



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-14699
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Department Counsel
For Applicant: *Pro Se*

October 22, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On May 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guideline B. 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 the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On June 4, 2008, applicant answered the SOR in writing, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on June 17, 2008. Applicant did not submit a response to the FORM. The case was assigned to me on August 15, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 36 year old employee of a defense contractor.

Applicant was born in South Korea. When he was still a minor, his parents separated and he moved to the United States with his father. Applicant, his father, and his sister became United States citizens in 1990 or 1991.

Applicant served in the United States Army for approximately six years. He has worked for the same defense contractor since he received his honorable discharge in 2002. He has been working in South Korea for an unknown period of time.

Applicant's wife, to whom he has been married since 2004, was born in South Korea. She lives in the United States, but is a citizen of Korea. They have at least one child who was born in the United States.¹ Applicant's mother, mother-in-law and father-in-law are Korean citizens residing in Korea. In his response to the SOR, applicant stated he "keep[s] in touch" with his mother.

The Government offered a number of official United States publications with the FORM that provide relevant facts about South Korea. The Government requested that these documents be admitted into evidence. I have admitted the documents into evidence, and I take administrative notice of the following facts found therein:

South Korea is a highly developed, stable, democratic republic with powers shared between the president and the legislature. Despite the friendly relations between the two countries, South Korea intelligence agencies are some of the most active collectors of sensitive U.S. information and technology. In 1997, a civilian employee of the U.S. Navy pleaded guilty to Conspiracy to Obtain National Defense Information after he was caught providing U.S. classified information to a South Korean military attache. Civil penalties have been imposed on numerous U.S. companies for illegal exporting military-related products to South Korea.

Policies

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." (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Ord. 10865, Section 2.)

¹Applicant's security questionnaire identifies one child. However, in his response to the SOR, he referred to his "children."

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph 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 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information.

Analysis

Guideline B, Foreign Influence

The security concern relating to the Foreign Influence guideline is set forth in Paragraph 6 of the AG, and is 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.

Paragraph 7 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 7.a., “contact with a foreign family member, business or professional associate, friend, or other person 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” may be disqualifying. Under Paragraph 7.b., “connections to a foreign person, group, government, or country 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, group, or country by providing that information” may be disqualifying. Lastly, under Paragraph 7.i., “conduct,

especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country” may be disqualifying.

Applicant’s mother is a citizen and resident of South Korea. There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, immediate family members such as a mother. Applicant’s relationship with his mother, and his residence in South Korea, leaves applicant potentially vulnerable to exploitation, pressure, or coercion by the South Korean government. These facts raise concerns under all three disqualifying conditions.

Paragraph 8 sets forth conditions that could mitigate security concerns. Under Paragraph 8.a., it is potentially mitigating if an applicant can demonstrate that “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.” Under Paragraph 8.b., it is potentially mitigating if an applicant can demonstrate “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.” Lastly, under Paragraph 8.c., it is potentially mitigating if an applicant can demonstrate that the “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.”

None of the foregoing mitigating conditions is applicable. As noted above, applicant has the burden to provide evidence that supports application of mitigating factors. In this case, applicant failed to provide sufficient credible evidence that it is unlikely he would be placed in a position of having to choose between the interests of South Korea and the interests of the United States, or that he is not vulnerable to a conflict of interest.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2.c., the ultimate determination of whether to grant a security clearance must be an overall common

sense 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.

Applicant was born in South Korea. After his parents separated, he moved to the United States with his father, becoming a U.S. citizen in 1991. He served honorably in the United States military and has worked for his defense contractor employer since 2002. These are facts in his favor. Working against applicant are the facts that his mother, to whom he has ties of affection, is a citizen and resident of South Korea; his wife is a citizen of South Korea; his mother-in-law and father-in-law are citizens and residents of South Korea; and he is currently living in South Korea. These facts create a heightened risk of pressure, coercion, or exploitation.

Applicant may very well have been able to overcome the Government's evidence and establish that it is clearly consistent with the national interest for him to retain his security clearance if he had been able to clear up some basic matters, such as (1) why his wife did not apply for U.S. citizenship, (2) what is the exact relationship with his mother, and (3) how long has he been working in South Korea and when is he due to return, if ever. Unfortunately, by requesting a decision without a hearing, and then failing to offer documentary evidence that cleared up these and other issues, I have no choice but to conclude applicant failed to rebut the Government's case under Guideline B.

There is nothing in the record that suggests applicant is anything but a loyal American citizen. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied concern as to applicant's allegiance, loyalty, or patriotism.

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:

Guideline B:AGAINST APPLICANT
Subparagraphs 1.a. through 1.c: Against applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JOSEPH TESTAN
Administrative Judge