WILKINS DEPOSITION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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DIANE J. SCHROER :

Plaintiff, : Civil Action No.

v. : 05-1090(JR)

JAMES H. BILLINGTON :

Defendant. :

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Washington, D.C.

Wednesday, September 20, 2006

Deposition of:

CYNTHIA WILKINS,

called for oral examination by counsel for Plaintiff, pursuant to notice, at Wilmer Hale, 1875 Pennsylvania Avenue, NW, Washington, D.C., 20006, before Karen Geddes, Certified Shorthand Reporter, of Alderson Court Reporting, beginning at 9:35 a.m., when were present on behalf of the respective parties:

Page 66

make that distinction for the word "evaluated."
BY MS. MCGOWAN:
Q. And in what context were you asked to provide this guidance?
A. Are you asking me what occurred?
Q. What occurred? I don't know if it was a memo, an e-mail or a meeting.
A. I was called and asked to come to a meeting in CRS, and I was advised that the meeting was to discuss any security clearance impact for an applicant who had reported this information, and then I went to the meeting and we discussed this.
Q. Who was at that meeting?
A. At the meeting were several individuals from the Congressional Research Service. Do you want me to name them?
Q. Yes, please.
A. Charlotte Preece, the Chief of the Foreign Affairs, Defense, and Trade Division -- I might get some of the titles slightly wrong -- Kent Ronhovde, who I believe is counselor to the director of the Congressional Research Service.

Page 67

Q. I'm sorry. Just to be clear, Charlotte Preece is the chief for foreign affairs?
A. That's correct.
Q. And then Kent --
A. Ronhovde, R-o-n-h-o-v-d-e, and I believe he is counselor to the director of CRS.
Q. Anyone else at that meeting?
A. Bessie Alkiswani.
Q. I'll definitely ask you to spell that.
A. Okay. That is Alkiswani, A-l-k-i-s -- I never spell it out loud -- s-w-a-n-i, I believe. She is the head of workforce development for CRS -- again, I may be off on some of the names -- and there was another person, Cathy Dees, I'm not sure about that. The name just went out of my head and came back in, but another CRS management official.
Actually, I'd like to correct myself. I'm not sure about that name at all.
Q. Okay.
A. I have absolutely gone blank on that. It's either -- or Diane Duffy. I am totally confused on that.

Page 68

Q. Who contacted you about attending this meeting?
A. I believe it was Bessie Alkiswani.
Q. What information, if any, were you provided in advance of the meeting?
A. Basically, what I just said, that they had an applicant to a position that required a security clearance, and the applicant had volunteered transgender information. And my input was requested about how, if at all, it would impact the security clearance process.
Q. When was that meeting, if you remember?
A. I don't, exactly. It was late 2004, very late.
Q. Was a meeting like this common as part of the hiring process?
MS. RUSSELL: Objection, vague. You can go ahead and answer.
THE WITNESS: I wouldn't characterize it as common, but there are times in which information is brought to a manager and they need guidance and they will call for guidance from me.

Page 69

BY MS. MCGOWAN:
Q. And during this meeting, did anyone indicate that this applicant was the preferred applicant for the position?
MS. RUSSELL: Objection to the form of the question. But you can answer, if you understand the question.
THE WITNESS: I got the sense that yes, that was the serious candidate for the position.
BY MS. MCGOWAN:
Q. Did you indicate that -- well, let me ask, sort of, tell me what you said in the course of that meeting as far as the advice that you gave.
A. I told them that I believed, based on my reading of the adjudicative guidelines and supplemental information, that it was something that needed to be evaluated.
Q. Anything else?
A. I said that as part of the evaluation, it would need to be referred to the health services office; I told them that it was not disqualifying on its face, standing alone, but needed to be

Page 70

evaluated; that it would take some time to go through this process.

Q. Did you discuss what that process would entail at that meeting?

A. Yes. They believed that the applicant had prior service and prior security clearance status. The break in service was not known, however.

I indicated that if the investigation had been conducted some time ago, and I believe the understanding was the break in service was about two years, but that was not exactly clear, inasmuch as the applicant was reporting this as a current pending matter for him, most probably, a new investigation would be needed because the prior investigation would not reasonably have covered something that was occurring right then.

So we discussed that health services would have a role in reviewing medical information and that additional investigation might probably be needed.

Q. At any time after that meeting, did you attempt to ascertain whether or not the information

Page 71

had actually been part of Ms. Schroer's prior security investigation?

A. No. I never obtained -- I was never given a copy of the application materials or any of the paperwork that we used to go forward and conduct that type of inquiry.

Q. So now I will move onto Section 3.3(d), actually not (d) as much as it is 3.3 generally. Actually, let me focus on 3.3(d), specifically, which is on page 376.

With respect to this provision, which begins: Access eligibility shall be reapproved for individuals who were determined to be eligible based on a favorable adjudication, how -- if you can explain to me, how does this provision apply in a circumstance where an applicant has a prior security clearance that has been completed within the last five years?

A. Well, Section (d) says, it provides for -- you used the word "reciprocity" earlier. It provides, essentially, for reciprocity. If there is a prior background investigation within five years

Page 72

that was favorably adjudicated, if the break in service is not more than two years, and if there is no indication of any change in status, in other words, any new information that might warrant evaluation, and procedurally, this section of the order also asks for the individual to basically submit an updated 86 to say that nothing has changed in their background, appropriate record checks referred to there, in the last line, refers to basically an updated national agency check where the security office is calling the investigative indices to see if there's any additional information to consider.

Q. What does the library do or how does the library attempt to ascertain the existence of new information with respect to applicants who already have a security clearance?

A. When an individual applies for employment, they submit their employment application and whatever attachments they need to, and also a declaration for federal employment form, OF-306. That declaration form contains questions regarding

Page 73

criminal history, employment difficulties, federal delinquency, et cetera.

So there are times that new information is developed through that individual's 306. If you are also asking what happened in this particular case?

Q. That was my next question, yes.

A. There are other times when an individual may volunteer information, either during a selection interview, information could be obtained during a reference check or any interactions between the applicant and the library, the individual may provide information.

Q. With respect to ascertaining or attempting to ascertain new information, who at the library is charged with the responsibility of determining whether or not new information exists that may, for example, not have been voluntarily disclosed by an applicant?

A. Well, again, the 306, but that would be a voluntary disclosure. Selecting officials conduct reference checks for employment selection purposes, and then when an application is ultimately referred

Page 98

was necessary?
A. Okay. I think that is a two-part question. The service unit identifies whether or not to request a waiver based on their operational need to fill the position without undue delay. We determine whether the waiver process with our inquiries needs to be completed when an individual does not already meet requirements. So they are either lacking in the investigation, it's untimely, or there's no information that needs to be considered.
Q. And so as far as that first piece, when would the director of a service agency -- or how would the director of the service agency ascertain whether or not they need to ask for a waiver?
A. Based on their admission requirements. It's their decision.
Q. Are there any factors specified that go into that determination?
A. The service unit looks at the job that needs to be filled, and it's my understanding, typically they will look at what projects or duties

Page 99

that individual -- that incumbent must be performing to meet mission objectives. If they conclude based on the duties of that individual needs to perform that they cannot wait the four months, to six months, to eight months, to a year, for that background investigation to be completed on a pre-appointment basis, they, at that time, request us to entertain the waiver, and then they certify that although the person is being appointed without the background investigation, the retention is subject to the favorable completion of the background investigation and that in a sensitive position, that individual will not have access to classified information until such time that they are determined eligible.
Q. At any point were you asked to render an opinion about whether or not Ms. Schroer would have been eligible for a security clearance waiver?
A. I think that was part of the discussion. CRS typically requests waivers because they must fill their positions in order to do their work for the Congress in a timely manner. And in our

Page 100

discussion about what we would have to do, that yes, we would need to evaluate it from a security clearance standpoint, it would involve, at a minimum, a health services evaluation, I'm sure that in the discussion of the time frame and the fact that this was information that needed to be evaluated, I communicated that the waiver would not be the process.
Q. When you say "would not be the process"?
A. Would not be probably approved, because waivers relate to cases where there's no information that requires in-depth evaluation, additional evaluation, without benefit of investigation.
Q. And with respect to the question of whether or not the waiver would or would not have been approved, had CRS requested a waiver in Ms. Schroer's case, on the assumption that they had offered her the position, who would have been the person to make the determination of whether or not to grant the waiver?
A. My boss, the director of security.
Q. And that is Mr. Lopez?

Page 101

A. Mr. Lopez. And he would be making that decision based on a recommendation from me.
Q. At any time, did you discuss the matter of a waiver for Ms. Schroer with Mr. Lopez?
MS. RUSSELL: Objection, lacks foundation. But you can answer, if you understand.
THE WITNESS: I think I did. I report to him; he is my boss. And I believe at some point following the meeting, I let him know this had occurred and that that had been my guidance.
BY MS. MCGOWAN:
Q. What else during the course of that conversation with Mr. Lopez happened?
MS. RUSSELL: Objection to the form.
THE WITNESS: Nothing, to my recollection. He seemed to agree with me.
BY MS. MCGOWAN:
Q. At any point, did you discuss Ms. Schroer's eligibility for a security clearance waiver with the head of the library health services office?
A. Not on that day. But shortly thereafter,

Page 126

of her security clearance eligibility?
MS. RUSSELL: Objection, lacks foundation, relevance. Also, objection to the form of the question. But you can answer it, if you can understand it.
THE WITNESS: No. No security clearance determination was requested of the applicant. No background investigation was conducted. No determination was made.
BY MS. MCGOWAN:
Q. Then, finally, with respect to 2024-8, is there anything in this regulation that informs the library's determination of whether an applicant for employment should be deemed eligible for security clearance?
A. This Library of Congress regulation, 2024-8, is focused on employees of the library who have been granted security clearance, and it apprises them of their obligations to safeguard information, execute a nondisclosure agreement, comply with security requirements.
So it does not appear to relate to

Page 127

applicants for employment who have not been processed for security clearance.
MS. MCGOWAN: I think this is a good time for a lunch break. So I have ten to 1:00. Perhaps we meet back here at a quarter till 2:00 with the thought we have five minutes to get ourselves reorganized and start an hour from now?
MS. RUSSELL: Actually, I'm going to request we meet at 2:00, because I need to go back to the office and submit something for review. Is that okay?
MS. MCGOWAN: Yes, we can start at 2:00.
(Lunch Recess 12:49 p.m. to 2:05 p.m.)
BY MS. MCGOWAN:
Q. Before we start in any new material, I just want to close the loop on some of the issues we discussed this morning.
The first issue that I wanted to make sure I had the complete picture, was with respect to the meeting that you discussed that you had with Ms. Preece and some other individuals at the library.

Page 128

So looking back on who you identified as being at that meeting, I just wanted to make sure that that was a complete lineup of who was at the meeting. So if we could just run through again who was there?
A. Charlotte Preece, chief of the foreign affairs division; Kent Ronhovde, counsel to the director; Bessie Alkiswani, who is head of workforce.
And then there was a name that I couldn't quite remember. I think it's Diane Duffy; the other name I said is someone that I work with currently in CRS administration. So maybe that popped up, but I'm still not 100 percent sure about that last name. I worked with the others more frequently.
Q. So in addition to you, there were four people at the meeting?
A. I think so.
Q. What information was given to you prior to coming to that meeting?
A. As I recall, the information I was given on the phone is that CRS had an applicant for this

Page 129

position, and the position would require a top-secret security clearance, and that the applicant had volunteered that he was about to undergo transsexual surgery. And I was asked whether that would have an impact and in what way on the security clearance process.
Q. And who was that phone conversation with?
A. Again, I believe it was from Bessie.
Q. Did you ask her for any additional information for you to have at your disposal prior to this meeting?
A. I can't recall exactly if I asked for anything additional on the phone. When we met in the meeting, I might have asked her, they may have volunteered, I don't know what form this took, but I understood that the applicant had prior military service, held a security clearance in the military and had left, and it was unclear how long, but my sense was that it was about two years. I don't know if they were estimating or if they didn't even know; I don't know.
Q. What other information about the applicant

Page 134

time she was applying?
A. I don't recall.
Q. So what "advice," if that is the right word, were you being asked to provide this group who asked you to meet with them?
A. Generally speaking, they wanted to know what impact that information, if any, would have on a security clearance process.
Was the information disqualifying on its face? Which I said, no.
What issues did it bring up?
Did it fall under the security clearance guidelines?
I believe I was asked if this would have been a source of leverage, and I said not necessarily, inasmuch as the individual has told you this.
I was asked to speculate whether this would have been considered in a prior background investigation, and I think I said: Probably not, because if there's been a break, and the investigation took place some time ago and this is a

Page 135

current matter, it probably would need more investigation.
I was asked how long it would take to determine whether he, the applicant, could be appointed or cleared, or the length of time that the evaluative or investigative process would take.
Q. What was your answer to that last question about how long?
A. I informed them that I saw this as an issue that would need to be referred to health services for an evaluation, first of all, that that could take weeks, but I didn't know exactly.
I told them that we, after that, might have to do a background investigation, which could take an additional lengthy time period.
CRS usually requests a waiver, and I said in this case, because there was information that really needed to be evaluated, it was unlikely that the waiver would be approved.
Q. Is there anything else you said to them as part of your feedback?
A. I think that is it.

Page 136

Q. Did you get any follow-up questions or comments back after you shared that information with the folks at the group, people at the meeting?
A. There was discussion about how long. There's always discussion about how long something will take, so a lot of discussion about that, and it would depend on how things played out.
Q. And if you can, tell me as much as you remember of that -- how the conversation about -- you know, what were people interested in finding out more with respect to the issue of how long?
A. Basically, it was how long? How long would it take to -- if they decided to go ahead, to refer it to health services? What kind of an evaluation would be needed; in other words, how long it would take? Whether we would need to do the full background investigation, how long it would take if we had to do that.
Q. Now, in the event that the health services investigation had come back with the recommendation that this was not -- or it did not present a security clearance process, would a further

Page 137

background investigation have been required at that point?
A. I don't know for sure. It's speculative. I think it might depend on whether Dr. Charles wouldn't be able to -- what kind of conclusion she made.
She could say: I have been able to fully evaluate this information and there is absolutely no relevance to a security clearance determination, or she could conclude: I've been able to obtain some information, and based on the information I have now, there is no reason not to initiate the background investigation to obtain the other pertinent elements.
So I don't, exactly, know what the outcome would have been.
Q. With respect to the first option that you laid out, in which Dr. Charles said that there was -- she was satisfied that she had enough information to ascertain that there was no relevance, if that were her determination, then what, if any, additional investigation would be