

DATE: March 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05694

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Ronald Bruce Cohen, Personal Representative

SYNOPSIS

Applicant's foreign contacts, specifically his wife, siblings, and girlfriend who are citizens of the Republic of South Korea, do not raise a security concern. Applicant's questionable sexual behavior has also been mitigated. Clearance is granted.

STATEMENT OF THE CASE

On June 9, 2003, 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 9, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on December 23, 2003. A notice of hearing was issued on January 22, 2004, scheduling the hearing for February 18, 2004. At the hearing the Government presented three exhibits. The Applicant presented one exhibit and called one witness. He also testified on his own behalf. The official transcript (Tr.) was received on March 5, 2003.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 60 years of age and is employed as an Electronics Technician for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible

for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in 1943, in Pusan City, South Korea. He was raised there, and later joined the South Korean Army. He then went to work on automotive engine systems. At some point he learned that a company in the United States was in need of mechanical technicians, and in 1973, he was approved to immigrate to the United States. He soon joined the United States Army. After serving honorably in the United States Army, he went to school to study electronics. The Applicant eventually gained employment with a defense contractor that he has been employed with for the past twenty-two years.

In 1978, the Applicant and his wife married. The Applicant's wife is a citizen of the Republic of South Korea. She resides in the United States with the Applicant, and is a permanent resident alien. She would like to become a United States citizen. (Tr. p. 40). The Applicant's wife is five years older than him, in poor health, has nervous problems, bad vision, and is not physically able to pass the examination required to become a citizen. She has no relatives in Korea and no desire to ever return. The Applicant and his wife have no children together. She had two children from a previous marriage. Her son committed suicide last year. The Applicant has two brothers and a sister that are citizens and residents of the Republic of South Korea. Since coming to the United States in 1973, he has had absolutely no contact with them. He is not sure if they are alive or dead. (Tr. pp. 45-46).

Paragraph 2 (Guideline D- Sexual Behavior). The Government alleges in this paragraph that the Applicant is ineligible for clearance because his sexual behavior involved a criminal offense, is indicative of a personality or emotional disorder, subjects the individual to undue influence or coercion, or reflects lack of judgement or discretion.

In 1992, the Applicant met a woman at church that he fell in love with. Their romantic relationship has continued since then. The Applicant's girlfriend is a citizen and resident of the Republic of South Korea. She is married, but separated from her husband. She is a housewife and has three children. The Applicant has sent gifts of money in birthday or New Years cards to her children. (Tr. p. 59-61). On one occasion, he sent a wire bank transfer of \$100.00. The Applicant has traveled to Korea to see his girlfriend on at least five occasions. The last time was in September 2002. The Applicant does not know if her husband works for the Korean government.

Over the years, several different times, the Applicant tried to divorce his wife in order to marry his girlfriend. His wife did not want a divorce, and indicated that she wanted a cash settlement in the amount of \$200,000.00 in exchange. As time passed, the Applicant felt sorry for his wife because of her illnesses and her total dependence on the Applicant. More recently, he has changed his mind and decided not to divorce his wife. (Tr. p. 52). The Applicant states that he is committed to taking care of his wife and plans to remain in the marriage.

The Applicant states that his relationship with his girlfriend in Korea has now dissolved and is over for good. (Tr. pp. 56-57 and 62). The Applicant had tried to telephone her about a week before the hearing. The Applicant explained that she would not speak to him. (Tr. p. 58).

The Applicant's supervisor, whom the Applicant has worked for during the past twelve years, testified that the Applicant is a person of integrity and great moral strength. He is also a hard worker and very dependable. The witness had detailed knowledge of the Applicant's relationship with his girlfriend in Korea, his visits to Korea to see her, and the fact that the Applicant has decided to no longer pursue the relationship. (Tr. pp. 19-29).

Letters of recommendation submitted on the Applicant's behalf indicate that his United States military career was exemplary. (See, Applicant's Exhibit A).

A letter written by the Applicant's supervisor and cosigned by his second level supervisor further attests to the Applicant's responsible nature. (See, Applicant's Answer to the SOR).

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:

Foreign Influence

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to 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.

Condition that could raise a security concern:

1. 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.

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between the loyalty of the person(s) involved and the United States.

Condition that could raise a security concern:

3. Sexual behavior that causes an individual to be vulnerable to coercion, exploitation or duress.

Condition that could mitigate security concerns:

4. The behavior no longer serves as a basis for coercion, exploitation, or duress.

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 B (foreign influence) and Guideline D (Sexual Behavior) 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 his 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 has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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 in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts and questionable sexual behavior have a direct and negative impact on his suitability for access to classified information.

With respect to Guideline B, the evidence establishes that the Applicant is not vulnerable to foreign influence. The Applicant's wife, siblings, and girlfriend, although citizens of the Republic of Korea do not pose a security risk. None of these individuals are agents of or employed with the Korean government. The Applicant has discontinued his relationship with his girlfriend in Korea. He has no contact with his siblings in Korea. His wife is a permanent resident of the United States, who would become a citizen if she could. The Applicant's foreign contacts are minimal, or no longer existent, and are not of a nature to influence his security worthiness. Mitigating condition 1 applies. Therefore, the Applicant has met his burden of demonstrating that his foreign ties do not raise a security concern, and Guideline B is found for the Applicant.

Clearly, the Applicant used poor judgment by getting romantically involved with a woman when he was a married man. At this point in time, however, the Applicant's romantic relationship with his girlfriend in Korea is over. He no longer wishes to pursue it. His girlfriend is no longer interested in him. He is now committed to his wife. His wife and his supervisor both know about his past relationship with his girlfriend in Korea. There are no secrets. There never were. The Applicant cannot be subject to blackmail or coercion. Mitigating condition 4 applies. Accordingly, the Applicant has met his burden of demonstrating that his questionable sexual behavior does not raise a security concern, and Guideline D is also found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guidelines B and D of the adjudicative

guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and D.

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: For the Applicant.

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Paragraph 2: For the Applicant.

Subparagraph 1.a.: For the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge