



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 08-00081
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: Greg McCormick, Esquire

June 15, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s wife and in-laws are citizens and residents of South Korea. Also, Applicant has a history of delinquent debt which he failed to disclose in its entirety on his 2005 security clearance application. These facts generate security concerns under Guidelines B, foreign influence, F, financial considerations, and E, personal conduct. After evaluating Applicant’s background and family relationships, together with the nature of his ties to the country, and the country’s relationship with the U.S., I conclude he has mitigated the foreign influence security concern. As for the financial considerations security concern, Applicant satisfied all of the delinquencies, and provided evidence demonstrating that his finances are currently organized and stable. His explanation for failing to disclose all of his delinquencies on his security clearance application was credible. He has mitigated the financial considerations and personal conduct security concerns. Clearance is granted.

On September 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns, as described above. 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.

Applicant answered the SOR on November 12, 2008, admitting Paragraph 1, subparagraphs 2.a through 2.b, 2.d through 2.f, 2.j through 2.k, 2.o, 2.t, 2.v, 3.a through 3.c, and 4.d and 4.f. He denied the others and requested a hearing. The case was assigned to me on February 10, 2009. On March 10, 2009 a Notice of Hearing was issued scheduling the case for April 7, 2009.

At the hearing, I received six government exhibits, and 25 Applicant exhibits marked A1 through A7, B1 through B10, C1 through C6, and D1 through D2. Also, I received Applicant's testimony. At the end of the hearing, I left the record open at Applicant's request to allow him to submit additional exhibits. Within the time allotted, Applicant submitted 14 additional exhibits that I incorporated into the record as Applicant's Exhibits (AE) E through R. The transcript was received on April 10, 2009.

Rulings of Procedure

I granted department counsel's motion to withdraw SOR subparagraphs 2.c, 2.p through 2.r, 2.u, 2.v, Paragraph 3, and SOR subparagraphs 4.e and 4.f. Also, upon a motion of department counsel, I amended SOR subparagraphs 2.s and 4.d, respectively, to read as follows:

2.s. As of May 27, 2008, you had approximately \$3,835.00 per month in discretionary income, yet you have not paid the debts set forth in subparagraphs 2.a, 2.b, and 2.d - 2.o.

4.d. On or about May 2005, you were arrested in State X for writing, making and/or presenting a worthless check. You were subsequently found guilty and were ordered to pay a fine of \$208.00.

Request for Administrative Notice

Department counsel, in a motion filed January 7, 2009, requested that I take administrative notice of facts about South Korea set forth in 15 documents that I marked as Government Exhibits (GE) I through XV. At the close of the hearing, I took administrative notice of the facts set forth in all of the exhibits except GE XII through XV.

Findings of Fact

Applicant is a 36-year-old married man with three children, ages eight, six, and two. The two oldest children are from his first marriage, which lasted from 2000 through

2006 (Tr. 29). He was not married to the mother of the youngest child (Tr. 30). The children's respective mothers have physical custody of them.

Applicant attended college for approximately a year immediately after finishing high school in 1992, then left to pursue a job with a professional sports franchise. In 1995, he quit his job with the sports franchise, and joined the U.S. Air Force where he served until 2002. He was honorably discharged. During his Air Force stint, he earned the Air Force Good Conduct Medal, the National Defense Service Medal, the Armed Forces Expeditionary Medal, the Air Force Overseas Service Ribbon, the Air Force Longevity Ribbon, and the Air Force Training Ribbon (AE D1).

While in the Air Force, Applicant worked as an avionics technician (Tr. 15). He held a security clearance throughout his time in the Air Force (Tr. 33). For the past three years, Applicant has worked for a defense contractor that manufactures fighter jets. For the first year on the job, he worked as an aircraft weapons manager (Tr. 34). Since then, he has worked as an aircraft logistics support manager.

Applicant is highly respected on the job. According to his supervisor, his integrity and dedication are unwavering (AE C3). A senior manager, who has been with the company for 25 years, characterizes Applicant as "the eyes and ears" of the program where he works (AE C5). Another senior manager says that he works at a level far above his peers (AE C1).

Applicant has spent the past two and a half years living in the Republic of Korea. The aircraft parts that he services are used on jets in the South Korean air force (AE C6).

While living in Korea, Applicant met and married his current wife, a Korean citizen and resident. She manages a fast food restaurant (Tr. 36). Her father is an apartment security guard (Tr. 57). He served two years in the Korean military in his youth as part of their compulsory service requirement (Tr. 38). Her mother is a homemaker. Neither parent receives a government pension.

Applicant's wife has three sisters who are Korean citizens and residents. One is a Buddhist monk, another is an x-ray technician, the third is a nurse (Tr. 69). None work for the Korean government. Both the x-ray technician and the nurse are married (Tr. 39). The brothers-in-law's occupations are unknown from the record.

Applicant's wife is the only member of her family who speaks fluent English. Applicant has a minimal understanding of the Korean language. Applicant and his wife speak with her parents about once per month, and her sisters about once every other month (Tr. 84). All of Applicant's in-laws live in the same city as he does.

Applicant and his wife maintain separate bank accounts (Tr. 41). None of Applicant's accounts are in Korea, nor does he have any other Korean property interests.

The Republic of Korea is a stable democratic republic with powers shared among the president, the legislature, and the judiciary (AE I at 3; AE III at 3). It has an independent press, and generally respects civil liberties (*Id.*).

Korea's economic growth has been spectacular over the past 20 years (*Id.* at 4). It is the United States' (U.S.) seventh largest trading partner (*Id.* at 6). In 2007, Korean and U.S. trade ministers negotiated the U.S. - Korea Free Trade Agreement (*Id.* at 6). It is awaiting ratification by both countries' legislatures.

The U.S. and Korea have been close allies since 1950, and have fought communism on the Korean peninsula and in Vietnam (*Id.* at 8; AE IV at 3; AE V at 1). The U.S. and Korea signed a mutual defense treaty in 1953 (AE I at 6). Since then, the U.S. has maintained a military presence in Korea including the Army's Second Infantry Division and several Air Force tactical squadrons (*Id.*). A Combined Forces Command was established in 1978 to coordinate operations between U.S. and Korean forces (*Id.*).

In recent years, the U.S. and Korea have differed in their diplomatic approaches toward North Korea. The U.S. position is more assertive in its attempts to curtail North Korea's development of advanced military technology such as ballistic missiles and nuclear weapons. South Korea has emphasized steps toward unification with North Korea (AE IV at 2).

South Korea has a history of collecting protected U.S. information. It has targeted the U.S. with intelligence gathering programs, and has focused its collection efforts on computer systems, aerospace and nuclear technologies (Exhibit VIII at 7). In May 1997, a civilian employee of the U.S. Department of Navy, Office of Naval Intelligence, pleaded guilty to conspiracy to obtain national defense information (*see generally*, AE IX). Among other things, between 1994 and 1996, he mailed several classified documents containing information about the national defense of the U.S. to an officer in the South Korean navy (*Id.*).

Applicant's credit reports list approximately \$32,000 of delinquent debt (GE 2 through 4). SOR subparagraph 2.a is the deficiency remaining from a repossessed automobile. When Applicant and his first wife separated, she kept their automobiles (Tr. 45). Shortly before Applicant moved to South Korea, he instructed his estranged wife to sell them. She told him that she had sold them. Applicant did not know this was not true until meeting with an Office of Personnel Management (OPM) investigative agent nearly two years later (Tr. 46). With the help of a credit counseling agency he retained in June 2007, Applicant contacted the creditor, negotiated a settlement, and satisfied it by March 2009 (AE A2; AE E).

SOR subparagraph 2.b is a credit card account that Applicant and his wife shared. He inadvertently did not cancel it when they separated, and she continued to use it without his knowledge (Tr. 47). After his credit counselor informed him of this debt, he contacted his ex-wife who wrote a check to satisfy it. The check bounced (Tr. 47). Applicant then satisfied this debt on March 10, 2009 (AE F).

SOR subparagraphs 2.d,¹ 2.e, and 2.i, are phone accounts Applicant had opened for his ex-wife over the years (Tr. 49). Unbeknownst to him, she failed to pay them. He satisfied them by June 2008 (AE H, J)

SOR subparagraph 2.f is a medical bill incurred in 2004 to treat his son (Tr. 52). Applicant thought his then-wife had paid the deductible when she took their son to the doctor. Shortly after discovering it was still outstanding, Applicant satisfied it (AE L).

Neither Applicant nor his credit counseling agency could identify the creditor listed in SOR subparagraph 2.g. Subsequently, the agency contacted the credit reporting agencies, and had it removed from his credit reports (Tr. 53).

SOR subparagraph 2.h is a debt allegedly owed to a video store. Applicant contacted the store, and it could not confirm it. He then contacted the credit counseling agency, who had it removed from his credit reports (Tr. 54).

SOR subparagraph 2.j, a duplicate of SOR subparagraph 2.k, is another bill owed to the same bank that issued Applicant the credit card listed in SOR subparagraph 2.b. The bank consolidated these debts, and Applicant's payment in March 2009 satisfied both.

Applicant contacted the creditor listed in SOR subparagraph 2.m to confirm the debt (Tr. 57). The creditor then referred him to a collection agent. The collection agency researched the debt, and told him that it had no record of it, and that the only other account in his name that a creditor had assigned to them had been satisfied (Tr. 58).

SOR subparagraph 2.n is a credit card Applicant's ex-wife used when he was in the military. He disputed the account with the creditor (Tr. 72).² His dispute was rejected, and he subsequently satisfied the account (AE O).

SOR subparagraph 2.o is the automobile loan that the divorce court transferred to Applicant's ex-wife through their divorce decree (Tr. 60). He was unaware either that she was not making monthly payments timely after their divorce, or that it had been repossessed (*Id.*). Applicant satisfied it entirely by March 16, 2009 (AE Q, AE R).

In May 2005, Applicant was arrested and charged with writing, making and/or presenting a worthless check. He was found guilty and ordered to pay a fine of \$208.00. He paid the fine, as ordered (AE 1 at 36).

Applicant earns \$80,000 per year (Tr. 83). His employer pays for his mortgage, car, utilities, and all of his insurance (AE A1). He has \$3,840 of monthly after-expense income. He has \$13,000 in his company's 401k, \$1,700 in a personal savings account,

¹SOR subparagraphs 2.d and 2.i are duplicates.

²Applicant asserted that the late fees were excessive.

\$600 in a personal savings account, and \$500 in a joint account owned with his mother (AE A1). He satisfied the delinquencies through savings accrued while working in South Korea (Tr. 73, 81). He maintains a budget, has no debt, and does not have any credit cards. He earned approximately \$52,000 on his previous job (Tr. 83).

Applicant completed a security clearance application in September 2005. He did not disclose an automobile repossession, as required in response to Question 27b. He listed the account as delinquent on Section 28 of the security clearance application (GE 1 at 40). He was unaware of the repossession because his ex-wife kept the automobile after their divorce, and told him that she had sold it.

Applicant answered “yes” to Questions 28a, (**Your Financial Delinquencies** *In the last 7 years, have you been over 180 days delinquent on any debt(s)?*), and 28b, (*Are you currently over 90 days delinquent on any debt(s)?*). He listed the account with the car dealer, as mentioned above, and noted that earlier in 2005, he had “fallen behind on [his] responsibilities” (*Id.*). He did not list any of the other SOR delinquencies.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider 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 overarching 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.

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.”

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.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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” (AG ¶ 6). The Republic of Korea is a staunch ally of the U.S. It has a stable, democratic system of governance, a highly developed economy, and an independent judiciary.

Conversely, Korea has a history of spying on the U.S., collecting classified military information, and sensitive, economic and industrial information. Consequently, Applicant’s relationship with his wife and in-laws, all South Korean citizens and residents, triggers the application of AG ¶ 7(a), “contact with a foreign family member, business, or professional associate, friend, or other person who is a citizen or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” and AG ¶ 7(d), “sharing living quarters with a person or persons . . . if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.”

Although Applicant lives in the same city as his sisters-in-law, he only sees them approximately once every two months. None of them work for the government or in professions where the targeting of U.S. technology would be reasonably conceivable. The mitigating conditions set forth in AG ¶¶ 8(a), “the nature of the relationships with foreign persons . . . or the position 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 8(c), “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,” apply to his sisters-in-law.

Applicant’s wife and parents-in-laws’ positions and activities in South Korea are similarly innocuous. However, Applicant lives with his wife in South Korea, and there is a presumption that relationships with parent-in-laws are not casual. AG ¶ 8(a), “the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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.,” does not apply.

Applicant is a U.S. citizen by birth. His parents are both U.S. citizens, and he was raised in the U.S. He served in the U.S. Air Force for seven years, earning several medals and ribbons. He does not speak the Korean language, and has difficulty communicating with his parents-in-law. All of his children live in the U.S., and all of his property interests are located in the U.S. He did not begin developing these South

Korean contacts until after he relocated there to take a job with a U.S. defense contractor that builds planes for the Korean air force. Given the extensive U.S. military presence in South Korea, and the volume of U.S./South Korea trade, it is axiomatic that some U.S. citizens who are either stationed there, or employed there with defense contractors will develop relationships with South Korean citizens that could trigger foreign influence security concerns. Upon evaluating Applicant's U.S. ties, the reason Applicant is living in South Korea, and his relationship with his South Korean family members, and their respective occupations, I conclude AG ¶ 8(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," applies.

Applicant has mitigated the foreign influence security concern.

Guideline F, Financial Considerations

Under this guideline, "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" (AG ¶ 18). Applicant's delinquencies trigger the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant's separation and subsequent divorce in 2005 significantly contributed to his financial problems. His ex-wife accrued nearly all of the debts. She either lied to him about their status, or continued using joint credit cards without his knowledge. Because Applicant was working abroad, he was unable to confirm what she was telling him.

After meeting with an OPM agent in 2007, Applicant retained a credit counseling agency that helped him identify creditors, and negotiate settlement arrangements. By March 2009, he had satisfied them. The only delinquencies Applicant did not pay were the ones whose creditors were unable to verify were his responsibility. In these cases, he notified the credit counseling agency who then had the disputed debts removed from his credit reports. In the one instance when Applicant's dispute of a debt was rejected (SOR subparagraph 2.n), he paid it, as required.

Applicant maintains a budget. He has no debt, and does not use credit cards. He has ample income to meet his current responsibilities. AG ¶¶ 20(b), "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," 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," and 20(e), "the individual has a reasonable basis to dispute the legitimacy of the

past-due debt which is the cause of the problem, and provides documented proof to substantiate the basis of the dispute, or provides evidence of actions to resolve the issue,” apply.

Applicant has mitigated the financial considerations security concern.

Guideline E, Personal Conduct

Under this guideline, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information” (AG ¶ 15). Applicant’s omission of pertinent financial information from his security clearance application raises the issue of whether AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies.

Applicant did not totally omit his financial delinquencies from the security clearance application. Instead, he disclosed that he had delinquent debts, listed one example, and provided an explanation. He also listed the prosecution for writing a bounced check in response to another security clearance application question. Under these circumstances, his explanation that he did not know his ex-wife was still accruing debts on joint accounts after their divorce was credible. Applicant did not falsify his security clearance application, and his answers do not trigger any personal conduct security concerns.

Applicant’s 2005 prosecution for a bounced check is more indicative of the financial struggles he underwent during the marital breakdown rather than any deficiency in judgment or propensity to disobey rules and regulations. As discussed above, Applicant’s finances are now stable, and his past problems are unlikely to recur. SOR subparagraph 4.d does not trigger a personal conduct security concern.

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.”

Applicant performed with distinction in the U.S. Air Force, and continues to perform his job exceptionally as a civilian employee of a major defense contractor. He experienced a financial setback after his divorce, but responded in a disciplined manner, methodically satisfying each delinquency as he discovered them. Upon considering Applicant's application for a security clearance in light of the whole person concept, I conclude he has mitigated the security concerns. Clearance is granted.

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 B:	FOR APPLICANT
Subparagraph 1.a - 1.c:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a - 1.b:	For Applicant
Subparagraph 2.c:	WITHDRAWN
Subparagraphs 2.d - 2.o:	For Applicant
Subparagraphs 2.p - 2.r:	WITHDRAWN
Subparagraph 2.s - 2.t:	For Applicant
Subparagraphs 2.u - 2.v:	WITHDRAWN
Paragraph 3, Guideline J:	WITHDRAWN
Paragraph 4, Guideline E:	FOR APPLICANT
Subparagraphs 4.a - 4.d:	For Applicant
Subparagraphs 4.e - 4.f:	WITHDRAWN

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge