

KEYWORD: Foreign Influence; Financial

DIGEST: Applicant's wife and three stepchildren are citizens and residents of South Korea. Applicant has four bad debts or accounts placed for collections in excess of \$17,000. Applicant has mitigated the security concerns over his wife and stepchildren. However, the record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his unpaid debts. Clearance is denied.

CASENO: 04-10088.h1

DATE: 02/15/2006

DATE: February 15, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10088

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's wife and three stepchildren are citizens and residents of South Korea. Applicant has four bad debts or accounts placed for collections in excess of \$17,000. Applicant has mitigated the security concerns over his wife and stepchildren. However, the record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his unpaid debts. Clearance is denied.

STATEMENT OF THE CASE

On June 23, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 22, 2005, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On September 28, 2005, the Applicant received a complete copy of the government's file of relevant material (FORM) dated September 7, 2005. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On October 28, 2005, the Applicant's response to the FORM was due. No response has been received. On November 7, 2005, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security significant Foreign Influence and Financial Considerations. Applicant admits he has been married for 22 years, since September 1983, his stepchildren do not know what kind of work he does, and admits being delinquent on two debts. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

Applicant is 51 years old, has worked for a defense contractor as a system administrator since September 2000, and is seeking to obtain a security clearance. He has lived in South Korea since July 1998. He has been married to his wife since September 1983. She is a citizen of South Korea, as are her children, two daughters and a son. Applicant was in the Air Force from 1980 through August 2000, retiring as an E-7.

Prior to his retirement, Applicant was notified by the Air Force that he had been overpaid by \$7,700 in housing allowance. His last two Air Force pay checks were retained by the government as well as one third of this retirement check each month for one year. After leaving the service, he had a \$900 per month job and then obtained a \$7 per hour job.

In July 2003, Applicant borrowed \$29,818 from a citizen and resident of South Korea to pay his stepchildren's debts. The loan was being repaid at a rate of \$1,636 per month. In November 2004, when he completed written interrogatories (Item 6), the balance was \$8,181. He anticipated having this debt paid off in April 2005. In his response to the SOR, Applicant indicated he prepaid the loan in full and no longer has contact with the lender. He failed to provide any documentation showing the debt had been paid.

In May 2004, Applicant was questioned by the Defense Security Service (DSS) about his delinquent debts. At that time he was going to contact his creditors to see if they could wait a few months for payments. If they could not wait, he stated he would make payments until all of his debts were paid in full. Applicant failed to provide any correspondence with his creditors following the DSS interview.

In December 2004, Applicant made a \$200 payment (Item 6) on a \$3,281 debt owed on a military store credit card. He said he had agreed to pay \$200 per month on this debt. In his July 2005 response to the SOR, Applicant indicated he had paid \$400 on this debt since November 2004. He failed to provide documentation showing more than one \$200 payment.

Applicant owed a credit card debt of \$1,087. In his November 2004 response to written interrogatories, he said he had agreed to make three \$500 payments, which would be followed by a settlement agreement. In his July 2005 response to the SOR, Applicant indicated he had made three \$500 payments in December 2004 and two payments in January 2005. He also alleged he made three payments of \$800 each in March 2005, April 2005 and May 2005 to fully satisfy this debt. However, he did not provide documentation showing payment.

Applicant owed \$5,269 on a collection account for a credit card. In his November 2004 response to written interrogatories, he said he had agreed to make a \$500 down-payment, which he did (Item 6), and would make three additional payments of \$439. In his July 2005 response to the SOR he alleges he has paid \$1,300 on this debt and will

pay the balance when his finances permit. He provided no documentation showing payment.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline Foreign Influence and Financial Considerations.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (2)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security.

Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under the Foreign Influence guideline, a security risk may exist when an individual's immediate family, or other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, or 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. The Government established the Applicant's spouse is a citizen and resident of South Korea as are her son and two daughters. He is close enough to his stepchildren to obtain a loan to repay their financial obligations. Disqualifying Condition (DC) 1 (E2.A2.1.2.1 *An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*) applies.

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the Administrative Judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced or is brought under control or used as a hostage by a foreign intelligence or security service. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. ⁽³⁾ An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.

Applicant has been married to his wife since September 1983. She has never worked for a foreign government and has not worked outside of the home for the last 15 years. Her son works in construction, her one daughter is a housewife married to a supervisor for a subway ticket agency, and her other daughter is unemployed married to a US Air Force member. There is nothing about these individuals, their jobs, or lifestyles that establishes they are agents of a foreign power or in a position to be exploited by a foreign power.

Mitigating Condition (MC) 1 (E2.A2.1.3.1 *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabiting, 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 loyalty and the person(s) involved and the United States*) applies. Allegations 1.a. and 1.b. are concluded for Applicant.

Applicant owes a citizen of South Korea \$8,181.80. This is concern under financial considerations and not under foreign

influence. SOR 1.c is found for Applicant as to the foreign influence concern.

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

In November 2004, when he completed his responses to the written interrogatories Applicant admits owing \$8,181 on a loan, \$3,281 on a bad debt for a credit card with evidence he had recently paid \$200, \$1,087 on a debt placed for collection for another credit card, and \$5,269 on another credit card placed for collection on which he had recently made a \$500 payments. He owed approximately \$17,000 on these four debts. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Applicant asserts his debts have been paid, but the only documents he provided show two payments totaling \$700 (\$200 and \$500) as having been made since ay 2004. Applicant says the \$8,181 loan has been paid, but provided no documentation to support his assertion. He says he paid \$400 on the \$3,281 debt but provided documentation of only a single payment of \$200. He says the \$1,087 debt has been paid, but failed to provide any documentation supporting his assertion. He said he paid \$1,300 on the \$5,269 debt but only provided documentation showing a single \$500 payment.

Applicant has been aware of the concern over his past due accounts since at least May 2004 when he was interviewed about his finances by the DSS. At that time, he said he would contact his creditors and begin repaying them. There is no evidence he ever contacted the creditors to establish a satisfactory repayment plan.

None of the Mitigating Conditions (MC) apply in the Applicant's favor. MC 1 (E2.A6.1.2.1 *The behavior was not recent*) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2 *It was an isolated incident*) does not apply because there are four unpaid debts. There was no showing the debts were caused by factors beyond Applicant's control. He indicates he had to repay \$7,700 to the government due to an overpayment of his housing allowance, but the repayment ended more than four years ago in 2001. Applicant failed to show the financial impact of the recoupment of this money during the four years since recoupment ended. MC 3 (E2.A6.1.3. 3 *The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business*

downturn, unexpected medical emergency, or a death, divorce or separation)) does not apply.

For MC 6 (E2.A6.1.2.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. Applicant asserts he has paid some of his overdue obligations in full and has worked out a satisfactory repayment plans and made payments to the remaining creditors. However, he failed to document the payment of his debts.

There has been no showing Applicant has sought or received financial counseling. There is no showing of a demonstrated change in his financial management nor is there any indication his financial difficulties are under control. After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the "whole person," I conclude Applicant has not mitigated the security concern based on financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Foreign Influence: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Paragraph 2 Financial Considerations: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

DECISION

In light of all 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 the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
3. ISCR Case No. 98-0419 (April 30, 1999) at p.5.