could not remember by whom) that if the final report was late he would not be eligible for that year's Phase II award and would have to wait until the following year to apply. Consequently [redacted] claimed that he attempted to complete his project because he wanted the NSF Phase II funding.

Finally, testimony from [redacted]'s supervisor, Dr. [redacted] and other [redacted] employees that [redacted] supervised supports the documentary evidence that [redacted] was working nearly full-time at the University on non-SBIR projects during the entire first half of 1993. In an interview conducted on December 31, 1996, [redacted] stated that up until July 1993, [redacted] worked full-time on [redacted] projects that [redacted] was conducting, predominantly the NIH prosthetics project [redacted] Research Engineer [redacted] stated to NSF OIG special agents that he himself worked full-time on the NIH grant ([redacted]) from January through June 1993. Commean also asserted that [redacted] was also involved close to full-time on this NIH project during this same time period and that [redacted] worked on the NIH grant [redacted] on a daily basis. Another [redacted] Research Engineer, [redacted] stated to NSF OIG special agents that, during January through June 1993, he saw [redacted] on a daily basis did not notice any decline in [redacted]'s level of effort on [redacted].

Knowledge of Rules and Requirements

The evidence in this case also shows that [redacted] knew of NSF's requirement that he take full time leave during the NSF award. Most importantly, during the December 18, 1996 interview with NSF OIG special agents, [redacted] signed an affidavit stating:

In the case of the NSF proposal I submitted, I read the NSF solicitation for 1992 and understood the rules and regulations stated in this solicitation governing 2/3 of the work had to be done by the proposing firm, the principal investigator had to be primarily employed by the proposing firm, and that duplicate proposal submissions had to be stated. [See Attachment #6]

[redacted]'s knowledge can also be seen prior to the actual award being made. In a June 5, 1992 letter submitted together with the Phase I Proposal, [redacted] wrote to [redacted]

I am aware that you are applying for a SBIR grant entitled [redacted] through your company, [redacted] Please be advised that if this grant is awarded, you would need to take full-time leave from the university to be eligible for SBIR support. I approve of this effort and will enthusiastically support your project as proposed. [See Attachment #1]

[redacted] included the required certifications, statements, and documents in his proposal. On the cover page of the proposal, [redacted] certified:

By signing and submitting this proposal, the prospective grantee is (1) certifying that statements herein are true and complete and to the best of his/her knowledge; (2) agreeing to accept the obligation to comply with NSF award terms and conditions if an award is made as a result of this

application. I understand that willfully making a false statement or concealing a material fact in this proposal, a progress report, a final report, or any other communication submitted to NSF is a criminal offense (U.S. Code, Title 18, Section 1001). [See Attachment #1]

Although [redacted] admittedly knew of this leave requirement, he did not formally request leave until May, 1993, five months after the start date of his NSF SBIR award.⁴ Most striking is that, by this time, [redacted] had already received two of the three NSF Phase I payments (totaling \$32,688): one on February 2, 1993 and one on May 4, 1993. Also by this time, [redacted] had received notification that he had obtained SBIR funding from the U.S. Air Force (USAF) and knew he had a pending proposal with the National Institutes of Health (NIH).⁵ In fact, during May 1993, [redacted] was simultaneously receiving payments from the NSF SBIR award and the USAF SBIR award, and receiving salary from [redacted] NIH [redacted] award.

In a May 17, 1993 letter from [redacted] to [redacted], [redacted] acknowledges the NSF requirements by quoting and attaching excerpts from the NSF Program Solicitation:

As you are already aware, [redacted] was recently awarded three SBIR Phase I grants with me as the principal Investigator. Most SBIR guidelines require that the PI be principally employed by the small business (i.e. more than half time) during project performance. The NSF guidelines require that 'the PI take full time leave from the educational institution during the six months Phase I period of performance and for the full Phase II period of performance if a Phase II award is made'. A copy of the relevant section of the NSF SBIR solicitation is attached for your reference. In this regard, I would like to request a full time six month leave of absence. [See Attachment #9]

Attached to [redacted]'s letter to [redacted] were summary documents reported by [redacted] ([redacted]'s company), each reflecting an SBIR award or pending award. Of the five summaries listed, the NSF, USAF, and NIH SBIR awards were each listed as "Status: Awarded" with an "Expected Start Date: July 1993" and "Duration: 6 Months". [See Attachment #9]

[redacted]'s leave of absence was thereafter approved for July 1993. [redacted]'s stated that he felt that it would have been "very difficult" to complete his NIH [redacted] grant without [redacted] and that [redacted] worked full-time on [redacted] projects that [redacted] was conducting (predominantly the NIH project) up until July 1993. [See Attachment #8]

Used Previously Obtained Data in the NSF Final Report

[redacted] as informed that he was awarded the NSF grant in December 1992. In fact, [redacted] wrote an electronic mail note to [redacted] employees [redacted] on December 28, 1992, stating "the NSF proposal is funded. Congrats."

⁵ Both awards were made: " [redacted] NIH SBIR Phase I, Contract [redacted] effective August 15, 1993 through August 14, 1994 and [redacted] USAF SBIR Phase I, Contract # [redacted], effective May 17, 1993 through November 17, 1993.

Severa¹ employees have alleged that used data obtained previous to the submission of the NSF proposal in his final report to NSF, and then represented this data as that obtained through the NSF award.

According to the statements of Research Engineer the data presented in the NSF SBIR Phase I Final Report was really pilot data for a prosthetics project funded by the NIH. (See Attachment). Specifically, related how the figures appearing in the data Tables 3 and 4 in the NSF Final Report were really those taken for a paper originally drafted in October 1992.⁶ claimed that it would have been impossible for to have duplicated these results exactly because, in general, there are variable, uncontrollable factors that affect each scan. [See Attachment #8]

Documentary evidence (scanning logs) of various objects which were used as the basis of a portion of s final report research results show that the scans were completed prior to NSF SBIR funding. [See Attachment #10] In fact, only one of the four items to be scanned for this project was scanned during the award period.⁷

In a memorandum dated January 29, 1996, and explained their final report contribution origins in detail. Among other data reported, it is stated that the research results of SBIR Final Report Tables 1-4 and Figures 12, 14, 15, & 16 were all prepared by in preparation for non-NSF related studies. [See Attachment #11]

A review of the data in Tables 3 and 4 of the article, " shows it to be the same data as that in the Phase I Final Report.⁸ [See Attachment #12]

also stated that he had reviewed the NSF final report prior to its submission, and had recognized that data presented in the final report was duplicative of that found in other projects completed before the NSF project was even awarded. alleged that the software programs presented in the final report were actually those he worked on in 1992 with a few cosmetic changes.

⁶ Data in Tables 3 & 4 represent results originally obtained by in his 1992 pilot study for proposal with as principal investigator. This data was later published in :

⁷ Scanning log status reports recording the scanning of a cylinder and plaster bust for b, Radiologist Technologist, are dated October 30, 1992 and December 18, 1992, respectively. The third object, a hairdryer, was scanned during the unfunded flexibility period on September 3, 1993. The fourth item, a coffee mug, was scanned on January 27, 1993, during the effective period of the NSF SBIR award but when was still a full-time employee of

⁸ The Final Report also contains verbatim copy from another article This copy represents background explanatory work rather than the merits of the research. However, the existence of additional duplicative material is indicative of a pattern of re-usage. [See Attachment #13]

1 said that he had brought these issues to 3 attention prior to the submission of the final report, but that 1 felt that he had done nothing wrong. [See Attachment #8]

In the December 18, 1996 interview with NSF OIG agents, 1 declared that all data in the Final Report was obtained for and during the NSF project and that the Article used data which was originally generated for the NSF Final Report. However, 1 admitted that he could not furnish proof of this because he no longer had the documents he used to draft the Final Report. [See Attachment #6]

VI. Conclusion and Recommendations

We find 1's actions to be particularly egregious and unacceptable because they are in stark contrast to NSF's SBIR rules and, equally important, program philosophy. NSF's SBIR philosophy has always been to foster small business, and NSF SBIR program managers will not make awards to those principal investigators whose grant requests appear to be mere supplements to work already being pursued by the PIs at their respective academic institutions.

In the case at hand, the evidence clearly shows that 1 did not meet the requirements for NSF SBIR program eligibility, and that he caused false claims to be made in an effort to obtain funds under his award. Specifically, 1 was a full-time employee of 1 during the majority of the NSF grant period. In addition, 1 represented data from work completed prior to the start of the NSF SBIR award as that obtained under this award.

Consequently, we recommend that the U.S. Attorney's Office take appropriate action against and/or 1 in the amount of \$177,096 (treble the cost of the award plus three penalties of \$10,000 for each false claim).

VII. Attachments

1. SBIR Phase I proposal submitted to NSF on June 13, 1992
2. SBIR Phase I final report submitted on September 30, 1993
3. 1992 NSF SBIR Program Solicitation, Form NSF 92-30
4. letter of employment for July 1992 through July 1993 and for July 1993 through December 1993
5. Personnel Activity Report for for January through June 1993
6. NSF OIG memorandum of interview of and affidavits drafted during this interview
7. December 20, 1996 signed and notarized statement by submitted to NSF OIG
8. NSF OIG memorandum of interviews of
9. May 17, 1993 letter from to
10. Relevant pages of scanning log maintained by co-worker I
11. August 29, 1996 analysis of final report by co-workers as submitted to NSF OIG
12. Article by "g" May 1995,
13. Article by

April 18, 2001

In Re: _____

SSN: _____

Applicant for Security Clearance

ISCR C

DECISION OF ADMINISTRATIVE JUDGE

APPEARANCES

FOR GOVERNMENT

_____, Department Counsel

_____, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On May 31, 2000, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on July 24, 2000, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 11, 2000.

On October 12, 2000, the Department Counsel, the Applicant, and Applicant's Husband (Husband), (who is the Applicant in ISCR Case _____) joined in a motion to consolidate the two cases for hearing purposes. The Applicant and her Husband waived their privacy rights, the issues involve some identical allegations, and some that are substantially similar. The motion to consolidate the cases was granted on October 17, 2000. The cases were combined for hearing purposes only, each case was considered and decided separately and independently.

notice of hearing was issued on October 17, 2000. A hearing was held on November 29, 2000, at which the Government presented twelve exhibits. The Applicant presented two exhibits and called her Husband as a witness. The Applicant also testified on her own behalf. The official transcript (Tr.) was received on April 9, 2001.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 38 years of age, and has a Masters Degree in Management Information Systems and a Masters in Business Administration. She is Chief Executive Officer and majority stockholder of her company, seeks a security clearance on behalf of herself and her company.

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she has engaged in conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate she may not properly safeguard classified information.

The Applicant was born and raised in India. In January 1993, she became a naturalized citizen of the United States.

In the 1992-1993 time frame, she and her Husband co-founded In the beginning the Applicant worked full time in the information technology (IT) department for another company, and part-time responsibilities at involved running the business, and handling the administrative matters of the business. In April 1995, the Applicant quit her full time job to come on full time with At that point, she took an active role in the company, implementing the commercial side of the business and procuring contracts. The Applicant stated, "In 93 it was the imaging work that was going on and in 95 we started the consulting. So the business was more general. It was IT consulting, application development, not specific to imaging or 3D imaging." (Tr. p. 125).

The Applicant's Husband was employed as a full time research associate by a University when he started in June 1992. submitted a proposal to the National Science Foundation (NSF) for a Small Business Innovation Research (SBIR) award. (Government Exhibit 3). The proposal was accepted, and was awarded the contract.

The work submitted in the final report was presented by the Applicant's Husband as having been performed by under the NSF award, when in fact it was performed by the University (with whom he was employed) for a different purpose before the NSF award was granted. (Government Exhibits 2 and 3). In October 1995, the NSF was informed by the University that the Applicant's Husband had used data from previous research experiments in the final report he submitted to the NSF.

It was also determined that the Applicant's Husband violated the terms of the NSF regulations, as he continued to be a full time employee of the University during a significant portion of the period of the NSF Small Business Innovation Research (SBIR) award. The NSF SBIR award was to begin in December 1992. The Applicant's Husband continued his full time employment with the University through June 1993, six months into the nine month period of the SBIR award, and well after receiving the first two NSF checks in payment. The Applicant's Husband was aware of the regulations that required that he take full time leave from the University while working on the NSF project, and failed to follow the regulation. (Government Exhibit 2 and 3). The Applicant admits that the incidents occurred, but denies any wrongdoing. (See, Applicant's Answer to SOR).

The Applicant stated that she had no specific knowledge of the validity of any of the allegations, including false claims to pay money received by her Husband from the NSF during the time he was an employee of the University, charges of misconduct, theft of materials and unauthorized telephone calls. The Applicant categorically denies any involvement in these issues. (Government Exhibit 12).

She testified that her Husband may have technically violated the rules of the NSF, but that the violations were not intentional. (Tr. p.141).

In 1997, an investigation by the NSF Office of Inspector General (OIG), concluded that the Applicant's company had violated the terms of the NSF SBIR program. NSF OIG concluded that the Applicant's Husband, who was President of had submitted three false claims for payment under the contract awarded to the company.

NSF OIG referred the case to the United States Department of Justice to recover \$177,096.00 in damages and penalties under the Civil False Claims Act. (Government Exhibits 2 and 3).

On December 16, 1998, the Applicant's company entered into a pre-filing settlement by which the Applicant's agreed to pay \$75,000.00 to the United States Department of Justice, after which the matter was dismissed. (Government Exhibit 8). The Applicant stated that she made the business decision to settle the case, instead of litigating the matter, for economic reasons. (Tr. p. 140).

Paragraph 2 Guideline B - Foreign Influence. A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress.

These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

of which the Applicant is Chief Executive Officer and majority shareholder, operates nationwide with six or seven offices in the United States. was started by her father-in-law in 1970 as a family owned business. Her father-in-law is the President and principal consultant and runs the day to day affairs of the company in India. The Applicant's Husband is the principal owner c with 51% of the shares. Her mother-in-law is the other owner.

In 1995, a joint venture between was formalized to provide documentation to support an L-1 visa application (intra company transfer) for the Applicant's brother-in-law. The Applicant's brother-in-law was recruited from India to come to the United States to work for Her brother-in-law worked for for several years before he moved on to other employment. Since 1995 has worked with to recruit and train citizens of India for eventual transfer to the United States to perform specialized services for Recruits from India are brought to the United States on either L-1 or H-1 visas. In addition to recruiting its own employees from India works with 30 subcontracting firms that also bring people from India to work in the United States. Many of these subcontractors are in the United States on H-1 or L-1 visas.

The Applicant's Husband testified that presently, his father is winding down business, and that the corporate net worth is now only the real estate value of the building, which is between \$400,000.00 and \$500,000.00. Presently, the Applicant's Husband receives \$3,000.00 a year from in total revenue. (Tr. pp. 69 -71).

The Applicant stated that she has no financial interests in India, including no ownership interests in and will not inherit anything from her parents. (Tr. p. 145, and Government Exhibit 12).

The Applicant's mother and father are citizens of the Republic of India and reside in India. They have green cards and are visiting the United States most of the time. When the Applicant's parents are in India she maintains monthly contact. When they are in the United States she contacts them once a week or so. (Tr. pg.142).

The Applicant also has two sisters who are citizens of India and reside in that country. She contacts them about once every month or two by telephone or e-mail. (Tr. p. 143). The Applicant also has other relatives including three nephews and one niece, aunts, uncles and cousins who are citizens of India and reside there. The Applicant has not had contact with these relatives for at least five years.

The Applicant's mother-in-law and father-in-law are also citizens of the Republic of India, and reside in India.

The Applicant's Husband was born in India and is a naturalized citizen of the United States. The Applicant's children were born in the United States.

The Applicant's brother lives in the United States and became a naturalized citizen within the last two to three years. (Tr. pg. 143).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline E (Personal Conduct)

Conditions that could raise a security concern:

- o A pattern of dishonesty or rule violations; to include violation of any written or recorded agreement made between the individual.

Conditions that could mitigate security concerns:

None.

Guideline B (Foreign Influence)

A security risk may exist when an individual's immediate family, including cohabitants, and other persons whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern:

- o an immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
- o A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline E (Personal Conduct) and Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who engages in personal conduct of a questionable nature and who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the complete record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's personal conduct and foreign influence has a direct and negative impact on her suitability for access to classified information.

The Applicant was born in India, and became a citizen of the United States in 1993. She is co-founder and

Chief Executive Officer f n the United States, which is in a joint venture with company her Husband owns in India. In 1997, was investigated by the United States Department of Justice for alleged wrongdoing, in violation of the Civil False Claims Act, which involved the Applicant's Husband submitting false claims for payment under a SBIR contract. The matter was settled by the Company A for \$75,000.00. Although the Applicant denies any knowledge of or any involvement in an wrongdoing b I do not find her testimony credible. She was intimately involved in the day to day operation of business. She is intelligent, and well educated in her field. As both the administrative officer and Chief Executive Officer of the company since its inception, she knew or should have known that her Husband was not in compliance with NSF regulations. Accordingly, she is also held responsible for the actions of her company. Under the particular circumstances of this case, the Applicant's conduct or lack thereof shows poor judgment, unreliability and untrustworthiness and falls far short of meeting the eligibility requirements for access to classified information under Guideline E.

With respect to Guideline B, the Applicant has substantial foreign contacts in both her business and personal life. She has business and financial interests as well as significant emotional and family ties in India. She is the co-owner of a business in the United States that does substantial business with a foreign owned and operated company that her Husband owns in India. She has substantial emotional ties to India, including her parents, sisters and other relatives, who are all Indian citizens and reside there, and with whom she is in consistent contact. Her Husband is from India, and maintains continuing and regular contact with his family. It is the Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. She has not done so. Accordingly, I cannot say that she would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation, which is sufficient to overcome the Government's case. On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant

Subpara. 2.d.: Against the Applicant.

Subpara. 2.e.: Against the Applicant.

Subpara. 2.f.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Administrative Judge