



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



In the matter of:)
)
) ISCR Case No. 15-04446
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Department Counsel
For Applicant: *Pro se*

October 19, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on May 8, 2014. (Government Exhibit 1.) On December 9, 2015, the Department of Defense (DoD), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended), issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why the DoD 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on January 4, 2016, and he requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on April 11, 2016. A notice of hearing was issued on May 9, 2016, scheduling the hearing by video-teleconference for June 6, 2016. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E, which were admitted without objection. He also testified on his own behalf. The record remained open until close of business on June 13, 2016, to allow the Applicant to submit additional

documentary evidence. He submitted supplementary Exhibits 1 through 4, which were admitted without objection. The official transcript (Tr.) was received on June 14, 2016. 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 condition in South Korea. (Tr. pp. 21-22.) Applicant had no objection. (Tr. p. 22.) The request and the attached documents were admitted into evidence and included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

REQUEST TO AMEND STATEMENT OF REASONS

On February 23, 2016, Department Counsel requested in writing that the SOR be amended to include one allegation under paragraph 3, Guideline E, Personal Conduct. Applicant had no objection to the requested amendment. (See Applicant's Response dated March 19, 2016.) The amendment, now allegation 3.(a) reads as follows, "You were administratively separated from the U.S. Army due to a pattern of misconduct".

FINDINGS OF FACT

Applicant is 30 years old, and is married. He has two years of college and is working towards his Bachelor's degree. He is employed for a defense contractor as an Electronic Technician. He is seeking to obtain a security clearance in connection with this employment.

The Government opposes Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

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, which could result in the compromise of classified information.

Applicant admits each of the allegations set forth in the SOR under this guideline, except 1.c. He was born in 1986, in South Korea, to an American father and a South Korean mother. Following Applicant's father's first tour in the military, after the Vietnam War, he got out of the military, and moved to South Korea where he met Applicant's mother. Applicant was raised for the most part at two American Army bases, until he

was 17 years old. He attended an international school, and in October 2004, at the age of 17, he joined the United States Army.

Applicant explained that in 2004, he joined the Army to be able to provide financial assistance to his family and ill father. Since then, until November 2015, he has provided financial support to his mother and father in Korea. While supporting his family, they raised enough money to purchase land to build a house in June 2011. Applicant admits that he is co-owner of the property because he contributed to the cost. On paper, however, the property is in his mother's name. Applicant is not listed as an owner because he is prohibited from buying and purchasing land as an American citizen with his visa status. (Tr. p. 46.) Upon inheritance, the property will go to Applicant's wife. The house is valued at about \$130,000. Applicant also owns a car in South Korea that he purchased in May 2015. (Tr. p. 47.) He also has a South Korean driver's license. Applicant maintains a bank account in South Korea. He uses it to buy clothes on the Korean market, or to allow his wife to transfer money to him for emergency purposes if needed.

Applicant is married to a Korean citizen, who is currently a resident of Korea. She is 33 years old and works as a nurse. She has one sister in South Korea who works as a manicurist. The sister's husband is a boxing coach. Applicant's in-laws are also residents and citizens of South Korea. His wife's mother is a housewife. Her father works in the construction business. Applicant's wife in South Korea contacts her parents everyday.

Applicant's mother is also a citizen and resident of South Korea. (Applicant's Exhibit D.) She is a retired restaurant owner. Applicant lived with his mother from the time he got out of the Army in 2006 until November 2015, when he got married. Applicant maintains contact with his mother on a weekly basis by telephone and in person electronically. (Tr. p. 32.) Applicant has told his mother that he is applying for a security clearance. Applicant's mother has extended family in South Korea that include three brothers and one sister who are citizens and residents of South Korea. His mother maintains regular contact with them.

Applicant's father, is a United States citizen who resides in South Korea. (Applicant's Exhibit C.) Following his military service, he taught at a University in Korea, and worked as an educational counselor at an American Army base in Korea. (Tr. p. 36.) He has never held any jobs affiliated with the South Korean government. He is currently 100% disabled from the Department of Veteran's Affairs, collects social security, and resides with Applicant's mother in South Korea. They have been married for 34 years. Applicant has informed his father that he is applying for a security clearance. Applicant explained that his wife and both of his parents are his official legal dependents. (Applicant's Exhibit E.)

Applicant has a few friends that he grew up with in South Korea who are now Republic of Korea soldiers. He no longer maintains contact with them.

Applicant began working for his current employer in 2010. He has never held a security clearance. Applicant's assets in the United States are limited. He testified that he has two bank accounts in the United States. He has \$1.00 in his checking account, and \$300 in his savings account.

I have taken administrative notice of the current political conditions in South Korea. 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.

Paragraph 2 (Guideline F - Financial Considerations) The Government alleges that Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

Applicant denies the allegation set forth in the SOR under this guideline. Credit report of the Applicant dated May 31, 2014; April 14, 2015; and February 18, 2016, which includes information from all three credit reporting agencies, indicate that Applicant was indebted to the creditor listed in the SOR. (Government Exhibits 3, 4, and 5.)

Applicant became indebted to a credit union for a delinquent credit card account that was charged off in the approximate amount of \$12,624. Applicant testified that he used the credit card for cash advances in the amount of about \$9,000 to help his family purchase the land, and to buy groceries for himself. He stated that this was his first credit card, and he did not understand how to pay credit card bills at the time. He acknowledges that he was young and dumb, and could not afford the payments because he was paying for a car he had purchased. The account was eventually closed due to the delinquencies. About two years ago, Applicant contacted the creditor and paid off the debt in full. A letter from the creditor dated June 2, 2016, confirms this payment. (Applicant's Post-Hearing Exhibit A.)

Paragraph 3 (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.

Applicant admits the allegation set forth in the SOR under this guideline. Applicant joined the United States Army in October 2004 at the age of 17. After finishing boot camp and advanced training, he was stationed at a base in South Korea. His enlistment period was to extend for 30 months. He only served 16 or 17 months before he was discharged. In June 2006, he was administratively separated from the

United States Army due to a pattern of misconduct. Applicant committed two significant offenses. His first offense was for drinking under age. On his own time after work, Applicant went drinking with local Korean friends. His NCO smelled alcohol on him and wrote him up. Applicant's second offense involved him showing up late for PT formations on at least six to ten occasions. Applicant stated that he would be late anywhere from 5 to 10 minutes to 1 to 2 hours. Applicant was issued an Article 15, and was penalized with 14 days of extra duty and 14 days of lost pay.

In 2005, Applicant underwent a sleep study and it was determined that he did not have sleep apnea. For the past nine years, Applicant has been legally fighting this issue. He has already been considered 40% disabled based upon his hearing, ankles and shoulder. In November 2015, it was officially determined that Applicant had sleep apnea while in the Army. (Applicant's Exhibit A.) Applicant is currently waiting for his disability determination based upon his sleep apnea. He is also appealing the nature of the separation based upon this diagnosis to have it changed from a discharge honorably under general conditions to an honorable discharge.

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 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;

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 information;

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; and

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

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.

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.

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.

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.

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 that is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order adverse to an applicant 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, the security of classified industrial secrets 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 clearance may have foreign contacts, instances of financial irresponsibility, and poor personal conduct 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 or her a security clearance.

In this case the Government has met its initial burden of proving that Applicant has significant foreign contacts (Guideline B), an instance of financial irresponsibility (Guideline F), and poor personal conduct (Guideline E.) This evidence indicates poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant’s conduct, I conclude there is a nexus or connection with his security clearance eligibility.

The evidence presented shows that Applicant’s foreign contacts are significant. His family, including his mother, father and wife, resides in South Korea. Applicant has spent the majority of his life in Korea. His parents are both residents of South Korea. His mother is also a citizen of South Korea. His new wife is a citizen and a resident of South Korea. Applicant has a bank account and car in South Korea, and has provided financial support for his family there until last year. He has helped his family to purchase a home in South Korea. He has lived in the home with his mother for many years until recently. His close connection to South Korea raises significant security concerns about his desire in the future to help a foreign person, group, or country by providing protected information or his parent’s desire to continue retaining financial support from their son.

Under Guideline B, (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*; 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*; 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*; and 7.(e) *a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation* apply. None of the mitigating conditions are applicable.

In regard to Applicant's finances, Applicant has provided documentation showing that he has paid the delinquent credit card debt. Most troubling, however, is the fact that Applicant used this credit card to cash advance money he gave to his mother to purchase land in South Korea. This does not show the requisite good judgment or reliability that is necessary in order to be eligible for access to classified information. However, under Guideline F (Financial Considerations) Applicant has shown mitigation. Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; and 19.(c) *a history of not meeting financial obligations*, apply. But, in this case, Mitigating Condition 20.(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also applies. Accordingly, Guideline F is found for the Applicant.

Applicant's personal conduct continues to show immaturity and irresponsibility. His misconduct while serving in the military involving underage alcohol abuse and repeated issues of being late for formation shows unreliability and untrustworthiness. It is questionable at this point, as to whether sleep apnea played a significant role in his situation, but I don't believe it is to blame for everything. There are many people with sleep apnea who are able to follow rules and regulations, even considering their medical conditions. Here, Under Guideline E (Personal Conduct), Disqualifying Conditions 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 convincingly applicable.

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth above, when viewed under all of the guidelines as a whole, supports a whole-person assessment of poor judgement, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and/or other

characteristics indicating that the person may not properly safeguard classified information.

Under the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. Considering all of the evidence, Applicant has not introduced persuasive evidence in rebuttal, explanation, or mitigation that is sufficient to overcome the Government's case.

I have considered all of the evidence presented. It does not mitigate the impact of his foreign contacts and his poor personal conduct, and the effect, that it can have on his ability to safeguard classified information. On balance, it is concluded that Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 3 of the SOR. Paragraph 2 is found for the Applicant.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1:		Against Applicant.
Subpara.	1.a.	Against Applicant.
Subpara.	1.b.	Against Applicant.
Subpara.	1.c.	Against Applicant.
Subpara.	1.d.	Against Applicant.
Paragraph 2:		For Applicant.
Subpara.	2.a.	For Applicant.
Paragraph 3:		Against Applicant.
Subpara.	3.a.	Against Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge

