



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



In the matter of:

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) ISCR Case No. 15-04422
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Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: Leon Schachter, Esquire

October 13, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on October 14, 2014. On January 19, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing through counsel on February 10, 2016, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on April 19, 2016. DOHA issued a notice of hearing on May 3, 2016, and I convened the hearing as scheduled on June 21, 2016. The Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified on his own behalf, as did his first and second line supervisors, and submitted Exhibits (AppXs)

A through S, which were received without objection. DOHA received the transcript of the hearing (TR) on June 29, 2016. The record closed on June 29, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel and Applicant's Counsel both submitted a formal request that I take administrative notice of certain facts relating to the Republic of Korea. The request was granted. 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

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Guideline B - Foreign Influence

Applicant is a native-born American; but when he "was two years old," his parents returned to Korea, the country of their birth, taking Applicant with them. (TR at page 21 line 2 to page 22 line 4.) At the age of 27, "in [the] fall [of] 2006," Applicant returned to the United States to enter graduate school. (TR at page 25 lines 6~10, and GX 1 at pages 5 and 15.) He has resided in the United States since returning, and has earned both a Master's Degree and a Ph. D. (Tr at page 25 lines 6~10, and GX 1 at pages 10~15.)

1.a. Applicant's 73-year-old mother and 77-year-old father, who are citizens of and reside in Korea, are both "retired College Professors from private institutions," and they have no connection with the Korean government. (TR at page 49 lines 2~6, and GX 1 at pages 28~31.) Applicant affirms that he would not jeopardize national security vis-a-vis his parents. (TR at page 65 line 21 to page 58 line 2.) He contacts his parents about "once a week." (AppX Q.)

1.b. Applicant's 23 year-old brother, who is a citizen of and resides in Korea, is a "Banker," and has no connection with the Korean government. (TR at page 49 lines 6~9, and GX 1 at pages 31~32.) Applicant affirms that he would not jeopardize national security vis-a-vis his brother. (TR at page 65 line 21 to page 58 line 2.) He contacts his brother about "once [every] two weeks." (AppX Q.)

1.c. Applicant has infrequent contact with other citizens and residents of Korea, as delineated on a very comprehensive list of "Foreign Contacts." (AppX Q.) Of the ten individuals he has contact with, his contact ranges from monthly to yearly. (*Id.*, TR at

page 52 line 2 to page 55 line 20, and at page 59 line 15 to page 65 line 2.) None of these foreign contacts have any connection with the Korean government. (*Id.*)

South Korea has a history of collecting protected U.S. information. It ranks as one of the seven countries most actively engaging in foreign economic collection and industrial espionage against the United States.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B - Foreign Influence

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.

Here, Paragraphs 7(a) and 7(b) are arguably applicable: 7(a) “*contacts with a foreign family member . . . 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(b) “*connections to a foreign person . . . 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 . . . by providing that information.*” The Applicant’s parents and his brother are citizens and residents of South Korea, and he has ten other foreign contacts with Koreans. These are clearly countered, however, by the first and second mitigating conditions, as 8(a) “*the nature of the relationships with foreign persons, . . . 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 . . . and the interests of the U.S.*”; and 8(b) “*there is no conflict of interest [as] 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.*” Apart from his immediate family, Applicant has little contact with his Korean associates. His parents and brother have no connection with the Korean government, and he would not jeopardize national security vis-a-vis these relatives.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances. 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.

The administrative judge should also 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 considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Applicant is most highly regarded by those who work with him, and those who know him through academia. (TR at page 66 line 4 to page 74 line 21, and AppXs B, R, and S.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alleged Foreign Influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a.~1.c. For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge