



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 15-08835

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

06/05/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant is addressing his remaining past-due debt through regular monthly payments. His past financial problems do not reflect adversely on his suitability for a security clearance. Additionally, available information is sufficient to mitigate the security concerns about Applicant's family ties in the Peoples Republic of China. Applicant's request for a security clearance is granted.

Statement of the Case

On February 24, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew a security clearance required for his employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have a security clearance.¹

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

On June 8, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under the adjudicative guidelines² for financial considerations (Guideline F), personal conduct (Guideline E), and foreign influence (Guideline B). Applicant timely responded to the SOR (Answer) and requested a hearing. I received this case on November 7, 2016, and convened the requested hearing on January 25, 2017.

The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 3. Additionally, the Government proffered a request that I take administrative notice of certain facts pertaining to the Peoples Republic of China (China). That request is documented in an eight-page memorandum supported by nine enclosed documents. I granted the Government's request and have included it in the record as Hearing Exhibit (HX.) 1. Applicant and his wife testified, and he submitted Applicant's Exhibits (AX.) A - D. I admitted all exhibits without objection. DOHA received a transcript of the hearing (Tr.) on February 3, 2017.

Procedural Issue

The SOR initially contained eight allegations (SOR 1.a – 1.h) under Guideline F; one allegation (SOR 2.a) under Guideline E; and one allegation (SOR 3.a) under Guideline B.

On September 2, 2016, Department Counsel amended the SOR to delete all but one of the Guideline F allegations, with SOR 1.h relabeled as SOR 1.a. The amendment deleted the SOR 2 Guideline E security concern altogether, and relabeled the SOR 3 Guideline B security concern as SOR 2. Finally, also under Guideline B, the amendment modified SOR 3.a, relabeling it as SOR 2.a, and added another allegation as SOR 2.b.

Applicant did not object to the amendment and timely responded to the new SOR 2.a and 2.b allegations. The amendment and Applicant's response, dated September 21, 2016, are included as HX. 2. (Tr. 11 – 13)

Findings of Fact

Under Guideline F, the SOR (as amended) alleged that Applicant owes \$8,870 for a delinquent credit card account (SOR 1.a). Applicant admitted this allegation and provided information showing he has entered into a monthly payment agreement for a reduced amount that will settle his obligation.

Under Guideline B, the SOR (as amended) alleged that Applicant's daughter-in-law is a citizen and resident of China (SOR 2.a); and that his son, a U.S. citizen, lives in China (SOR 2.b). Applicant admitted both allegations, but he denied the stated concern

² The Department of Defense implemented the adjudicative guidelines on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

that his personal ties in China place him in a position of having to choose between the interests of the United States and China. In response to the SOR, Applicant admitted, with explanations, all of the SOR allegations. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 45 years old. He and his wife have been married since 1994 and have three children, ages 25, 21, and 10. In June 2006, Applicant started work as a senior technician for his current employer. Applicant also served in the Army and Army National Guard between September 1991 and March 2006, when he received an honorable discharge at the rank of sergeant. Applicant was deployed to Afghanistan from March 2005 to May 2005, and was recommended for a Bronze Star for his performance during that deployment. He has held a security clearance since early in his military career and throughout his current employment. (GX. 1 and 2; AX. B)

Starting in about 2008, Applicant and his wife began experiencing financial problems. His wife had developed medical problems that kept her from working full-time and greatly reduced their household income. Starting in about 2012, both of their younger children developed severe medical problems resulting in out-of-pocket expenses they could not always pay. At one point, they had trouble making their mortgage payments, but they obtained a loan modification to bring their mortgage current. They also incurred debts in the form of unpaid medical co-payments and costs for medical specialists. While they eventually repaid all of those debts, they also accrued significant credit card debt in order to make ends meet. Their lone remaining debt is the delinquent credit card account alleged at SOR 1.a. In July 2016, Applicant negotiated a settlement with that creditor whereby he is paying \$100 each month for 36 months for a total of \$3,600 that will satisfy his obligation on that account. Applicant has been making those payments as required. (Answer; GX. 2 and 3; AX. A; Tr. 40 – 44, 68)

Applicant earns enough each month to cover their regular expenses. Their youngest child's health has improved, but as of the hearing, the 21-year-old was pending specialized surgery at a hospital across country for which Applicant and his wife would have to travel. These ongoing costs are not all covered by insurance and continue to strain Applicant's finances. They are again trying to modify their mortgage, and Applicant's wife is now able to work full time. She soon expects to contribute about \$2,000 each month to the household finances. (Tr. 44 – 46, 66 – 67, 71 – 72)

Applicant's oldest child, a son, is 25 years old. In September 2012, he was studying engineering and living in the United States when he met a Chinese woman (J), now his wife, on line. At the time, she was living and studying in Europe. After about five months of on-line communications, Applicant traveled to Europe to meet J in January 2013. He stayed with J in Europe before returning to the United States in April 2013. J followed in May 2013 to meet Applicant and his wife. Applicant's son and J stayed in the United States until August 2013, when they traveled to China to meet her parents. Applicant's son married J in China before they returned to the United States in November 2013. They held a second ceremony for Applicant's family in the United States, attended by J's parents, in January 2014. J's father works for an insurance company and her mother is a

homemaker. Applicant and his wife thought their son would stay in the United States, but in January 2016, the couple moved to China. Applicant's son teaches English there, and as of the hearing, J was "due any day" with their first child. Applicant does not know what his son's intentions are for the child's citizenship or whether they will ever return to the United States to live. He has monthly contact with them by social media and on line video chats. (GX. 2; Tr. 47 – 56, 62)

Applicant testified at the hearing that he kept his security manager informed about every development in his son's relationship with a Chinese citizen. He also testified credibly that he would immediately notify his security manager if the Chinese government took any coercive actions against his son.

Applicant has an outstanding reputation in the workplace based on his reliability, integrity, and trustworthiness. His security manager and others at various levels in his organization have extolled Applicant's honesty and professionalism. (AX. C)

To assess the security significance of the facts pertaining to Applicant's son and daughter-in-law in China, I take administrative notice of certain facts regarding that country that are not reasonably disputable. China is an increasingly industrialized world economic and military power. The country has a population in excess of one billion people, who live under an authoritarian, Communist regime. Geographically vast and demographically diverse, the country has significant natural resources to help support its growing economy. China devotes most of its industry and domestic production to its military forces, and it has a strategic nuclear arsenal. China is in direct competition with the United States in many geopolitical and economic areas, and actively collects military, economic and industrial information about the United States. China has long been the leading threat to the security of U.S. military and commercial technology. (Hx. 1)

Nonetheless, China and the U.S. also are major trading partners and share other common interests. For example, the two countries have worked closely on regional issues, especially those involving North Korea. However, the Chinese government has an abysmal human rights record. Officials continue to engage in suppression of personal and electronic expressions of political dissent. Arbitrary arrest and detention, forced confessions, torture, and other prisoner mistreatment are commonplace. Government and law enforcement practices are largely unchecked by any independent judicial review. (Hx. 1)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,³ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

³ See Directive. 6.3.

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, administrative judges should follow specific applicable guidelines whenever it possible to measure a case against them as they represent policy guidance governing the grant or denial of access to classified information.

The principal purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁵ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁶

Analysis

Financial Considerations

The Government presented sufficient information to support the SOR allegation under this guideline. The facts thus established reasonably raise a security concern about Applicant's finances addressed at 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

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; AG ¶ 2(b).

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.

More specifically, the record as a whole requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*). Around 2008, Applicant started experiencing financial problems that culminated in accrual of several past-due debts. As of the amended SOR, available information shows he still owed \$8,870 for a delinquent credit card account.

I have also considered the following pertinent AG ¶ 20 mitigating conditions:

- (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;
- (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
- (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.

All of these mitigating conditions apply. Applicant's financial problems arose from unforeseen medical problems over which Applicant had no control. To his credit, Applicant and his wife did not wait to resolve their debts when they arose. For example, although not alleged, Applicant's proactive approach to resolving past mortgage problems speaks well of his judgment and sense of responsibility. The lone debt at issue here is being resolved through regular monthly payments on a lesser negotiated amount due. No new delinquencies have been reported, and Applicant's finances are improving, despite continuing medical challenges for one of their children, and especially with his wife's ability to return to work. An assessment of the record evidence as a whole as it pertains to Applicant's finances shows the security concerns under this guideline are mitigated.

Foreign Influence

The security concern about foreign influence is stated at 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.

More specifically, available information requires consideration of the following AG ¶ 7 disqualifying conditions:

- (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
- (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.

The SOR is supported by reliable information that showed he has close family ties in China. The presence of his son and daughter-in-law in China presents a heightened risk of coercion or exploitation. AG ¶¶ 7(a) and 7(b) apply.

Available information also requires application of the following AG ¶ 8 mitigating conditions:

- (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.;
- (b) 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; and

(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.

Applicant's family ties, although close, are not likely to cause a conflict between his obligation to protect classified information and the interests of the Chinese government. Applicant is a native-born U.S. citizen who has served in the U.S. Army and held a security clearance without incident for several years. Applicant also has kept his company's security organization informed at all stages of his son's association with a Chinese citizen. He also was credible in his assertions that he would immediately advise those same official of any adverse contact by the Chinese government. Applicant's contact with his son and daughter-in-law is routine, and none of Applicant's ties in China have any association with the Chinese government. Applicant's son is living his own life overseas and does not rely on Applicant for support. Applicant has not visited his son in China, and Applicant and his wife remain professionally and personally rooted in the United States. On balance, I conclude available information sufficiently mitigates the security concerns about Applicant's son and daughter-in-law in China.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a veteran and is highly regarded by his employer and co-workers for his commitment to his company's work in support of U.S. interests. He has a solid reputation for loyalty to the United States and for the professionalism and reliability he exhibits at work. Applicant and his wife are committed to their life in the U.S. and to ensuring their other children continue to resolve their health issues. A fair and commonsense assessment of the record evidence as a whole shows that the doubts about Applicant's suitability for a security clearance raised by the Government's information are resolved.

Formal Findings

Formal findings on the allegations set forth in the SOR (as amended), as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge