



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-04120

Appearances

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

March 28, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated September 15, 2009. (Government Exhibit 1.) On August 26, 2011, 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 September 9, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on November 30, 2011. A notice of hearing was originally issued on December 7, 2011, scheduling the hearing for January 17, 2012. The matter was rescheduled and set for January 30, 2012. The Government presented seven exhibits, referred to Government Exhibits 1 to 7, which were admitted without

objection. The Applicant presented ten exhibits, referred to as Applicant's Exhibits A through J, which were admitted without objection. The Applicant also testified on his own behalf. The official transcript (Tr.) was received on February 8, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in South Korea and Russia. (Tr. p. 26) Applicant had no objection. (Tr. pp. 27 and 40.) 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 the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 27 years old, and has a Bachelors Degree in Aerospace Engineering. He is employed by a defense contractor as a Design Engineer 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 E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he engaged in conduct which shows dishonesty, questionable judgment, unreliability and/or untrustworthiness.

The Applicant admits each of the allegations set forth in the SOR under this guideline, except 1(a) and 1(b).

In 2007, after graduating from college, the Applicant began working for an engineering company. In March 2008, he was terminated from his employment for punctuality and attendance problems. He explained that he was not available during the core operating hours. He would show up for work consistently late. He did not enjoy his job as it turned out to be completely different than he expected. He was immature and reckless. During that period, he also failed to notify his employer of the fact that he was engaging in outside employment activities. He was doing freelance work and on one occasion he worked on his freelance work during regular work hours. (Tr. p. 71.) These were violations of company policies. (Government Exhibit 3.)

The Applicant has an extensive history of driving infractions beginning in 2007, which continued until 2011.¹ (Applicant's Exhibits B and J.) On November 3, 2007, he was stopped by law enforcement and cited for speeding (greater than 100 MPH). On April 21, 2008, he pled not guilty to the charged infraction, but was found guilty of a lesser infraction of speeding (greater than 65). He was fined \$100.00 and awarded other assessments.

In June 2008, the Applicant was stopped by law enforcement and cited for speeding (greater than 65 MPH). (Government Exhibit 4.) He failed to appear in court as required by the citation. On October 24, 2008, he paid a fine of \$445.00.

In July 2008, the Applicant was stopped by law enforcement and cited for driving while using a cell phone. On October 10, 2008, he paid a fine of \$50.00. (Government Exhibit 2.)

In August 2008, the Applicant was cited for running a red light. He explained that the traffic camera took a picture of him passing through the middle of the intersection as the light turned red. His license was suspended for failing to appear in court as required and failing to pay the citation fine. He later went to court, paid the fine, and got his driver's license back.

In September 2008, the Applicant was stopped by law enforcement and cited for speeding (greater than 65 MPH.) (Government Exhibit 4.) On November 12, 2008, he failed to appear in court as required by the citation. On March 27, 2009, he paid the fine of \$559.00. He explained that he was out of town on the court date and had tried to change it, but was unable to do so.

In September 2009, he was stopped by law enforcement and cited for speeding (greater than 65 MPH). (Government Exhibit 2.)

In 2010, the Applicant was stopped by law enforcement and cited for a lane violation. He paid a fine of \$190.00. He explained that he had cut across two lanes of traffic in order to make the exit that he almost missed. (Tr. p. 83). He states that he is much more careful now. (Government Exhibit 4.)

The Applicant states that he truly regrets all of his traffic violations of the past. He explained that at the time he was young, immature and reckless. Although it was not an excuse for his violations, at that time his commute to and from work was over 120 miles per day. He explained that these violations taught him a lesson and he has learned from his mistakes. He states that he now manages his time schedule properly and does not over commit himself. His current home is very close to his work. He

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The Applicant indicates in his affidavit dated January 19, 2011, that he recalls being cited for speeding in the first half of 2010. (Government Exhibit 2, page 4.) The Applicant also admits that he was recently cited for speeding in March or April 2011. (Tr. p. 84.) Neither of these violations were alleged in the SOR.

states that he never wants to violate any state or federal traffic, or non traffic laws, and he now always plans his schedule. (See Applicant's Answer to SOR.)

When Department Counsel asked the Applicant when was the last time he had any driving infractions, the Applicant admitted that he had been cited for speeding in April or March 2011, a violation not alleged in the SOR. When asked why he was speeding after such an extensive past speeding record, the Applicant stated, "Right. So - - so that was in the middle of really nowhere, like it right in the middle of the desert. I just - - most people were going about 80. I mean, like honestly say it. Like really, I mean if you go out the 14, often is the case, like people go about 75 or 80, and so." (Tr. p. 84). This comment by the Applicant does not show the level of maturity necessary in order to have access to classified information.

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 allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated September 30, 2009; November 8, 2011; and January 30, 2012, collectively reflect that at one time he owed each of the delinquent debts set forth in the SOR. (Government Exhibits 5, 6 and 7.)

In January 2008, a state tax lien was filed against the Applicant in the amount of \$351.00. The Applicant testified that he purchased an experimental aircraft as a hobby project. He brought it into the state and had it properly registered. However, he did not realize that there was property tax associated with it. He missed the time frame in which to report the assessed value of the aircraft and so the state reported the value much higher than the actual value. The Applicant paid off the tax lien. (Tr. p. 58.)

In January 2009, the Applicant's credit report indicated that he was 60 days late in payments toward his student loans with an outstanding balance of \$12,340. The Applicant pays \$109.65 monthly toward the debt and is current with his payments. He now owes about \$4,800. (Applicant's Exhibit G.) He now brings home a little over \$5,000 monthly after taxes and lives within his means. (Tr. p. 64.) He is able to maintain a savings account with a significant amount of money. (Applicant's Exhibit H.) He has no other delinquent debts and is current with all of his regular monthly expenses and his credit card bills. (Applicant's Exhibits C, D, E and F.)

Applicant's credit report dated January 28, 2012, reflects a good credit rating of 720. (Applicant's Exhibit I.)

Paragraph 3 (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, which could result in the compromise of classified information.

The Applicant admits each of the allegations set forth in the SOR under this guideline. The Applicant was born in the Soviet Union in 1984. He moved to the United States with his family in 2001, and became a naturalized United States citizen in 2006. He attended college here from 2002 until he graduated in 2006. His foreign passport from the Soviet Union is being held in an official secured safe by his current employer. After obtaining United States citizenship and an American passport in 2006, he never used his foreign passport to travel. (Tr. p. 54.) He has lived and worked in the United States since moving here, and has no plans of ever moving back to the Soviet Union. He has been working for his current employer since June 2009.

The Applicant's wife is a citizen of South Korea. Her extended family that includes her parents, a brother, and aunts and uncles are citizens and residents of South Korea. The Applicant met his wife in the United States and has known her for four years. They have been married for three and a half years. She currently has a green card and plans to apply for United States citizenship when she is eligible. Her mother is a housewife, and her father works in a shipyard in South Korea. The Applicant's wife telephones her parents in South Korea on a regular basis about once a week. Her brother works in South Korea as an architect for a construction company. (Tr. p. 49) She communicates with him much less frequently, about once every two years. (Tr. p. 49.) Only on special occasions, does the Applicant send gifts to his wife's family in Korea. (Tr. p. 46.)

The Applicant's father is a dual citizen of the United States and Russia. He was born in Kuwait. The Applicant's father resides in the United States and has a business in Russia selling hair straightening products. He travels to Russia about once every two years for business purposes. (Tr. p. 56.) The Applicant's father owns a small apartment in Russia worth about \$50,000 to \$70,000, which is in the Applicant's sister's name. His father's assets in the United States are worth approximately \$100,000. His father loves the United States and never plans on moving back to Russia. (Tr. pp. 56 - 58.)

Two letters of recommendation, one from the Applicant's past supervisor and the other from a coworker, attest to his excellent work ethics, professionalism, diligence, close attention to detail and high sense of integrity. The Applicant is considered an asset to the organization and highly recommended for a security clearance. (Applicant's Exhibit A.)

The Applicant has contacts with South Korea and Russia. Accordingly, it is appropriate to discuss the situation in both countries. I have taken administrative notice of the current political conditions in South Korea and Russia. These include the fact South Korea is a highly developed stable democratic republic with powers shared between the president and the legislature. South Korea has a history of collecting protected United States information. It has targeted the United States with intelligence gathering programs and has centered its collection efforts on computer systems, aerospace technologies and nuclear technologies, and its activities have included stealing information from computerized data bases maintained by United States

government agencies. South Korea is one of seven countries most actively engaged in foreign economic collection and industrial espionage against the United States.

Russia has a centralized political system, with power concentrated in a president and a prime minister, a weak multiparty political system dominated by the ruling United Russia party and a bicameral legislature (Federal Assembly). Corruption is widespread throughout the executive, legislative and judicial branches and officials often engage in corrupt practices. Russia's intelligence services are conducting a range of activities to collect economic information and technology from United States targets and remains one of the two most aggressive and capable collectors of sensitive United States economic information and technologies, particularly in cyberspace. Two trends that may increase Russia's threat over the next several years is that many Russian immigrants with advanced technical skills who work with leading United States companies may be increasingly targeted for recruitment by the Russian intelligence services; and a greater number of Russian companies affiliated with the intelligence services will be doing business in the United States. Russian intelligence efforts include espionage, technology acquisition, and covert action efforts to alter events abroad without showing its hand.

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 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.

Condition that could raise a security concern:

16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected 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; and

19.(c) a history of not meeting financial obligations.

Conditions that could mitigate security concerns:

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; and

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

Guideline B (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 in a foreign country if that contact

creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

7.(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.

Conditions that could mitigate security concerns:

8.(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

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.

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."

CONCLUSIONS

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 personal conduct, 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 engaged in a pattern of rule violations indicative of poor personal conduct (Guideline E), has been financially irresponsible (Guideline F), and 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.

Turning to Guideline E, Financial Considerations. The Applicant has paid off his tax lien and his student loans are current. He has no other delinquent debt and is able to pay his regular monthly expenses and credit card bills in a timely fashion. He also has a significant amount of money in savings. His finances and credit rating are in good standing. He understands that he must remain fiscally responsible at all times.

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. Mitigating Conditions 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*, and 20.(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

Concerning Guideline B, Foreign Influence, the Applicant's foreign contacts that include his wife from South Korea, and his father from Russia do not pose significant security risks. His wife has her green card and plans to become a United States citizen when she is eligible. She and the Applicant have made the United States their permanent home. Although she contacts her parents fairly regularly, the Applicant has little or no contact with them. The Applicant's father, who is a dual citizen of the United States and Russia, and has a business in Russia, resides in the United States, and has more assets here than he does in Russia. He also plans to permanently stay in the United States.

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 in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*; and 7. (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* apply. Mitigating Conditions 8(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, 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* also apply. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

The Applicant's personal conduct under Guideline E, however, is more troubling. The Applicant engaged in poor personal conduct that reflects negatively on his ability to be trusted with the national secrets. His pattern of misconduct involving company policy violations as well as numerous traffic violations that include four or five speeding tickets; a ticket for running a red light; a ticket for driving while using a cell phone; and a ticket for improper lane change; not to mention his failure to appear in court when required to do so, demonstrates poor judgment, unreliability and untrustworthiness. The Applicant acknowledges his mistakes, and indicates that he has changed his ways. However, his credibility is in question since his most recent traffic violation occurred in April or March 2011, just last year. Given the number of driving violations he has committed, more time is necessary to demonstrate that he can properly follow rules and regulations. I am not convinced at this time that he can follow rules and be trusted. Under the particular

circumstances of this case, the Applicant falls short of this requirement at this time. The Applicant may reapply in one year and by then, assuming he follows his intentions, his past misconduct will hopefully be in the distant past. This will improve his opportunities to meet the eligibility requirements for access to classified information.

Disqualifying Condition 16.(c) *credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information* applies. None of the mitigating conditions are applicable.

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information, including his favorable letters of recommendation. However, 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 questionable judgement, untrustworthiness, unreliability, lack of candor, 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 failed to 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 Paragraph 1 of the Government's Statement of Reasons. Paragraphs 2 and 3 are 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.
- Subpara. 1.g.: Against the Applicant.
- Subpara. 1.h.: Against the Applicant.

Paragraph 2: For the Applicant.

- Subpara. 2.a.: For the Applicant.
- Subpara. 2.b.: For the Applicant.

Paragraph 3: For the Applicant.

Subpara. 3.a.: For the Applicant.

Subpara. 3.b.: For the Applicant.

Subpara. 3.c.: For 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