



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 12-00770
)
 Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and F (Financial Considerations). Security concerns under Guideline B are mitigated, but concerns under Guideline F are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 13, 2011. On September 26, 2012, the Defense of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines B and F. DOD acted 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 adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on October 3, 2012; answered it on October 20, 2012; and requested a hearing before an administrative judge. Department Counsel

was ready to proceed on January 18, 2013, and the case was assigned to me on January 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 28, 2013, scheduling it for February 26, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. DOHA received the transcript (Tr.) on March 8, 2013.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Taiwan. His request and supporting documentation are attached to the record as Hearing Exhibit I. I took administrative notice as requested. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations in the SOR. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 35-year-old test engineer employed by a federal contractor since October 2006. He has held a security clearance since September 2007.

Applicant was born in Taiwan of Taiwanese parents. He came to the United States with his family in 1990, when he was 13 years old, in order for his father to receive training as a nuclear engineer and to enable his sister to attend college in the United States. (Tr. 36.) In 1991, Applicant's father returned to his job as a nuclear engineer for the Taiwanese Department of Energy. His father retired from his position in Taiwan, worked as a consultant in Taiwan for about a year, came to the United States in 2009, and obtained his green card. Applicant testified that his father intends to become a U.S. citizen when he is eligible. (Tr. 39.) His father has not conducted any business or maintained any contacts with former colleagues in Taiwan since 2009. (Tr. 41, 45.) His father closed his bank account in Taiwan and used his retirement funds to buy a home in the United States. (Tr. 43.)

When Applicant's father returned to Taiwan in 1991, Applicant, his mother, and his siblings remained in the United States. His mother and brother are now U.S. citizens. (Tr. 39.) Applicant became a U.S. citizen in November 2001. (GX 1 at 7.)

Applicant attended college in the United States and received his bachelor's degree in August 2000. After graduation, he worked at the university as a project engineer from September 2000 to January 2005, when he was laid off. He worked for a federal contractor for about two months when he was laid off again due to budget cuts. He worked as an engineer for another defense contractor from March 2005 to October 2006, when he volunteered to be laid off during a reduction in force and accepted a position with his current employer. (Tr. 31-33; GX 1 at 14-17.)

Applicant's sister returned to Taiwan after she graduated from college, and she completed graduate school in Taiwan. (Tr. 31, 45.) She is a professor of geology in Taiwan, and her husband, also a citizen and resident of Taiwan, owns and operates a pet store. Applicant is close to his sister and has monthly contact with her by email or cell phone. He travels to Taiwan about every other year to visit her and her family. (Tr. 46-48.)

Applicant's parents spend about half their time in Taiwan, where they stay in the family home that they retained after immigrating to the United States, and half their time in the United States. Applicant's father also owns a couple of rental properties in Taiwan. (Tr. 43.) They have grandchildren in both countries. (Tr. 34-35.) Applicant talks with his parents about once a month. (Tr. 44.)

Applicant has limited contact with his older brother. He testified that he and his brother are not particularly close, but that he intends to contact his brother more often now that his brother is married and has children. (Tr. 65-66.)

Applicant purchased an investment property in 2005. He financed the purchase with first and second mortgages. He hired a property manager, who collected the rent and sent him a quarterly check for net rental income. He had no problems with the property for about a year. When he stopped receiving the rental checks in 2007, he visited his property manager's office, found it closed, and could not locate her. (Tr. 51.) His tenant was still in the property and paying rent. However, when the tenant moved out in late 2007, Applicant stopped making payments on his two mortgages, which were both with the same lender. He did not contact the lender, make any effort to modify the mortgage loans, or otherwise resolve them. He made no effort to find another tenant. He started receiving notices from the lender in 2008 but did not respond to them. He did not explore the possibility of selling the property. He was focused on his work and did not want to deal with the delinquent mortgages. (Tr. 32-33, 50-55.)

Applicant made no effort to prevent foreclosure on the property. (Tr. 56.) The first mortgage was foreclosed and the proceeds from the foreclosure sale were sufficient to satisfy the first mortgage but not the second mortgage. The lender obtained a default judgment for the deficiency on the second mortgage in March 2011. (GX 2.) As of March 21, 2011, Applicant owed about \$41,609 on the second mortgage. (AX B.) About \$250 per week is being collected by garnishment. (Tr. 61.) About \$4,606 was collected by garnishment in 2011, and about \$6,342 was collected in 2012. (AX C.) He has not contacted the lender since the garnishment was imposed, preferring to let the process run its course to eventually resolve the debt.¹ (Tr. 62.)

Applicant is unmarried and has no children. He owns his home and lives alone. He is current on his mortgage payments on his primary residence. He has no delinquent

¹ The court records reflect that the case was concluded by "Settlement/Nonsuit/Vol. Dismissal." (GX 2) The basis for this entry in the court record is not clear, because Applicant did not appear in court, respond to any pleadings, contact the lender, or take any active part in the resolution of the debt.

debts other than the deficiency on the second mortgage on his rental property. (GX 4.) He has about \$12,000 in his checking account, about \$25,000 in a retirement account, and about \$10,000 in investments. (Tr. 48-49.) He recently received a pay raise, and his net monthly remainder, after deduction of the garnishment, is about \$3,200. (Tr. 63.)

Taiwan is a multi-party democracy, established as a separate, independent government by refugees from mainland China in 1949. The People's Republic of China (PRC) does not recognize Taiwan's independence and insists there is only one China. The U.S. recognized Taiwan as an independent government until January 1979, when it formally recognized the PRC government as the sole legal government of China. Taiwan has developed a strong economy and has significant economic contacts with the PRC. For many years, Taiwan has been an active collector of U.S. economic intelligence, and there have been numerous instances involving transfer of classified materials and illegal export or attempted export of sensitive, dual-use technology to Taiwan. The People's Republic of China maintains intelligence operations in Taiwan and uses PRC nationals with Taiwan connections to gather intelligence for the PRC. The PRC is one of the most aggressive practitioners of industrial espionage. It aggressively targets sensitive and protected U.S. technology and military information, using worldwide intelligence operations, including those in Taiwan.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The SOR alleges that Applicant’s father is a citizen of Taiwan residing in the United States and that he worked as a nuclear engineer for the Taiwanese Department of Energy until he retired (SOR ¶ 1.a). It also alleges that Applicant’s sister and brother-in-law are citizens and residents of Taiwan (SOR ¶ 1.b).

The security concern under this guideline is set out in AG ¶ 6:

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.

Two disqualifying conditions under this guideline are relevant:

AG ¶ 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

AG ¶ 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.

AG ¶¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

When family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Based on Applicant's ties to his father and his

sister, Taiwan's record of intelligence gathering targeted toward the United States, his father's former connections to Taiwan's government, and the PRC's use of resources in Taiwan to gather classified and sensitive information from the United States, I conclude that the heightened risk required by AG ¶ 7(a) and the potential conflict of interest required by AG ¶ 7(b) are established.

Security concerns under this guideline can be mitigated by showing that "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S." AG ¶ 8(a). For the reasons set out in the above discussion of AG ¶¶ 7(a) and 7(b), I conclude that this mitigating condition is not established.

Security concerns under this guideline also can be mitigated by showing "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." AG ¶ 8(b). Applicant's ties to his father and sister are not "minimal." However, I am satisfied that his deep and longstanding relationships and loyalties in the United States will cause him to resolve any conflict of interest in favor of the United States. His mother and brother are U.S. citizens, and his father is a permanent resident of the U.S. who aspires to be a U.S. citizen. Applicant has resided in the United States all of his adult life. All of his assets are in the United States. He has no financial interests in Taiwan. He is deeply devoted to his work in the United States, to the extent that he ignored his responsibilities regarding his rental property due to his undivided attention to his work.

Security concerns under this guideline also may be mitigated by showing that "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." AG ¶ 8(c). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). This mitigating condition is not established because Applicant has not overcome the presumption that his contacts with his father and sister are not casual.

Guideline F, Financial Considerations

The SOR alleges that Applicant is indebted in the amount of about \$44,000 for a delinquent second mortgage loan (SOR ¶ 2.a). The concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The evidence establishes that Applicant allowed the second mortgage loan to become delinquent, took no action to prevent foreclosure, and has taken no affirmative action to resolve the deficiency on the second mortgage. Instead, he allowed the lender to foreclose, obtain a default judgment for the deficiency, and garnish his wages to collect the debt. The evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions are potentially relevant:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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; and

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

AG ¶ 20(a) is partially established because the default on Applicant's mortgages was a one-time event, and it occurred because of circumstances making it unlikely to recur, *i.e.*, the criminal conduct of a rental property manager. However, his conduct was recent, and his passive attitude toward his obligation to the lender casts doubt on his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is partially established because the criminal conduct of his property manager was a condition beyond his control. However, he did not act responsibly, because he took no affirmative action to prevent foreclosure or resolve the delinquent second mortgage after the first mortgage was foreclosed.

AG ¶ 20(d) is not established. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Applicant walked away from the property, allowed the mortgages to be foreclosed, allowed a default judgment to be entered against him, and took no action to prevent garnishment of his pay. Payments by involuntary garnishment are “not the same as, or similar to, a good-faith initiation of repayment by the debtor.” ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009).

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. An 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) the 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.

I have incorporated my comments under Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant was candid and sincere at the hearing. He is attached to his father and his sister. His travel to Taiwan is related to his family attachments and has no independent security significance, because there is no evidence that he is attached to Taiwan except to the extent that it is where his sister and her family reside. See ISCR Case No. 02-26978 (App. Bd. Sep 21, 2005). He has lived in the United States since adolescence and is devoted to his work in the United States. He has worked for defense contractors for more than eight years and held a security clearance for more than six years, apparently without incident. However, his lack of concern about his financial obligation to the mortgage lender leaves me with doubts about his reliability and trustworthiness.

After weighing the disqualifying and mitigating conditions under Guidelines B and F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on his family ties to Taiwan, but he

has not mitigated the security concerns raised by his financial delinquencies. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Paragraph 2, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge