



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-02585

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Pro se

January 24, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on June 22, 2009. (Government Exhibit 1). On September 13, 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.

Applicant answered the SOR in writing on September 28, 2010, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on October 22, 2010. A notice of hearing was issued on October 29, 2010, scheduling the hearing for November 19, 2010. At the hearing, the Applicant requested a continuance in order to obtain an interpreter, as there was an obvious language difficulty. The matter was continued and rescheduled for December 13, 2010.

The Government offered eight exhibits referred to as Government Exhibits 1 through 8, which were received without objection. The Applicant presented three exhibits, referred to as Applicant's Exhibits A through C, which were admitted into evidence without objection. He also testified on his own behalf. The Applicant's coworker helped him interpret some of the English language the Applicant had difficulty understanding. The Applicant submitted one Post-Hearing Exhibit, consisting of 14 pages, referred to as Applicant's Post-Hearing Exhibit A. The transcript of the hearing (Tr.) was received on December 22, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political condition in South Korea that were set forth in Administrative Notice documents 1 through 8. 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 following Findings of Fact are based on Applicant's Answer to the SOR testimony and the exhibits. The Applicant is 46 years of age, married and has two children. He is employed as a Manager by a defense contractor and seeks to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 (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 was born in Seoul, Korea in 1964. He grew up in Korea and later immigrated to the United States. He became a naturalized United States citizen in 2002. From 1991 to the present, he has been employed with the same company. In 2008, his job transferred to a department where he would be handling Department of Defense articles that needed a security clearance. He has a big Korean family and his friends are Korean.

The Applicant's wife is a citizen of South Korea and resides in the United States with the Applicant. He met her in South Korea. She is currently a permanent resident of the United States and has not applied for her United States citizenship yet. (Tr. p. 43.) Two of his sisters are citizens of South Korea and reside in the United States. They have resided in the United States for about ten years and have not applied for United States citizenship yet. (Tr. p. 45.) His brother is a citizen and resident of South Korea. His mother-in-law, father-in-law and brother-in-law are citizens and residents of South

Korea. His mother-in-law is retired and is a housekeeper. His father-in-law is a retired real estate agent. His brother-in-law is a doctor, and does not work for the Korean government. The Applicant and his wife talk with their family in South Korea about once a month on average. The Applicant takes his family to Korea about once a year for about a month in order to visit their family there. He states that his children have to learn the Korean culture. (Tr. p. 47.) The Applicant's mother resides in the United States but has a house in Korea that the Applicant does not know whether he will inherit. (Tr. p. 50.) The Applicant enjoys living in the United States now, but cannot say that he will not go back to Korea some day in the future. (Tr. p. 51.)

I have taken administrative notice of the current political conditions in South Korea. Following the Korean War, South Korea has experienced political turmoil that included autocratic leadership, restriction of political freedoms, military coups, declarations of martial law, and violent confrontations. Currently, South Korea is a stable, democratic republic. The South Korean Government has generally respected the human rights of its citizens, however, reported human rights problems include: societal discrimination against women, persons with disabilities and minorities; domestic violence and rape; child abuse; and trafficking in persons. South Korea has a history of collecting protected U.S. information and in the past has centered its collection efforts on computer systems, aerospace technologies, nuclear technologies. Its activities have included stealing information from computerized databases maintained by U.S. government agencies.

Paragraph 2 (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 admits each of the delinquent debts set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated September 17, 2009; March 9, 2010; June 8, 2010; October 20, 2010; and November 18, 2010 collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 4, 5, 6, 7, and 8.) The Applicant states that before he got married he used a lot of credit cards on dinner and drinking. (Tr. p. 53). He became excessively indebted and could not afford to pay his bills. In 2008, he stopped paying the bills.

The Applicant's delinquent debts total in excess of approximately \$40,000.00. Allegation 1(a), a delinquent credit card debt in the amount of \$12,000.00; allegation 1(b), a credit card in the amount of \$19,000.00; and allegation 1(c), a credit card in the amount of \$12,000.00 are outstanding. In February 2010, the Applicant entered into a debt consolidation program and since then has made monthly payments of \$760.00 toward resolving his indebtedness. (Applicant's Post-Hearing Exhibit A.) He anticipates, and the company projects, that his delinquent debts will be resolved in two years. (Tr. pp. 42 and 58.)

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Applicant admits each of the allegations set forth under this guideline. The Applicant completed a Questionnaire for National Security Positions dated June 22, 2009. Question 26(g), of the application asked the Applicant if in the last seven years, have you had bills or debts turned over to a collection agency? The Applicant answered, "NO." (Government Exhibit 1.) This was a false response. The Applicant failed to disclose that the debt set forth in allegation 2(c) was turned over to a collection agency for collection.

Question 26(h), of the same application asked the Applicant if in the last seven years, have you had any accounts or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Government Exhibit 1.) The Applicant answered, "NO." This was a false response. The Applicant failed to disclose that the debts set forth in allegations 2(a) and 2(b) were suspended, charged off or cancelled for failing to pay as agreed.

Question 26(m), of the same application asked the Applicant if in the last seven years, have you been over 180 days delinquent on any debts? The Applicant answered, "NO." (Government Exhibit 1.) This was a false response. The Applicant failed to disclose the debts set forth under paragraph 2 of the SOR.

Question 26(n), of the same application asked the Applicant, are you currently over 90 days delinquent on any debts? (Government Exhibit 1.) The Applicant answered, "NO." This was a false response. The Applicant failed to disclose the debts set forth under paragraph 2 of the SOR.

The Applicant admits that he made a conscientious decision not to reveal the true extent of his financial history on his security clearance application. He states that he was not truthful in answering the questions on the security clearance application concerning his finances because he was embarrassed. (Tr. p. 64.) He knew he was indebted at the time he answered the questions erroneously.

Letters of recommendations from the General Manager of the company and another person attest to the Applicant's hard working nature, his integrity, and trustworthiness. (Applicant's Exhibits A and B.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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 risks of foreign exploitation, inducement, manipulation, pressure, or coercion;

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.

Conditions that could mitigate security concerns:

None.

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.

Condition that could mitigate security concerns:

20.(d) the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E (Personal Conduct)

15. *The Concern.* 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

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.

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 behavior 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 unacceptable 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."

The Government must make out a case under Guideline B (Foreign Influence) Guideline F (Financial Considerations) and Guideline E (Personal Conduct) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance. The Government must be able to place a high degree of

confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

In this case the Government has met its initial burden of proving that the Applicant is subject to foreign influence (Guideline B), been financially irresponsible (Guideline F), and falsified his security clearance application (Guideline E). 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.

Under Foreign Influence, Disqualifying Conditions 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.(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* apply. None of the mitigating conditions are applicable.

It is acknowledged that the Applicant comes from a large Korean family, and most of his extended family members are citizens of and/or reside in South Korea. Two of his sisters and his brother are citizens of Korea. Although his two sisters live in the United States, and have lived here for ten years, they have not applied for citizenship here. His wife and in-laws are also citizens and/or residents of Korea. Although it does not appear the his family in Korea have any association with the Korean government, the Applicant cannot say that he will not return to Korea to live in the future.

It is noted that the current political situation in South Korea elevates the cause for concern in this case. The Applicant maintains close and continuing contact with Korea and strong ties with his Korean culture. He is a native born Korean citizen who immigrated to the United States, but still holds on tight to his Korean identity. His wife and her family are Korean citizens. The Applicant is a product of the Korean culture and its values, and sends his family to Korea every year to ensure that his children learn the culture. Under the particular facts of this case, the possibility of foreign influence does exist and 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.)

In regard to the Applicant's finances, his excessive indebtedness was caused by extravagant spending and living beyond his means before he was married. He is ashamed of his past and has been working to resolve his financial delinquencies. He is indebted to three separate creditors, and is currently paying the debts through a debt consolidation program. He plans to continue to pay the debts until they are resolved. The Applicant now understands his responsibility to be fiscally responsible at all times. He has presented sufficient evidence to demonstrate a track record of financial responsibility, or that he has resolved his financial indebtedness.

There is sufficient 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. However, Mitigating Condition 20.(d) the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts is also applicable. Accordingly, I find for the Applicant under Guideline F (Financial Considerations.)

Turning to the Applicant's deliberate falsification of his security clearance application. There is no acceptable excuse for this misconduct. The Applicant blatantly lied in response to a series of questions concerning his finances. He was embarrassed by the truth and did not want to reveal the information to the Government. This conduct demonstrates dishonesty, unreliability and untrustworthiness. He is not someone to be trusted with the national secrets. He is therefore, not sufficiently trustworthy to have access to classified information. Under the particular facts of this case, his poor personal conduct is considered a significant security risk, which prohibits a favorable determination in this case. Under Guideline E, (Personal Conduct), Disqualifying Condition 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. None of the mitigating conditions are applicable. Consequently, I find against the Applicant under Guideline E (Personal Conduct.)

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, a lack of candor, an unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information. I have also considered his favorable evidence, including his favorable letters of recommendation.

Considering all the evidence, the Applicant has failed to meet the mitigating conditions of Guidelines B and E of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has failed to meet his ultimate burden of persuasion under Guidelines B and E. Guideline F is found for the Applicant.

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

Subpara. 1.d.: Against the Applicant

Subpara. 1.e.: Against the Applicant

Subpara. 1.f.: Against the Applicant

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant

Subpara. 2.b.: For the Applicant

Subpara. 2.c.: For the Applicant

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant

Subpara. 3.b.: Against the Applicant

Subpara. 3.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

