

DATE: January 20, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16696

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of not meeting his financial obligations. He refuses to pay the debts because many of them will drop off his credit report in 2004. He argues that if he makes any payments it will reactivate those debts on his credit report for another seven years. Applicant's mother is a naturalized U.S. citizen who emigrated to the U.S. from South Korea. Applicant's stepfather is a scientist who is a permanent resident of the U.S., but is a citizen of South Korea and travels there often. Applicant failed to mitigate the financial considerations or foreign influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 29 August 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 29 September 2003 and elected to have a hearing before an administrative judge. The case was assigned to another administrative judge, but was transferred to me on 12 November 2003. On 11 December 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on 31 December 2003.

FINDINGS OF FACT

Applicant is a 27-year-old native-born U.S. citizen. Ex. 1 at 1. Applicant's mother was born in the Republic of Korea (South Korea), but is now a U.S. citizen and resides in the U.S. Ex. 1 at 5. She divorced Applicant's father and married a Korean-born permanent resident of the U.S. Ex. 1 at 7; Ex. 2 at 3. Applicant's stepfather is a citizen of South Korea. Although Applicant's stepfather is a professor at a U.S. university, he often travels to South Korea, where he is a well-known scientist. Tr. 23-24.

Applicant served on active duty with the U.S. Marines from 1994 until 1999. He had a secret clearance while he was with the Marines. Applicant married in 1998. Ex. 1 at 5. He has separated from his wife and is getting a divorce. While in the military, Applicant started to experience financial problems. The following chart summarizes the financial considerations allegations contained in the SOR and their current status.

¶	Nature and Amount	Status	Record
1.a.	Collection acct \$66	Paid	Tr. 25
1.b.	Collection acct \$51	Unpaid-no intent to pay	Tr. 26
1.c.	Charged off acct \$844	Unpaid-no intent to pay	Tr. 27
1.d.	Collection acct \$1,472	Unpaid-no intent to pay	Tr. 28
1.e.	Charged off acct \$611	Unpaid	Tr. 28-29
1.f.	Collection acct \$60	Unpaid-no intent to pay	Tr. 29-30
1.g.	Auto loan 30 days past due \$485	Paid, but 30 days late again	Tr. 30
1.h.	Credit Union \$150	Unpaid-no intent to pay	Tr. 30
1.i.	Charged off acct \$788	Unpaid-no intent to pay	Tr. 30-31
1.j.	Charged off acct \$25	Paid	Tr. 31

Despite these debts, Applicant purchased another vehicle; so he now has car payments of of \$485 and \$311 per month. Tr. 34.

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 occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that 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 disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

Applicant is an angry young man-angry at his mother for marrying his stepfather (Tr. 17, 22-25) and angry at the Government for even suggesting that he could be a security risk (Tr. 38-41).

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had a number of delinquent debts (§§ 1.a.-1.j.) and made little effort to resolve his debts despite his income exceeding his expenses by almost \$800 per month (§ 1.k.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations contained in the SOR ¶ 1. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). Applicant's total debt is not large, but his attitude about paying these debts is troubling. He understands that he still owes the money on charged off accounts that fall off his credit report. Nevertheless, he has adopted a strategy of not paying his bills so they will fall off his credit report. He won't make payments on these accounts because the debt is then "just going to sit on my credit report and I have to live another seven years with it." Tr. 26. His purchase of a second vehicle instead of using the money to pay off his debts is symptomatic of his disregard for his creditors. None of the mitigating conditions listed under the guideline apply to Applicant's case. I find against Applicant on all subparagraphs except 1.a. and 1.j. These subparagraphs allege minor debts Applicant paid.

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's mother is a dual citizen of the U.S. and the Democratic People's Republic of Korea (North Korea) (§ 2.a.) and his stepfather is a citizen of North Korea (§ 2.b.). A security risk may exist when members of an applicant's immediate family are not citizens of the U.S. or may be subject to duress. Directive ¶ E2.A2.1.1.

The Government failed to establish Applicant's mother and stepfather are citizens of North Korea. Applicant's mother is a citizen of the U.S. and his stepfather is a citizen of South Korea. Evidently the Government's allegations are based on Applicant's statements in his security clearance application (SCA). Ex. 1 at 6-7. Applicant thought South Korea was the People's Democratic Republic of Korea instead of the Republic of Korea. Nevertheless, Applicant's stepfather's citizenship and frequent travel to South Korea, sometimes with Applicant's mother, raises a security concern-an immediate family member (Applicant's mother) is sometimes present in a foreign country. *See* DC E2.A2.1.2.1. South Korea is placing a higher priority on collecting foreign high technology. Ex. 7. Applicant's mother's marriage to a South Korean scientist and her many travels to South Korea, places her, and thus Applicant, in a vulnerable position. Applicant has not demonstrated that his mother is not in a position to be exploited by a foreign power or that any other mitigating condition applies. I find against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

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 or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.