



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-06309
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

July 19, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated May 6, 2009. (Government Exhibit 1.) On February 23, 2010, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR on March 4, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on March 23, 2010. A notice of hearing was issued on March 29, 2010, scheduling the hearing for May 17, 2010. The Government presented six exhibits, referred to Government Exhibits 1 to 6, which were admitted without objection. The Applicant presented one exhibit, referred to as Applicant's

Exhibit A, which was admitted without objection. The Applicant also testified on his own behalf. The record remained open until the close of business on May 28, 2010, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through C, which were admitted without objection. The official transcript (Tr.) was received on May 25, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 41 years old, and has a Bachelor's Degree in Business Administration. He is employed by a defense contractor as an IT Consultant and is seeking to obtain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR.) After a complete and thorough review of the evidence in the record, and upon due consideration of the same, the following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for a security clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant denied the allegations set forth in the SOR under this guideline. He explained that he thought he had already resolved the debts. Credit reports of the Applicant dated June 6, 2009; October 27, 2009; March 19, 2009; and May 17, 2010 collectively reflect each of the outstanding debts. (Government Exhibits 3, 4 , 5 and 6.)

The Applicant began working for his current employer on May 11, 2009. In 2000, the Applicant started his own business, discussed below. He opened up credit cards and ran up debt to help fund the business operations. In 2005, he hired a Bankruptcy attorney to assist him with his delinquent debt. Although he never filed Bankruptcy, the Applicant was able to consolidate his debts and negotiate settlements to get his debts resolved. Allegation 1(c), a debt owed to a bank in the amount of \$9,688.00 was settled in June or July 2005, for \$5,704.50, and the matter is resolved. (Tr. p. 52 and Applicant's Post-Hearing Exhibit A.)

Allegations 1(a) and 1(b), are debts owed to BMW for a motorcycle and a vehicle in the amounts of \$41,000.00 and \$42,000.00 that he purchased in early 2000. The Applicant testified that he fell four months behind on his payments, and in about April 2003, both the motorcycle and the vehicle were repossessed by the creditor. The Applicant asserts that the two delinquent debts have been removed from his most

recent credit reports. (Government Exhibit 2.) He is not certain whether they simply fell off because they were old debts, or whether he actually satisfied the debts. Applicant's Post-Hearing Exhibit B are letters from the creditor dated May 18, 2010, concerning the two debts. With respect to one of the debts, the collection agency for the creditor agrees to settle the account for \$4,583.00. The collection agency agrees to settle the other account for \$900.00. There is no evidence in the record to confirm whether the Applicant has settled the debts.

The Applicant presently earns approximately \$78,000 annually. After taxes, he takes home about \$1,900 bi-weekly. He is currently paying back his sister and his uncle for money he previously borrowed. He states that he is not incurring any new debt. He lives with a friend and pays \$450.00 month in rent. He submitted a financial report dated May 18, 2010, that reflects that after his monthly expenses, including his payments to relatives for money he borrowed from, he has \$340.00 at the end of the month. (Applicant's Post-Hearing Exhibit C.)

Paragraph 2 (Guideline B - Foreign Influence) The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant admitted each of the allegations set forth in the SOR under this guideline. The Applicant was born in Hong Kong in 1969. His father sent him to live with his uncle in the United States at the age of twelve. He resided with his uncle for three years, before his entire family moved to the United States, and he moved back in with them. He attended and completed middle school and high school. After receiving his green card in 1989, he joined the United States Army and served on active duty from February 1989 to June 1991. From January 1991 to approximately May 1991, he was deployed overseas in support of Operation Desert Shield/Desert Storm. He received an honorable discharge in June 1991. During his military career, he received the Army Commendation Medal with V-Device, the Army Achievement Medal, the Army Good Conduct Medal, the National Defense Medal, and the Southwest Asia service medal with two Bronze Stars. He served in the Army National Guard from June 1991 to July 1992. He became a naturalized United States citizen in 2008.

Following his discharge from the Army, he attended college and graduated with a Bachelor's degree in Business Administration and Manager of Information Systems. Upon graduation, he worked for other companies but started thinking about starting his own business. Several years later, in 2000, he started his own business to develop mobile Customer Relationship Management (CRM) Software. He incorporated the business in 2000, as a Delaware Corporation, but it was developed in China. To finance it, he used credit cards, borrowed money from friends and family members, and tried to find investors. He eventually found three Taiwanese investors that contributed about \$300,000. As time passed, the business was restructured. The Applicant sold shares of stock in his company to pay his debts. The Applicant raised approximately 1.2 million dollars in funding including Series A investment from another company in

exchange for 29% of the company, in order to subsidize his business. (Tr. p. 40.) Applicant believes that at the present time, his most accurate estimate is that he owns approximately 5% of his company, which is approximately 450,000 shares. (Tr. p. 42). The Applicant claims that since coming back from China, he has never received any profit, monetary remittance, or dividends from his company. The last time he had any involvement in the day-to-day operations of the company was the first three months of 2008.

From 2000 to 2008, when the Applicant was in China developing his business, he was collecting a salary from the company. He had a bank in China where the money was automatically deposited. The Applicant testified that his checking account is still open and contains approximately \$100.00 US dollars. (Tr. p. 46.) He states that the account has been inactive since August 2008, and he cannot access it except through a Chinese ATM machine. (Tr. p. 46.) He has no plans on using the account again. In order to close the bank account he must physically go to China. When asked whether he planned on returning to China. The Applicant responded, "If there are other business opportunities, it's possible. [His employer] has an office in Shanghai. We've talked about that." (Tr. pp. 46 - 47.)

The Applicant maintains close and continuing contact with Chinese citizens and residents, who he considers close personal friends and business associates, some of whom are or have been shareholders of the Applicant's company. (Tr. p. 49.) They maintain contact through e-mail or MSN. (Tr. p. 48.) The frequency of contact varies from several times a week to once every two or three months.

A letter of recommendation from his professor, Dean of the college the Applicant attended, when he applied for a job, attests to his professionalism, perfect attendance, superb quality of work, and outstanding work effort. Applicant's academic achievement earned him the Outstanding Graduate of the Year Award. A letter from a professional associate indicates that the Applicant is a highly skilled management and technical resource with impeccable professional standards and personal integrity. A letter from a high school friend and past coworker states that the Applicant has a strong work ethic, trustworthy, intelligent and well balanced, and a public company that matured in China. (Applicant's Exhibit A.)

The Applicant also submitted a letter dated August 24, 2009, offering him full time employment with his current company, and a memorandum concerning his promotion after only eight months with the company. (Applicant's Exhibit A.)

POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline F (Financial Considerations)

18. *The Concern.* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Conditions that could raise a security concern:

- 19(a) inability or unwillingness to satisfy debts;
- 19(c) a history of not meeting financial obligations.

Conditions that could mitigate security concerns:

None.

Foreign Influence

6. *The Concern.* 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.

Conditions that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

7. (e) a substantial business, financial or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in 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."

CONCLUSION

In the defense industry, a security clearance is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for such access may be involved in instances of financial irresponsibility and foreign influence which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F) and that he has foreign contacts (Guideline B). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

The evidence in the record is inconclusive as to whether the Applicant has paid off his two debts owed to BMW. Obviously, his entrepreneurial ventures and spending habits caused his financial problems. Since then, he has settled one of the debts. The other two remain owing. The record does not indicate when he will pay the other two creditors. He has provided insufficient evidence to demonstrate a track record of financial responsibility, and he has not resolved his financial indebtedness.

There is insufficient evidence of financial rehabilitation at this time. Under Guideline F (Financial Considerations), Disqualifying Conditions 19(a) *inability or unwillingness to satisfy debts* and, 19(c) *a history of not meeting financial obligations* apply. None of the mitigating conditions are applicable. Two of the three debts listed in the SOR remain outstanding. Although the Applicant has negotiated settlements, he has not yet fulfilled his financial obligations under the agreements. Thus, he has failed to make a good faith effort to repay his overdue creditors or otherwise resolve his debts. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* and 7(e) *a substantial business, financial or property interest in a foreign country, or in any foreign-*

owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation apply. None of the mitigating conditions are applicable.

The Applicant presently owns at least 5% interest in a company he founded that is based in China. The company is a public company that has matured in China. He also has several close personal friends who are citizens and residents of China. These close friends are either past or present business associates, shareholders in his company or both. As he explained, they started out being professional business associates but over time became close personal friends. He maintains contact with them on a regular basis and plans to continue doing so. In addition, the Applicant made it clear that if a future business opportunity presents itself, he will return to China for business matters. The Applicant also maintains a checking account in a Chinese bank that he can only access with a Chinese ATM card. The Applicant has significant foreign contacts that pose a security risk.

Here in the United States, the Applicant shares an apartment with a roommate and owns a car. He is currently repaying debts he owes to family members and still owes two outstanding creditors listed in the SOR. It is acknowledged that he has served honorably in time of combat in the United States Army, and that he has adopted the American way of life as his own in many respects. However, the evidence is mixed and it is not clear that his deep and abiding ties are here in the United States. His employment with the DoD is in the United States. The business he started and still owns a part of is in China. Furthermore, if another business opportunity comes up in China in the future, he plans to return there to take advantage of it.

It is noted that the current political situation in China elevates the cause for concern in this case. The evidence shows that the Applicant has a fairly strong bond and affection with his foreign friends and business partners and associates in China that could potentially cause the Applicant to become subject to foreign exploitation. His foreign financial interests raise the issue of divided loyalties. With regard to his foreign influence, I find that his foreign contacts, individuals who are business associates and/or partners, are in a position where they can easily be subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Thus, there is the possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, lack of candor, an unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

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

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge