

DATE: January 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00081

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's wife and brother, along with several of his in-laws, are citizens of the People's Republic of China. He admits financial delinquencies and a bankruptcy in 1995 occasioned by gambling debts. Applicant falsified material facts about his financial liabilities on the security clearance application he completed and certified in April 2001. Applicant's close familial ties with citizens and residents of the People's Republic of China, his financial problems, and his lack of candor raise serious 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 September 30, 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 B (Foreign Influence) Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing October 20, 2003, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 18, 2003. The FORM contained documents identified as Items 1 through 10. By letter dated December 26, 2003, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant did not submit additional information or objections within that time period. On March 5, 2004, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains nine allegations of disqualifying conduct. Five allegations relate to conduct charged under Guideline B, Foreign Influence; three allegations relate to Guideline F, Financial Considerations; and one allegation relates to conduct charged under Guideline E, Personal Conduct. In his answer to the SOR, Applicant admitted the five Guideline B allegations. He admitted two of the Guideline F allegations and denied one. He denied the one Guideline E allegation. His admissions are incorporated as findings of fact.

Applicant is a 56-year-old embedded software engineer employed by a defense contractor. He has been married three times. His first and third wives are citizens of the People's Republic of China. His second wife, who was born in what is now the People's Republic of China, is a U.S. citizen. It does not appear from the record that Applicant has any children. Applicant reports his background was investigated in October 1985, and he was granted a security clearance.

Applicant's current wife is a citizen of the People's Republic of China and resides with him in the United States. Applicant's brother is a citizen and resident of the People's Republic of China. Applicant's parents-in-law and brother-in-law are citizens and residents of the People's Republic of China. Applicant has traveled for pleasure to the People's Republic of China at least four times since 1997.

Applicant has a history of gambling and subsequent financial difficulties. He filed for bankruptcy in 1995 when he found himself unable to pay his gambling debts. (Item 5, at 2) In April 1996, Applicant was released from all dischargeable debts under Chapter 7, Title 11 of the United States Code. (Item 10)

Applicant continues to gamble approximately every other week. His gambling losses average approximately \$800 per month.

Applicant admits responsibility for two delinquent accounts totaling approximately \$2,606. He admits these debts arose after his discharge in bankruptcy in 1996 and have accumulated since 2001. (Item 2, at 3.) In a response to interrogatories from DOHA, dated July 2003, Applicant stated he would pay off one of the accounts by the next month and the other would be paid off "later." (Item 7, at 8.)

Applicant completed and certified a security clearance application (SF-86) on April 23, 2001. Applicant answered "no" to Question 38 on the SF-86, which reads as follows: "Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "no" to question 38. He states he did not owe the debts identified in the SOR when he completed his security clearance application and thus his negative response was truthful. He provided a credit report summary dated September 11, 2001 showing that on June 1, 2001 a credit union had reported it had charged off a bad debt of his in the amount of \$5, 840.⁽³⁾ The credit report summary of September 11, 2001 does not list the two debts alleged at ¶¶ 2.a., 2.b., and 3.a. of the SOR. A credit report, dated September 23, 2002, submitted as Item 9 in the FORM shows Applicant held three separate accounts with the creditor identified in ¶ 2.a. of the SOR. One account, opened in November 1996, was reported as more than 120 days in arrears. The second account, opened in December 1996, was reported as open and more than 90 days in arrears. The third account, opened in February 2002, was reported as 60 or more days in arrears. The September 23, 2002 credit report shows Applicant held two separate accounts with the creditor identified in ¶ 2.b. of the SOR. The first of these accounts was opened in August 1999 and closed by the Applicant in September 2002, with an amount still owing. The second account was opened in March 2002. Both accounts were coded "paid as agreed." A credit report, dated June 4, 2003, submitted as Item 8 of the FORM, shows two of the accounts with the creditor identified in ¶ 2.a. of the SOR and one account with the creditor identified in ¶ 2.b. of the SOR listed as profit and loss writeoffs on his June 2003 credit report.

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

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's close familial and friendship ties with and obligations to citizens of the People's Republic of China (PRC) created the potential for foreign influence that could result in the compromise of classified information. The SOR alleged that Applicant's spouse is a citizen of the PRC and resides in the United States (¶ 1.a.); that his brother is a citizen and resident of the PRC (¶ 1.b.); that his parents-in-law and brother-in-law are citizens and residents of the PRC (¶¶ 1.c. and 1.d.); and that he traveled to the PRC at least four times since 1997 (¶1.e.)

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the PRC has historically acted in a hostile manner to U.S. security interests and often seeks to collect as much intelligence as possible from individuals of ethnic Chinese heritage. Because Chinese Americans comprise a significant proportion of those employed in defense-related industries, they can be identified by the PRC as possible targets for information gathering.

Applicant admits all allegations in the SOR which raise security concerns under Guideline B, subparagraphs E2.A2.1.2.1, E2.A2.1.2.2, and E2.A2.1.2.6. His third wife is a citizen of the PRC and resides with Applicant in the United States. His brother, parents-in-law, and brother-in-law are citizens of the PRC and reside in the PRC. Applicant has traveled to the PRC at least four times for personal reasons since 1997. He has a long-standing habit of gambling despite substantial monthly gambling losses. These facts and his conduct make him vulnerable to coercion, exploitation, or pressure by a foreign government.

The record indicates that mitigating condition ¶ E2.A2.1.3.1 applies only in part to the facts of Applicant's case. While the evidence does not establish that Applicant's wife, brother, parents-in-law, and brother-in-law are agents of a foreign power, they are citizens of a totalitarian state with interests antithetical to the United States and could be exploited by their government in a way that could force Applicant to choose between loyalty to them and the United States. Applicant's contacts with foreign citizens are frequent and familial, and thus mitigating conditions E2.A2.1.3.2 and E2.A2.1.3.3 do not apply to Applicant's relationships with his wife, his brother, his parents-in-law, and his brother-in-law.

Applicant was unable to put forward evidence that could mitigate the security concerns discussed herein and

demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, allegations in subparagraphs 1.a. through 1.e. under Guideline B of the SOR are concluded against the Applicant.

Guideline F - Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of gambling and not meeting his financial obligations, and this financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1., E2.A6.1.2.3., and E2.A6.1.2.5. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged Applicant had two delinquent accounts totaling approximately \$2600 (¶¶ 1.a. and 1.b.) which had accumulated since his discharge in bankruptcy in 1996. (¶ 1.c.) An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

In his response to the SOR, Applicant admitted owing the two debts since 2001 (Item 2, at 3) In response to DOHA's interrogatories, he admitted gambling debts of approximately \$800 per month (Item 7, at 4) and indicated he would pay off his two debts at some future and unspecified time. The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3, and E2.A6.1.2.5. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. Applicant's financial problems and delinquencies were not beyond his control, thus mitigating condition E2.A6.1.3.3 does not apply. Additionally, Applicant provided no evidence he had sought or received counseling for his financial problems or that he had initiated good faith efforts to timely resolve his indebtedness. Thus, neither mitigating condition E2.A6.1.3.4. nor E2.A6.1.3.6. applies to the facts of Applicant's case. Accordingly, the allegations in the SOR of financial delinquencies (subparagraphs 1.a. through 1.c.), are concluded against the Applicant.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his answers on his SF 86 to question 38 (¶ 3.a.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in SOR subparagraph 3.a., the Government has established its case. Applicant states the debts listed in SOR allegations 2.a. and 2.b. arose after he completed his security clearance application in 2001 and thus he could not have known about them at the time the security clearance application was completed. However, the record shows that Applicant opened multiple accounts with the creditors identified and referenced in ¶¶ 2.a., 2.b., and 3.a. of the SOR after his 1996 discharge in bankruptcy. In his response to DOHA interrogatories in July 2003, Applicant acknowledged the debts arising from his failure to timely pay those accounts and said he would repay them at some unspecified later date. Applicant's assertion that he did not intend to falsify his response to Question 38 is not credible in light of his awareness of his financial problems over a period of several years before he completed his security clearance application, his awareness that he held more than one account with each of the creditors identified in ¶ 3.a. of the SOR, his discharge in bankruptcy in 1996, and his creditors' many attempts to put him on notice of delinquent debts. The record establishes Applicant did not answer Question 38 completely and truthfully, and this raises a security concern under ¶ E2.A5.1.2.2 of Guideline E.

Mitigating condition E2.A5.1.3.1. does not apply to the facts of this case. The information withheld by Applicant is

pertinent to a determination of his judgment, trustworthiness, and reliability. Two other mitigating conditions under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. ¶ E2.A5.1.3.2. While Applicant supplied some of the correct information about his financial delinquencies when questioned by a special agent of the Defense Security Service in April 2002, his falsification was not an isolated incident and it was recent. Mitigating condition E2.A5.1.3.3. is also inapplicable, since Applicant did not make prompt good faith efforts to correct the falsification before being confronted with the facts. Accordingly, the allegations in subparagraph 3.a. of the SOR are concluded against the Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: 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.

Joan Caton Anthony

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.
3. The record shows this account was opened in 1991 and was discharged in 1996 in Applicant's Chapter 7 bankruptcy.