



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



In the matter of:)
)
) ISCR Case No. 17-00379
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: Doug Murphy, Esq.

08/12/2019

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline E (Personal Conduct), Guideline B (Foreign Influence), and Guideline F (Financial Considerations). Foreign influence and personal conduct concerns were not mitigated, but financial considerations were mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted security clearance applications (SCAs) on June 16, 2009, and October 6, 2015. On June 2, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline F (Financial Considerations). The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and adjudicative guidelines (AG).

Applicant answered the SOR on July 17, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 12, 2018. The SOR was amended on March 29, 2018, to change two dates and references from Frankfurt, Germany to Mannheim, Germany in SOR ¶¶ 2.g and 2.i. The amended SOR was properly served on Applicant, who admitted the revised allegations on January 27, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued hearing notices with other administrative judges on April 20, 2018, and June 15, 2018, that were canceled in coordination with Applicant's counsel. A hearing notice was issued by me on December 12, 2018, and the hearing was convened on January 23, 2019. Government Exhibits (GE) 1 through 10 (and a list of Government exhibits marked as Hearing Exhibit (HE) 1) were marked and GE 1-10 were admitted in evidence. Applicant Exhibits (AE) A and B were marked and admitted in evidence. Applicant and his current spouse testified. DOHA received the hearing transcript (Tr.) on January 31, 2019.

Although Applicant declined to adopt the summary of his interview with a government investigator, he made substantial corrections and clarifications to the summary in his response to interrogatories. Most of his corrections involved explanations or updates on his interview with the investigator, but some involved correcting or changing the investigator's summary. The response to interrogatories and the summary statement were admitted in the record without objection (Tr. 16-19). I have noted Applicant's comments and corrections to the summary interview, and will give appropriate weight to the interview summary based on Applicant's written corrections, explanations, and testimony.

Request for Administrative Notice

I took administrative notice of facts concerning the People's Republic of China. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The Government's request and the supporting background documents are marked as HE 2. Administrative or official notice is the appropriate type of notice used for administrative proceedings. (ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)) Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or derived from government reports. (Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006)) A summary of the general facts noticed are included below.

The People's Republic of China is the most aggressive collector of U.S. economic, intelligence, and defense information and technology. China's intelligence services, private companies, and other entities frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate or governmental networks, to illegally obtain sensitive or classified information.

The United States faces a large and growing threat to its national security from Chinese intelligence collection operations. These operations have risen significantly over

the past 15 years. Among the most serious threats are China's efforts at cyber and human infiltration of U.S. national security organizations. China uses a variety of methods to acquire foreign military and dual-use technologies, including cyber activity and exploitation of access of Chinese nationals - such as students or researchers – acting as procurement agents or intermediaries. The threat from Chinese intelligence operations also extends overseas, including a growing technical collection capability to monitor deployed U.S. military forces, and attempts to infiltrate defense entities in the U.S. and partner countries.

The Chinese government has conducted large-scale, professional, cyber espionage against the United States and compromised a range of U.S. networks. Additionally, China's communist government is an authoritarian state that represses and coerces organizations and individuals involved in civil and political rights advocacy, ethnic minorities, and law firms representing individuals involved in sensitive cases. China also has a well-known history of significant civil rights abuses against ethnic and religious minorities. The government is responsible for arbitrary or unlawful deprivation of life, forced disappearances, torture and coerced confessions of prisoners, arbitrary and illegal detention at unofficial holding facilities.

The U.S. Department of State has warned that U.S. citizens visiting or resident in China have been interrogated or detained for reasons said to be related to "state security," and U.S. citizens may be detained without access to U.S. consular services or information about their alleged crime. Also, U.S. citizens may be subject to "exit bans" used coercively by Chinese authorities to keep U.S. citizens in China for years. The government regularly violates the individual and human rights of its citizens, and surveils and monitors foreign visitors to China. Hotel rooms, meeting rooms, offices, cars, taxis, telephones, internet usage and fax machines may be monitored onsite or remotely, and personal possessions in hotel rooms, including computers, may be searched without knowledge or consent of the owner.

China does not recognize dual nationality. U.S.-Chinese citizens and U.S. citizens of Chinese heritage may be subject to additional scrutiny and harassment, and China may prevent the U.S. Embassy from providing consular services. Regardless of the travel documents used, dual nationals or those with an ethnic or historical tie to China may be considered by Chinese authorities to be Chinese citizens and can be denied access to U.S. consular representatives if detained. Chinese authorities generally consider a child born in China to at least one Chinese parent, to be a Chinese citizen, even if the child was issued a U.S. passport at the time of birth.

Findings of Fact

Applicant is a 44-year-old mechanic with a pending employment offer with a defense contractor. He has been employed as a mechanic for another company since 2015, and has a history of civilian jobs overseas for U.S. defense contractors in Iraq, Afghanistan, Kuwait, Syria, and Germany. Applicant was born in South Korea and adopted by U.S. citizens in 1980 when he was a child. He naturalized as a U.S. citizen in

1984. He did not graduate from high school, but received a general education diploma (GED) in 1997. He married a U.S. military member in 2000 and worked as a contractor in Germany during his spouse's assignment there. They divorced in 2009, and he has two children from that marriage.

Applicant remarried in October 2010, to a Chinese citizen while he was living in China. They returned to the United States in February 2014, when his spouse became a permanent resident of the United States. His spouse naturalized as a U.S. citizen in March 2018. They have three children, all U.S. citizens. Applicant has never served in the military, but he reported that as a civilian contractor, he held a DOD security clearance in or about June 2009, and an interim clearance in 2015 that has been withdrawn.

The SOR alleges under Guideline B that Applicant's spouse is a citizen of China, and his mother-in-law is a citizen and resident of China. (SOR ¶¶ 1.a-b)

Under Guideline E, the SOR alleges Applicant failed to disclose on a 2015 SCA, three jobs held from 2014 to 2015, and being fired from a job in August 2015. (SOR ¶¶ 2.a-d) Additionally, the SOR alleges Applicant failed to disclose on the 2015 SCA that he was charged with possession and distribution of marijuana at a U.S. military base in 2002 (SOR ¶ 2.e); charged with driving while intoxicated (DWI) in 2004 and 2007 while living in Germany (SOR ¶¶ 2.f-g); failing to report being delinquent in child-support obligations (SOR ¶ 2.h), cross-alleged in SOR ¶ 3.c; and failing to report delinquent debts (SOR ¶ 2.i), cross-alleged in SOR ¶¶ 3.a-c, including child-support obligations.

The SOR also alleges under Guideline E that Applicant failed to disclose on his 2009 SCA the 2002 charge of distribution and possession of marijuana at a U.S. military installation, and the 2004 and 2007 alcohol-related charges while in Germany (SOR ¶¶ 2.j-l); and failing to disclose intervention by law enforcement because of his use of alcohol, and a referral to alcohol counseling or treatment from the 2004 DWI incident (SOR ¶¶ 2.m).

Finally, the SOR alleges under Guideline F a delinquent medical collection account for \$1,400; a charged-off credit account for \$4,884; and a delinquent child-support account for approximately \$19,278 (SOR ¶¶ 3.a-c).

Generally, Applicant admitted the SOR allegations, but provided explanations and clarifications with his Answers. He generally responded that his failure to report incidents in his SCAs resulted from his lack of formal education and he is not computer savvy. He claimed that he did not pay attention to the questions and received inadequate assistance when completing the SCAs. Additionally, Applicant admitted the allegations listed as amended SOR ¶¶ 2.g and 2.i. in his answer to the amended SOR.

Applicant was arrested three times, two involving alcohol and one involving drugs. In his 2009 and 2015 SCAs, he reported that he has never been charged with an offense involving alcohol or drugs. Applicant discussed these incidents in his interview with a government investigator. He provided corrections, updates, or explanations to areas of

the interview summary that he believed needed clarification. These incidents are discussed in further detail below.

In 2002, Applicant was arrested at a U.S. military installation for possession and distribution of marijuana. In testimony, he claimed he used marijuana once per day for two weeks to reduce pain from a 2001 hernia surgery. He smoked it in the on-post quarters or on his back porch where he and his spouse lived, and he stored it in his kitchen out of view of his spouse. He claimed that she never cooked, so she did not discover it in the kitchen. The military police were dispatched to Applicant's home because of a noise complaint. Applicant claimed alternatively that he was using it on his back porch and on his couch. During the interaction with military police, Applicant admitted possession of marijuana. He was apprehended and questioned, and he provided a sworn statement. Law enforcement records show that Applicant was found in possession of 130.6 grams of marijuana. The police investigation concluded there was probable cause to believe that Applicant distributed marijuana by giving a bag containing approximately 4.3 grams to another person, based on admissions by the other person. Applicant provided a sworn statement admitting to possessing and distributing marijuana. The report notes the case was referred to the area Special Assistant U.S. Attorney (SAUSA), who believed that there was sufficient evidence to prosecute Applicant. The record is devoid of additional information with regard to resulting actions by the SAUSA or installation authorities.

In an interview with a government investigator, Applicant acknowledged that he was charged with illegal drug usage. He noted in his interview that military police were called to his home because of a noise complaint by neighbors, and that they wrote an incident report and departed the home. In testimony, he stated that the police were called because Applicant's neighbor reported marijuana use. He also first claimed that he was "not arrested, just questioned at another location." He later admitted that he was arrested and transported to the military police station where he provided a statement. (Tr. at 45, 87)

Applicant stated the charge was dropped because he did not have to appear before any authority. When asked in his 2009 and 2015 SCAs whether he was "EVER charged with an offense involving drugs," he replied "no." He followed this answer with a series of inconsistent and contradictory statements. In his clearance interview, he claimed he did not report it on his 2009 and 2015 SCAs because he forgot about it after the charge was dropped, that it occurred more than 10 years ago, and he simply did not care (GE 10). He stated in response to interrogatories, that the SCA required him to report only drug usage in the past seven years, and that he did care.

Applicant was arrested in Germany for driving while intoxicated (DWI) in 2004 after he was stopped by German police and failed a breathalyzer test. He was turned over to the U.S. military police, and released to his spouse and her military command. In 2007, Applicant was again arrested in Germany for driving with a blood alcohol content of .067 after drinking at a club and driving. His car was impounded, and he was released to his spouse and her military command. He stated to the investigator that he was required to attend the Army Substance Abuse Program (ASAP) as a result of one of his arrests, and

he said he attended more than one session. However, in contradictory testimony, Applicant denied ever attending ASAP or any substance abuse evaluation or counseling.

In response to questions on his 2009 and 2015 SCAs whether he has “EVER been charged with an offense involving alcohol or drugs,” he responded “no.” He followed this with inconsistent and contradictory statements. In his interview with a government investigator, he initially denied that he had any prior alcohol-related arrests. When reminded by the investigator of the need for candor, he admitted the two incidents in Germany. In response to questions on why he had not listed them on his SCAs, he stated he did not read the SCA instructions well, but he was adamant that he only needed to report alcohol-related incidents that occurred within seven years. In his response to interrogatories, he acknowledged that he should have read the SCA instructions better, but thought the question pertained to a seven-year period. He also said the incident occurred a long time ago and when he was younger and did not think things through. However, in testimony, he claimed that he did not report the first alcohol-related arrest because he did not think it was an arrest since he did not go to jail, and he failed to report the second arrest because he forgot.

Applicant worked for a government contractor in Iraq for about eight months in 2008 before resigning, and in Afghanistan from approximately January 2009 until August 2009. He stated that he met a Chinese national online in August 2009. He vacationed in China for two weeks in August, and met with her. He returned to China in September 2010, and stayed until February 2014. While in China, Applicant married in October 2010, traveled extensively around China, and their first child was born in China. Applicant also held two jobs in China teaching English to Chinese students from wealthy families, from 2010 to 2014. He returned to the United States in 2014 with his Chinese-speaking spouse, and his first-born child. His spouse did not speak English, except for what he taught her.

Applicant completed an SCA on October 6, 2015. In it, he reported that his mother-in-law is a Chinese citizen, living in China, and he and his spouse had daily contact with her via the Internet. He reported that his mother-in-law was retired, and her husband was deceased. In testimony, Applicant noted that his mother-in-law never worked in China, and now lives with him as a U.S. permanent resident. She owns an apartment in China that she is trying to sell. In Applicant’s interview with a government investigator in November 2015, he stated that he believed his mother-in-law previously worked as a bus driver. Applicant noted that he does not speak Chinese and his mother-in-law does not speak English, so he has had no verbal or written contact with her even when he lived in China (GE 10).

In his 2015 SCA, Applicant reported that he and his spouse had no foreign contacts in the previous seven years. However, he testified that his spouse has grandparents, aunts, uncles, and cousins in China to whom his spouse communicates with about every two weeks through a phone application. Applicant’s spouse sends items to China that a cousin purchases about twice per year.

Applicant's spouse testified, and stated that she returned to China in July 2014 and stayed for three months while her mother helped her with her pregnancy. Her mother came to the United States in 2015 and stayed for six months. Her mother then took their second child back to China for one year when the girl was a year old. At another time, she took another child, at two years old, to China and stayed for 11 months. Her mother returned to the United States in 2016 and applied for permanent resident status in 2018. She stated that her mother retired from selling bus tickets in China, and her father was a police officer who died of cancer at 53 years old. Applicant's spouse went to university in Cyprus from 2004 to 2006 for a degree in tourism before returning home to China. After marrying and coming to the United States with Applicant, she naturalized as a U.S. citizen in March 2018. She stated that her Chinese passport was cancelled. She attributed her excellent command of the English language to her spouse, who was her primary source of instruction.

Applicant failed to report three jobs on his 2015 SCA, including a position teaching English to Chinese high-school students in the United States, a position at a car dealership, and a position as a crane inspector. In addition, he failed to report that he was fired from the crane operator job. These jobs are described below.

From August 2014 to June 2015, after returning to the United States from China, Applicant taught English to Chinese high-school students residing in the United States. He tutored, supervised, and transported the Chinese students to and from school, and lived with them in a home provided by a company that provides these services to Chinese nationals in the U.S. He described the job as mostly "babysitting" and that he did not like it. Applicant did not list this employment on his 2015 SCA. In a summary of Applicant's interview, he stated that he intentionally did not list the job because it had nothing to do with military contracts and he "just did not want to list it" (GE 10). In his response to interrogatories, he stated that he did not list the job because it was not relevant since it had nothing to do with military contracts and that he was paid as an independent contractor. Applicant's former employer reported that Applicant left the job voluntarily but the employment was not entirely favorable. His supervisor noted that Applicant was "not well educated" to be an English teacher, but he worked hard and was responsible (GE 5).

Two other jobs were also not disclosed on his SCA, including a three-month position at a car dealership, and a three-month position as a crane inspector. He was fired from this job due to a safety violation (GE 6). In a summary of Applicant's government interview, he stated that he did not disclose the crane inspector job and subsequent firing because he "hoped [he] would get away with it" and not get caught. In his response to interrogatories, he claimed that he was upset and embarrassed about the situation because it was really an episode of racial discrimination against him, rather than a safety violation, and that listing temporary positions, less than six months, were not relevant because they had nothing to do with military contracts (GE 10). In testimony, he claimed he did not report the missing jobs because he was not at them long enough to list them, and he did not list being fired from the crane inspector job because of false statements about him. He described the jobs as "stepping-stone" jobs that he believed did not have

to be listed on his SCA when held for less than six months. Of note, in contrast to his testimony and interrogatory response, he did list a five-month teacher job in China and a five-month mechanics job on his 2015 SCA (GE 1).

Applicant was delinquent on three debts, including child-support obligations that he did not report on his 2015 SCA. A medical debt for \$1,400 was incurred in 2014 and he testified was paid in 2015 (SOR ¶ 3.a). Rather, documentation submitted with his Answer to the SOR show that it was paid in 2017.

A credit card debt was charged off for \$4,884 (SOR ¶ 3.b) after Applicant “forgot to pay.” He first claimed it was paid off in 2015, but later testified that it was not paid until 2016. Rather, documentation submitted with his Answer to the SOR show that it was paid in 2017.

A debt on a child-support account for \$19,278 was past due (SOR ¶ 3.c). Applicant stopped paying his child support in 2011 while living in China, and stated to a government investigator that he did not pay the court-ordered support because he was angry at his former spouse. He first testified that he caught up on the arrearage in 2015, but later admitted that his pay was garnished in 2014 or 2015, but his employers did not act on the garnishment order until 2017. As of September 2015, Applicant owed \$19,112, and as of September 2016, he owed \$3,402. Per his Answer to the SOR, his arrearage was paid off by 2017. Applicant did not report his garnishment and the child-support debt on his 2015 SCA (SOR ¶ 2.h). In addition, he also failed to report the other listed delinquent debts (SOR ¶ 2.i). He testified that he failed to report the arrearage because he did not think about it.

Applicant submitted several letters of support, family photos, and certificates of training and performance. His co-workers, supervisors, and friends acknowledge his performance, loyalty, and excellent work ethic. I found Applicant to be less than forthcoming in testimony, and he often gave conflicting accounts.

Law and Policies

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

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An

administrative judge must consider a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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

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

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

Analysis

Guideline E: Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case, and I considered all of them. The following disqualifying condition are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

The findings of fact enumerate numerous incidents of falsification and failure to disclose required information, which raise serious questions of Applicant's judgment, honesty, and reliability. His failure to truthfully, fully, and consistently report his background and activities to the Government as required, raise unresolved questions about his conduct.

Applicant also failed to disclose two other positions on his SCA, including one involving an involuntary termination; two alcohol-related criminal incidents in a foreign country and a referral to alcohol counseling; a drug-related incident involving possession and distribution of marijuana on a U.S. military installation; and financial delinquencies including a substantial child-support arrearage and garnishment order.

These omissions display a history of poor decisions, qualities of untrustworthiness, and a lack of candor that implicates disqualifying condition AG ¶ 16 (a).

Guideline E includes conditions that could mitigate security concerns arising from personal conduct. I considered all of the mitigating conditions under AG ¶ 17 and found none to be fully applicable.

Applicant omitted substantial information from his 2009 and 2015 SCAs. His statements to a government investigator left several areas which required Applicant to correct or explain in order to mitigate the concerns they raised. I find Applicant's claims of mistake, forgetfulness, or unintentional omissions to be untruthful in themselves. Applicant intentionally omitted personally damaging information from his SCAs, and left it to the government to discover his past behavior without benefit of his voluntary disclosures. His reaction to the Government investigator's inquiries resulted in attempts to minimize the omissions or conduct. His hearing testimony compounded inconsistencies from earlier testimony, past responses to interrogatories, the interview summary, and SCA answers.

Additionally, based on his demonstrated lack of candor, I am not convinced that Applicant's background has been fully disclosed or adequately explained, to include the depth and circumstances of his association with China and its citizens. These remaining questions, individually and taken together with Applicant's failure to voluntarily disclose relevant and significant information to the Government, are additional reasons to cause me to question his overall truthfulness and trustworthiness with national security information.

Guideline B: Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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

The guideline notes several conditions that could raise security concerns under AG ¶ 7, and I considered all of them. The following are potentially applicable in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (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; and
- (e) shared 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.

Applicant's spouse is now a U.S. citizen. However, they both retain a close relationship with his mother-in-law, a Chinese citizen living with them. China is an aggressive collector of intelligence and defense information and a country known to exploit U.S. citizens of Chinese dissent, Chinese citizens living abroad, and U.S. citizens with connections to China. Applicant's associations with China, including through his spouse and mother-in-law, create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

The conditions and concerns raised above and detailed in the findings of fact, create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and a potential conflict of interest. AG ¶¶ 7(a), (b), and (e) apply.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8, and I have considered all of them. The following are potentially applicable:

(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.; and

(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.

No mitigation condition fully applies. Applicant's past and current close contact with China and Chinese citizens is substantial and continuing. His foreign relationships, including those through his spouse and mother-in-law, are significant. Additionally, he has turned at least two of his children over to his mother-in-law to return to China to live without him or his spouse, for extended periods of time. Applicant lives and works primarily in overseas conflict areas. He also lived and worked in China for four-and-a-half years. Applicant's family now lives in the United States, along with his mother-in-law who remains a Chinese citizen but who lives with him. Applicant's ties to China continue to create an unacceptable risk to national security.

Guideline F: Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant incurred over \$25,000 in delinquent debts, including child-support arrearages because he did not pay while in China and, alternatively because of a conflict with his ex-spouse. The record evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20, and I considered all of them. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant failed to disclose his delinquent debts on his 2015 SCA, and irresponsibly allowed the debts to accrue, especially his past-due child-support obligations. He resolved the medical and credit card debts later than he first reported, and was able to make headway toward his child-support arrearage through an involuntary garnishment of his pay. The debts have been resolved or are being satisfactorily resolved, therefore AG ¶ 20(d) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E, B, and F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's work for U.S. contractors overseas in conflict areas, and his letters of support, along with his awards, training, and certificates. I acknowledge that marrying a foreign national is not, in and of itself, a disqualifying event. I also recognize his spouse's efforts to become a U.S. citizen, and her desire to give her children a good education and quality life in the United States.

I am concerned with Applicant's and his spouse's previously undisclosed communications and associations with Chinese relatives living in China. In addition, his mother-in-law, who is a Chinese citizen and owns property in China, often travels between the United States and China, including taking Applicant's children unaccompanied by their parents, back to China for extended periods of time. China does not recognize dual nationality and dual nationals or those with an ethnic or historical tie to China may be considered by Chinese authorities to be Chinese citizens. As Applicant's first child was born in China, it should be noted that China generally considers a child born in China to at least one Chinese parent to be a Chinese citizen, even if the child is also a U.S. citizen. Applicant's spouse is a recent U.S. citizen, has returned to China after residing in the United States, and she and her children maintain a continuing association with family in China.

Applicant's four-and-a-half years in China, ties to Chinese citizens, and work history in China and for Chinese high school students in the United States, is concerning. Taken together with his failure to disclose relevant information in his SCAs, conduct while living overseas and on a U.S. military post, irresponsible financial decisions, and inconsistent statements continue to raise questions about his overall honesty, reliability, and judgment.

Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance based on foreign influence and personal conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

PARAGRAPH 1, GUIDELINE B: Subparagraphs 1.a - 1.b:	AGAINST APPLICANT Against Applicant
PARAGRAPH 2, GUIDELINE E: Subparagraphs 2.a – 2.m:	AGAINST APPLICANT Against Applicant
PARAGRAPH 3, GUIDELINE F: Subparagraphs 3.a – 3.c:	FOR APPLICANT For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge