



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



In the matter of:)
)
) ISCR Case No. 15-06263
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel
For Applicant: Sean M. Bigley, Esquire

December 14, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 20, 2015. On April 15, 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 on May 9, 2016, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on June 9, 2016. Applicant responded to the FORM (Response) on July 12, 2016. Department Counsel had no objection, and the documents are entered into evidence. The case was assigned to me on December 1, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations of the SOR, with explanations.

Applicant is a 46 year-old "President of [a] "US Corporation." (Item 2 at pages 5 and 15.) He became a naturalized U.S. citizen in August of 2006. (Item 2 at page 7.)

Guideline B - Foreign Influence

1.a. Applicant's spouse is a citizen of South Korea, residing in the United States. (Response at Exhibit I.) She "is a housewife and stay at home mother." (Item 3 at page 5.)

1.b. Applicant's parents are citizens and residents of South Korea. (Item 3 at pages 21~24.) They are both retired; but before his retirement, his father was a "Constitutional Court" Judge. (Item 2 at page 22.) Applicant avers that his father retired in "2005." (Response at page 5.) He further avers that his mother was a homemaker. (*Id.*)

Applicant's two sisters are citizens and residents of South Korea. (Item 2 at pages 27~29.) He avers that they are "homemakers." (Response at page 5.)

Applicant's brother is a citizen and resident of South Korea. (Item 2 at pages 29~31.) He avers that his "brother works in consulting at a private bank." (Response at page 5.)

Applicant speaks to his parents and siblings "about four (4) times per year." (*Id.*)

1.c. Applicant admits he has a South Korean bank account with about \$4,000 in it. He is in the process closing this account, as evidenced by a letter to the bank. (Response at Exhibit J.)

1.d. Applicant admits he owns a home in South Korea valued at about \$1,100,000. He avers that he plans "to sell the property as soon as reasonably feasible and purchase a home in the United States." (Response at page 5.) Despite the Government's concern noted in the SOR issued more than six months ago; and reiterated in the Government's FORM, Applicant has yet to address this serious concern of the Government.

Both Department Counsel and Applicant Counsel ask me to take administrative notice of the facts regarding South Korea. South Korea is one of the United States' most important strategic and economic partners in Asia. In 2012, both countries entered into a free trade agreement, which is expected to add between \$10~\$12 billion dollars to our Gross Domestic Product. The United States and South Korea have had a Mutual Defense Treaty since 1953, and we have a strong military presence there. That being said, South Korea has a history of collecting protected U.S. information.

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(e) are 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(e) “*substantial . . . property interest in a foreign country . . .*” The Applicant’s parents and siblings are citizens and residents of South Korea. Paragraph 7(a) is countered by the first mitigating condition, 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.*” His parents and brother now have no connection with the Korean government; his father has been retired for a decade, and he would not jeopardize national security vis-a-vis these relatives.

That, however, can not be said vis-a-vis his financial interest in South Korea, over a million dollars. He has had more than six months to deal with this obvious concern of the Government, but has chosen not to do so. If and when Applicant eliminates this concern, he may well be eligible for a security clearance, but not now.

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 highly regarded by those who know him. (Response at Exhibit E.) Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his 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:	AGAINSTAPPLICANT
Subparagraphs 1.a.~1.c.	For Applicant
Subparagraph 1.d.	Against Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge