



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-00797
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by a longstanding credit card debt he deliberately incurred with no intention of repaying. Also, security concerns about possible foreign influence owing to his family ties to the Republic of Korea remain unresolved. Applicant’s request for a security clearance is denied.

Statement of the Case

On January 4, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain or renew a security clearance required for his job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

On April 28, 2014, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline B (Foreign Influence) and Guideline F (Financial Considerations).² Applicant timely responded to the SOR and requested a decision without a hearing. On November 21, 2014, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on December 31, 2014. The record closed on February 10, 2015, when Department Counsel waived objections to admission of Applicant's timely submission of information in response to the FORM.⁴ The case was assigned to me on March 16, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes a total of \$35,267 for a delinquent mortgage debt (SOR 1.a) and a delinquent credit card account (SOR 1.b). Applicant denies responsibility for the SOR 1.a debt; and he admitted only that the SOR 1.b debt was charged off as a business loss. Under Guideline B, the Government alleged that Applicant's wife (SOR 2.a) and mother-in-law (SOR 2.b) are citizens of and reside in the Republic of Korea (ROK). Applicant admitted both allegations. (Items 1 and 4). In addition to his admissions, I make the following findings of fact.

Applicant is a 52-year-old employee of a defense contractor. He has worked for his current employer since May 2008, and he has worked as a defense contractor since 2004, when he retired from active duty in the U.S. Air Force after 24 years. His last duty assignment was in the ROK and began in 2002. He has remained there continuously for his civilian work. (FORM, Items 5 and 6; Response to FORM)

Applicant was married to his first wife, a citizen of the ROK, from 1984 until 2009, when their divorce was finalized. Applicant and his ex-wife separated in 2006. She was a permanent resident alien living with him in the United States, where they raised two children, who are now independent adults. His ex-wife passed away in August 2010. As required by their divorce decree, Applicant transferred their marital residence to his ex-wife by a quit claim deed in November 2009. The court ordered that she be responsible for all mortgage payments. Although title to the house was transferred, no documentation of any changes to the mortgage was produced by Applicant. The mortgage was foreclosed after they divorced, as shown by a notice Applicant received in November 2012 regarding a settlement between Applicant's state of residence and his mortgage lender. That notice was sent to Applicant because his name was still listed on the mortgage, and he has made a claim for his share of the funds from that settlement. (FORM, Item 4)

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the Government's case.

⁴ See Directive, Enclosure 3, Section E3.1.7.

When Applicant separated from his ex-wife, he obtained a credit card in her name and ran up a balance of more than \$20,000. He has never paid or otherwise resolved that debt, which is alleged at SOR 1.b.⁵ In a personal subject interview in October 2013, he told an investigator he had no intention of repaying the debt, which is alleged at SOR 1.b, even though he is able to do so. Both of the debts alleged in the SOR appeared on Applicant's credit report in January 2013; however, credit reports obtained by the Government in February and November 2014 do not list the debts. While the mortgage was resolved through foreclosure, the credit card was not paid and likely was removed from Applicant's credit history after the seven-year statute of limitations imposed by the Fair Credit Reporting Act. Applicant has not otherwise shown that he paid this debt. (FORM, Items 5 - 9)

Applicant and his current wife met in January 2009 and were married in December 2009 in the ROK. She is a citizen of the ROK who has always resided there. She and Applicant have lived together in the ROK since they were married. Applicant averred in his response to the FORM that he has recently applied to the U.S. Department of State for a visa for his wife so she can travel with him to the United States at some future date. However, she has never had any citizenship or other ties to the United States. Applicant's wife's mother also is a citizen of and lives in the ROK. Applicant sees her periodically when he and his wife visit her at her home about 200 miles away. Applicant's wife and mother-in-law do not have any official ties to the ROK government. (FORM, Items 4 - 6; Applicant's Response to FORM)

In addition to the documentary evidence supporting SOR allegations 2.a and 2.b, Department Counsel asked that I take administrative notice of information about the Republic of Korea. (FORM at 4 - 8) Specifically, in support of that request, Department Counsel referred to 13 documents identified as exhibits I - XIII. (FORM at 6 - 8) Based on that information, I take notice of the following facts:

The political, economic, diplomatic, and military interests of the ROK government are generally aligned with those of the United States. The two countries have strong ties dating to the establishment of diplomatic ties in 1949 and the armistice that ended the Korean War in 1953. Much of their alliance is focused on a mutual defense treaty regarding security against the threat of invasion by the Communist government of the Democratic Peoples Republic of (North) Korea (DPRK). The ROK government is modeled after western democratic countries. It is comprised of a representative legislature elected from open, multi-party voting in nine provinces; a chief of state and prime minister head the executive branch; and an independent judiciary rules on matters of Korean law derived from western and traditional Chinese ideologies. The ROK has a good human rights record, but its interpretation of national security laws and enforcement thereof has raised questions about aggressive detention, arrest, and restrictions on citizens' rights of free speech and assembly.

⁵ The alleged balance due is \$17,613, but credit reports, along with Applicant's Answer and a summary of his personal subject interview show the actual balance due as \$21,639.

The ROK is one of the United States' largest trading partners. Its economy has grown significantly in the past several decades, especially in the automotive and electronics sectors. One aspect of that growth has been an aggressive approach by the ROK in obtaining foreign technological, economic, and industrial information. The ROK is known to target U.S. sources of information in the information technology (IT) systems, aerospace, intelligence, and nuclear industries. ROK citizens have engaged in numerous criminal acts of economic espionage against the U.S., and attempts to circumvent U.S. restrictions on the export of sensitive technology.

Applicant served with distinction in the United States Air Force for more than 23 years. His performance evaluations for most of his career were superior, and he received numerous personal and command awards for his work in civil engineering and other logistics missions. Applicant retired with an honorable discharge as a master sergeant (paygrade E-7). His current work in the defense industry focuses on chemical, biological, radiological and nuclear safety work in the ROK. Applicant also deployed to Iraq as a civilian contractor between July and December 2007. He has completed numerous technical and military training requirements over the past 20 years. Applicant also has held a security clearance for most of his military and civilian careers. (FORM, Items 5 and 6; Response to FORM)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

⁶ Directive. 6.3.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁸ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁹

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.¹⁰ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.¹¹

Analysis

Financial Considerations

Available information is sufficient to support allegations that Applicant owes in excess of \$35,000 for a delinquent mortgage and a delinquent credit card. This information raises a security concern addressed, in relevant part, at AG ¶ 18 as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*). Unresolved indebtedness raises the possibility that a person might resort to illegal acts involving sensitive information in their charge to generate funds. More broadly, it also shows a potential defect in one's judgment and

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ Directive, E3.1.14.

⁹ Directive, E3.1.15.

¹⁰ See *Egan*, 484 U.S. at 528, 531.

¹¹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

reliability that may translate to an inability or unwillingness to properly protect sensitive information. In this case, Applicant deliberately incurred more than \$17,000 in delinquent credit card debt, alleged at SOR 1.b, that he had no intention of repaying. That debt remains unresolved eight years later even though Applicant admits he is able to repay the account.

As to the delinquent mortgage alleged at SOR 1.a, there is conflicting information about the issue of Applicant's responsibility to pay this debt. However, it appears more likely than not that this debt is no longer his responsibility, as the property was foreclosed and was resold in 2012. Further, there is no information showing Applicant is liable for any remainder after resale of the house. Nonetheless, the nature of the unresolved credit card account continues to support a security concern under Guideline F.

I have also considered the following pertinent AG 20 mitigating conditions:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of these factors apply. The debt at SOR 1.b is current and ongoing, as it has been delinquent for more than eight years. It is still Applicant's responsibility, despite the fact the account is no longer on his credit report. The circumstances causing the debt were not beyond his control. Applicant deliberately incurred the delinquency and still refuses to pay it despite his ability to do so. Concurrently, he does not dispute the debt but has not made any attempt, in good-faith or otherwise, to pay it. While his current credit is good on paper, Applicant's refusal to resolve his debt undermines confidence in his judgment and reliability. He has not mitigated the security concern raised by these facts.

Foreign Preference

Applicant's wife and mother-in-law are citizens and residents of the Republic of Korea. By definition, these are persons to whom Applicant is closely bound by affection. Applicant lives with his Korean wife in South Korea, where he works for a defense contractor. His contact with his mother-in-law is occasional. But that fact does not lessen the strength of his ties to her, which is derived from his close affection for his wife. Because the ROK is known to aggressively pursue economic and technology information from the United States, these relationships reasonably raise a heightened risk of foreign influence. The resulting security concern is articulated at AG ¶ 6, as follows:

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.

More specifically, the record requires application of the following disqualifying conditions under AG ¶ 7:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

I have also considered the following pertinent AG ¶ 8 mitigating conditions:

- (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; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

The Government met its burden of producing information that supported application of the disqualifying conditions cited above. The burden to mitigate the Government's security concerns then fell to Applicant. The information he produced does not support application of any of the pertinent mitigating conditions under this guideline. The burden of establishing any of the mitigating conditions herein is never to be placed on the Government. Here, Applicant has close and continuing ties to his wife, a foreign national, while living in her native country. He also has contact with his wife's mother, who is presumed, by virtue of his marital relationship, to be a tie of affection. Applicant did not present information that counterbalances the security concern about these relationships. Neither Applicant's wife or her mother has any connections in the United States. Only recently has Applicant acted to obtain a change in his wife's status that might establish such connections.

Applicant's current marital status and his maintenance of a security clearance is distinguishable from his former marriage to a foreign national. Applicant and his first wife lived in the United States. Ostensibly, she established ties and loyalties within their community that could be relied upon in case conflicting interests arose. Here, however, Applicant and his current wife have never lived together anywhere but the ROK. Aside from his current employment, neither person appears to have any ties to the United States. Applicant did not show, for example, that he owns property or has other financial interests in the United States, or that he intends to return to the United States to live. Combined with the complete absence of U.S. interests for his wife and mother-in-law, this record presents an unacceptable security risk that has not been mitigated by the Applicant's information.

On balance, Applicant has not mitigated the security concerns about his unpaid debt and his ties to foreign citizens. In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines B and F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). In particular, I note the significance and quality of Applicant's military service. However, the information produced through his most recent background investigation about his current personal circumstances and his financial decisions raises doubts about his suitability for continued access to classified information. Applicant did not sufficiently address those doubts. Because the Government's compelling interest in protecting classified information is the focal point in these adjudications, remaining doubts about suitability for access to such information must be resolved against the Applicant.

Formal Findings

Formal findings 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 F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge