



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



In the matter of:)
)
) ISCR Case No. 14-06340
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

04/28/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence and financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and F (financial considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 11, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 12, 2016, scheduling the hearing for February 3, 2016. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on February 10, 2016.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE H through K and admitted without objection.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about the Republic of Korea (South Korea). The request was not admitted in evidence, but was included in the record as Hearing Exhibit (HE) II. Applicant did not object, and I have taken administrative notice of the facts contained in HE II. Of note is that South Korea is one of the most active countries engaging in foreign economic collection and industrial espionage against the United States. The South Korean government has generally respected the human rights of its citizens, but some problems persist. I also note that the United States and South Korea share a long history of friendship and cooperation based on common values and interests. The United States has maintained military personnel in South Korea in support of its commitment under the U.S.-R.O.K. Mutual Defense Treaty to help South Korea defend itself against external aggression. South Korea is the United States' sixth-largest trading partner with a trillion-dollar economy.¹

Findings of Fact

Applicant is a 54-year-old employee of a defense contractor. He has worked for his current employer since 2013. He served in the U.S. military from 1985 until he retired in 2008. He has an associate's degree. He married in 1989 and divorced in 1992. He married his current wife in 1997. He and his wife have a child together, and Applicant adopted his wife's child.²

Applicant met his wife, a citizen of South Korea, when he was serving in the military there. She went through the vetting process that was required by the military before the marriage. She is a U.S. permanent resident. Applicant's adopted child is a U.S. citizen. His wife's parents are deceased. His wife has seven siblings. Two of her siblings are married to U.S. citizens. One lives in the United States, and the other recently moved to South Korea with her husband who retired from the U.S. military and accepted a job in South Korea. The remaining siblings are citizens and residents of South Korea. Applicant has sporadic contact with them by telephone. Applicant has not visited South Korea in more than ten years. None of Applicant's wife's siblings are

¹ See <http://www.state.gov/r/pa/ei/bgn/2800.htm>.

² Tr. at 30-35; GE 1, 3.

associated with the South Korean government. Applicant credibly stated that he would report any attempt to use his wife's family in South Korea against him.³

After he retired from the military, Applicant worked for a defense contractor in the same geographic area as his last duty station. The contract expired in 2011, and Applicant had to look for another job. He accepted a job more than halfway across the country. Applicant paid for the moving costs. That contract ended in September 2013, and he accepted his current position in October 2013.⁴

The SOR alleges 15 delinquent debts totaling about \$18,400; however, at least two of the alleged debts are duplicates (SOR ¶ 1.a - \$2,409 and SOR ¶ 1.m \$2,408), which reduces the amount of the debts to about \$16,000. The debts are listed on credit reports obtained in December 2013 and November 2014. There may be additional duplications as the bank alleged in SOR ¶¶ 1.h (\$805) and 1.i (\$548) was acquired by the bank alleged in SOR ¶¶ 1.g (\$979) and 1.j (\$493).⁵

Applicant has been paying his debts since at least 2013 when he accepted his current job. He moved to a smaller house where the rent was much less. He paid a number of debts before the SOR was issued. The December 2013 credit report lists multiple debts that had been in collection, but were reported as paid. The November 2014 credit report lists additional paid accounts. Applicant's repayment efforts were significantly hampered by a car accident in October 2015, resulting in serious injuries. He was out of work on disability until January 2016.⁶

Applicant paid the debts alleged in SOR ¶¶ 1.e (\$1,636), 1.k (\$450), and 1.l (\$30). He has payment plans for the debts alleged in SOR ¶¶ 1.a (\$2,409), 1.b (\$2,086), and 1.c (\$1,748). He concentrated on paying debts collected by the same collection company. Once those debts are paid, he will pay the debts collected by another collection company. Applicant disputed owing the debt alleged in SOR ¶ 1.o (\$51), and it has been deleted from his credit report. He has not received formal financial counseling. He credibly testified that it will take time, but he is committed to paying all his debts. He has a pending lawsuit from his car accident. He will use any funds he receives in a settlement or a judgment to pay his debts.⁷

Two witnesses testified and Applicant submitted documents and letters attesting to his excellent job performance, loyalty, trustworthiness, and honesty.⁸

³ Tr. at 32-34, 59-60; Applicant's response to SOR; GE 1, 3.

⁴ Tr. at 30; GE 1, 3.

⁵ See e.g., <http://www.federalreserve.gov/newsevents/press/orders/order20120214.pdf>.

⁶ Tr. at 20-30, 39; Applicant's response to SOR; GE 1-4; AE F.

⁷ Tr. at 20-27, 36-41, 58-61; Applicant's response to SOR; GE 1-4; AE A-E H K.

⁸ Tr. at 45-50; AE G.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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."

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 to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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

The security concern for foreign influence 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (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;
- (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; and
- (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.

Applicant's wife is a citizen of South Korea and a U.S. permanent resident. His wife's siblings are citizens and residents of South Korea. South Korea is a close ally of the United States, but it also engages in foreign economic collection and industrial espionage against the United States.

Applicant's foreign relatives create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), and 7(d) are applicable.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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.; and

(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.

I considered the totality of Applicant's ties to South Korea, but they are outweighed by his deep and longstanding relationships and loyalties in the United States. Like many military members serving overseas, Applicant married a citizen of the host country. His wife went through the vetting process that was required by the military before the marriage. Two of her siblings also married U.S. citizens. Applicant has not visited South Korea in more than ten years. He has sporadic contact with his wife's siblings by telephone. None of his wife's siblings are associated with the South Korean government. Applicant credibly stated that he would report any attempt to use his wife's family in South Korea against him.

I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the South Korean government. There is no conflict of interest, because Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

Guideline F, Financial Considerations

The security concern for financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant lost his job in 2011. He accepted a job more than halfway across the country and had to pay moving expenses. He has been paying his delinquent debts for several years, including debts that were not alleged in the SOR because they were paid before it was issued. His repayment efforts were significantly hampered by a serious car accident in October 2015. He was out of work on disability until January 2016. He is back to work, and he has resumed his efforts to pay his debts. He credibly testified that it will take time, but he is committed to paying all his debts.⁹ He also will use any funds he receives in a settlement or a judgment from his accident to pay his debts. He successfully disputed one debt. All of the mitigating conditions are applicable.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

⁹ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May. 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern."

(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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis.

I considered Applicant's favorable character evidence and his many years of honorable military service. I considered his ties to South Korea, but they are far outweighed by his deep and longstanding relationships and loyalties in the United States. As to his financial issues, Applicant has a plan to resolve his financial problems, and he has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence and financial considerations security concerns.

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 F:	For Applicant
Subparagraphs 1.a-1.o:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a-2.b:	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.

Edward W. Loughran
Administrative Judge