



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 07-10841  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

May 27, 2009

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on February 15, 2007 (Government Exhibit 1). On December 17, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and B concerning the Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on February 20, 2008, and requested a hearing before an Administrative Judge. The Applicant is permanently located overseas in the Republic of Korea (South Korea). Department Counsel was prepared to proceed on March 24, 2008. I received the original case assignment on March 28, 2008. The case was transferred to a second Administrative Judge on May 19, 2008. It

was subsequently reassigned to a third Administrative Judge on November 3, 2008. The case was reassigned to me on January 6, 2009. DOHA issued a notice of hearing on January 27, 2009, and I convened the hearing by Video Tele-Conference as scheduled on February 10, 2009.<sup>1</sup> The Government offered Government Exhibits 1 through 8, which were received without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits A through P, which were received without objection. DOHA received the transcript of the hearing, and the record closed, on February 20, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Procedural and Evidentiary Ruling**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of Korea. (Transcript at 11-16.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

The Applicant is 58, retired from the Armed Forces, and married to a South Korean national. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admits all of the allegations in this paragraph of the SOR.

The Applicant submits that the majority of his financial problems began when his wife became addicted to gambling in South Korea, where he and his wife live. Basically, the Applicant stated that his wife would take his credit cards without his permission and receive cash advances with them. She would then gamble, and lose, this money. This occurred in 1999 and 2000. The Applicant did not know that his wife was doing this until he received the credit card statements a month or so after she obtained the money. He attempted to stay current with the debts after she incurred them, but they were just overwhelming. Around 2002 he stopped paying any of these debts. He has repeatedly stated his intention is to fulfill these obligations, assuming that he retains his security clearance. (Transcript at 35-39, 41, 50; Government Exhibit 3.)

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<sup>1</sup>Previous Notices of Hearing had been issued on July 9, 2008; September 16, 2008; and December 2, 2008.

1.a. The Applicant admits that he is indebted to a collection agency for Chase in the amount of approximately \$17,391.00. (Government Exhibit 8 at 2.) The Applicant has made no recent payments on this debt and has no current plans to make payments on this debt. (Transcript at 39-40.)

1.b. The Applicant admits that he is indebted to a collection agency for Discover in the amount of approximately \$6,135.00. (Government Exhibit 8 at 2.) The Applicant has made no recent payments on this debt and has no current plans to make payments on this debt. (Transcript at 40-41.)

1.c. The Applicant admits that he is indebted to Unifund in the amount of approximately \$18,915.00. (Government Exhibit 2 at 9.) The Applicant has made no recent payments on this debt and has no current plans to make payments on this debt. (Transcript at 40-41.)

1.d. The Applicant admits that he is indebted to a collection agency in the amount of approximately \$29,829.00. (Government Exhibit 2 at 2.) The Applicant has made no recent payments on this debt and has no current plans to make payments on this debt. (Transcript at 42.)

1.e. The Applicant admits that he is indebted to American Express in the amount of approximately \$3,796.00. (Government Exhibit 8 at 1.) He testified that he made some payments on this account in about 2002. The Applicant has made no recent payments on this debt and has no current plans to make payments on this debt. (Transcript at 42-44.)

1.f. The Applicant admits that he is indebted to a collection agency in the amount of approximately \$31,643.00. (Government Exhibit 8 at 1.) The Applicant has made no recent payments on this debt and has no current plans to make payments on this debt. (Transcript at 42.)

1.g. The Applicant admitted that he had failed to file his income tax returns in a timely manner from 1998 through 2005. This was due to a mistaken belief concerning the money he would owe, and the status of the income he earned overseas. He testified that he has filed all of his tax returns and is fully up to date with the taxing authorities. (Transcript at 35-36.)

1.h. As stated above, the Applicant's wife was a compulsive gambler in 1999-2000. According to the Applicant, her conduct created many of his financial difficulties.

## **Paragraph 2 (Guideline B - Foreign Influence)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant.

The Applicant was stationed in South Korea several times during his military service. After his retirement from the military in 1994, he decided to return to South Korea and found work with his current employer. He has been employed by them continuously since that time. (Transcript at 60-61.)

The Applicant has been married to his present wife since 1996. She is his third wife, and is a citizen of South Korea. According to the Applicant, his wife has no desire to become an American citizen. She will move with him to the United States when he returns home. (Transcript at 52-53.) The Applicant testified that about half of his co-workers (approximately 60 out of 100) also have Korean born spouses. (Transcript at 61-62.)

The Applicant has many contacts with South Korea. Accordingly, it is appropriate to discuss the relationship of South Korea and the United States at this time.<sup>2</sup> South Korea is a stable, democratic republic. While the South Korean government generally respected the human rights of its citizens, some problems concerning human rights remain. The United States maintains a substantial military presence in South Korea, and the United States and South Korea are close military allies. South Korea does have a history of collecting protected United States information. At least one U.S. government employee has been prosecuted for disclosure of classified information to persons connected to the South Korean government. In addition, several American companies have received substantial civil penalties connected with their transfer of sensitive material to South Korea.

## **Mitigation**

The Applicant submitted Applicant's Exhibits A through J and P, containing his DD 214, as well as letters of achievement and various commendations for his work in the military and civilian sectors. They show him to be a highly respected employee.

Applicant's Exhibits K, L, M and N are letters of recommendation from co-workers and supervisors. The Applicant is described as someone who "consistently set (*sic*) the example for others in job performance and professionalism." Another person describes the Applicant as someone who is, "intelligent, dependable and motivated." Another fellow employee describes the Applicant this way, "His integrity and loyalty are beyond reproach." Finally, his Program Manager states that the Applicant, "is honest, trustworthy, loyal to the United States and its armed forces."

## **Policies**

Security clearance decisions are not made in a vacuum. When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider

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<sup>2</sup>All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice. (Administrative Notice request dated March 24, 2008, and Attachments I through XV.)

the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk that the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized by President Eisenhower in Section 7 of 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. The Applicant, by his own admission, has approximately \$107,000.00 in past due debts, all of which have been due and owing for several years.

In addition, as the Applicant admits, his wife had a serious gambling problem which precipitated this problem. Accordingly, AG ¶ 19(f) also applies, "Financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern." Finally, the Applicant also admits not timely filing his tax returns for several years. This brings into play AG ¶ 19(g), "Failure to file annual Federal, state, or local income tax returns as required or fraudulent filing of the same." The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

With regards to his tax situation, subparagraph 1.g., the evidence shows that the Applicant has resolved his tax situation. He is knowledgeable about his responsibility to file his income tax returns on time and evinces a credible intent to do it. This subparagraph is found for the Applicant.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's financial difficulties arose primarily between about 1999 and 2000, and were connected to his wife's compulsive gambling. However, he has basically done nothing to resolve this indebtedness. He has repeatedly stated he will resolve and/or pay these debts if he receives his security clearance. Not to put too fine a point on it, but the United States Government is not a collection agency. In addition, a stated intention to pay just debts sometime in the future, no matter how sincere, is not evidence of current security clearance eligibility. It is the Applicant's burden to submit evidence showing that his

financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” This mitigating condition is not applicable to this case. I have considered the fact that it was his wife, and not the Applicant, who had the gambling problem. However, the evidence in this case does not show that the Applicant has acted reasonably under the circumstances. He has known for almost two years that the Government has concerns about his financial situation, yet he has done virtually nothing to resolve them. This mitigating condition is not applicable in this case.

The Applicant has not initiated a good-faith effort to pay off his creditors. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is over \$100,000.00 in debt with no plan to resolve it but a vague promise to do so at some unstated time in the future, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). Accordingly, subparagraphs 1.a. through 1.f., and 1.h., as well as Paragraph 1, are found against the Applicant.

### **Guideline B - Foreign Influence**

The concern under Guideline B is styled 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.

The Applicant has connections to South Korea because he lives there and his wife is a South Korean national. The Applicant has lived and worked in South Korea for many years. In his case, he has worked for the same Defense contractor that entire time. His presence in South Korea for that period of time, under these circumstances, has little to no security significance.

In addition, it must be said that the Applicant is far from the first American military member to have a foreign born spouse. In fact, the Applicant testified that over half of his co-workers have foreign born spouses. Accordingly, a closer examination of his particular circumstances is required. He testified that, other than his spouse, he has no

real contacts with Koreans. Once again, under the particular circumstances of this case, this fact has little to no current security significance.

All of these connections must also be viewed in the context of the South Korean government, and in particular that government's history of attempting to obtain classified and other information from American companies and individuals. To his credit, the Applicant repeatedly stated that he is a loyal American citizen, that he understands his responsibilities as a security clearance holder, and that he would not be a party to any attempt by the South Korean government to obtain information from him. In my opinion, he has met his burden of showing an unequivocal connection to the United States.

Based on the evidence the Government has presented, the following Disqualifying Conditions apply to this case: 7.(a) "Contact with a foreign family member . . . 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 . . . 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 . . . 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 information concerning the South Korean government, provided by Department Counsel in his request for Administrative Notice and its Attachments.

The Applicant has provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given his particular background: 7(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."

The Applicant is a talented, able and trustworthy person. He has a Korean born spouse, and he lives and works in South Korea. I have weighed his connections to South Korea with his loyal service to the United States both as a member of the Armed Forces and as a civilian contractor. In this case, his evidence is sufficient to overcome the concerns the Government has under this allegation. Paragraph 2 is found for the Applicant.

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's



conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(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) 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.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is a respected employee who is under a severe financial strain caused by his wife’s actions, and has been for several years. He has not made a sufficient showing that his debt situation is under control. Under AG ¶ 2(a)(3), the Applicant’s conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)8)), or that the likelihood of recurrence is close to nil (AG ¶ 2(a)9)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his financial considerations at this time. As stated above, he has mitigated the concerns about foreign influence over the Applicant.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons. Paragraph 2 is found for the Applicant.

### **Formal Findings**

Formal findings for or against Applicant 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 THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	Against the Applicant
Subparagraph 1.c:	Against the Applicant
Subparagraph 1.d:	Against the Applicant
Subparagraph 1.e:	Against the Applicant

Subparagraph 1.f:	Against the Applicant
Subparagraph 1.g:	For the Applicant
Subparagraph 1.h:	Against the Applicant
Paragraph 2, Guideline B:	FOR THE APPLICANT
Subparagraph 2.a:	For the Applicant
Subparagraph 2.b:	For the Applicant
Subparagraph 2.c:	For the Applicant

### **Conclusion**

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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WILFORD H. ROSS  
Administrative Judge