



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 19-03629
)
Applicant for Security Clearance)

Appearances

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

05/06/2021

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On February 5, 2020, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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) effective within the DOD on or after June 8, 2017.

In a response notarized on February 26, 2020, Applicant admitted the sole allegation raised in the SOR. He also requested a decision based on the written record by a Defense Office of Hearings and Appeals (DOHA) administrative judge. The Government composed a written brief with 13 supporting documents (Items 1-13), known as the File of Relevant Material (FORM). On May 26, 2020, a complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not respond to the FORM within the time allotted. I was assigned the case on March

31, 2021. Based on the record as a whole, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 44-year-old senior solutions manager who has worked in the same position since October 2018. He has earned a bachelor's degree. For at least the past 20 years, he has worked steadily without interruption. Divorced, he was married from 2003 through 2018. He is the father of two minor children. This case involves an account charged-off for almost \$70,000 related to a second mortgage.

In 2005, Applicant and his former wife bought a home funded with two loans, one for \$244,000 and another for \$61,000. In April 2006, Applicant accepted a revolving line of credit with a maximum limit of \$81,800, and paid off the \$61,000 second mortgage the following month. The balance owed on this line of credit was never repaid.

In 2008, an economic downturn occurred and caused Applicant's home to become "significantly under water." (FORM at 3 of 8) Applicant writes that he unsuccessfully tried to contact the loan servicer, but he provided no documentation reflecting such efforts. He devised a strategy that involved his letting the property go into foreclosure, then purchased a second home in the same town with a \$416,990 loan. This raised his monthly mortgage obligations from about \$2,030 to \$2,620. Once he moved into the new property in October 2014, he ceased making payments on his loan obligations related to the first home. This triggered the foreclosure on the first property. Applicant gives no reason for acquiring this second home other than noting he intended to have his first home go into foreclosure.

Applicant admits that the second mortgage account on the first property originally obtained was charged-off. He cites to a state law that applies to mortgages given to secure the payment of the balance of the purchase price, or to secure a loan to pay all or part of the purchase price. While he argues that the charged-off account at issue was actually obtained to pay for the down payment on the house, the available credit reports and recorded property documents in the FORM indicate that the charged off account was actually a revolving line of credit that he opened after the initial home purchase and in addition to the primary and secondary mortgages note above. (see FORM at 3 of 8; FORM Exs. 3, 5-7, 9-11)

In his materials, Applicant describes his foreclosure strategy as his family's best option for dealing with their financial situation. He writes that it was "a deliberate action based on sound judgment regarding the situation and economic guidance." (FORM Exs. 3, 5) He stresses that he made his decision based on professional and legal advice. (FORM Exs.3, 5) Applicant conveys that his credit and financial situation is in good standing, although he did not provide a current financial statement. (FORM Ex. 3) No documentation was submitted that relates to the charged-off account and his alleged

release from responsibility for the delinquent debt at issue. He notes, however, that the creditor has never pursued the delinquent balance from him. (FORM Ex. 3)

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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied 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 variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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, and transcends duty hours. The Government reposes a high degree of trust and confidence in those granted such access. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, the Government offered documentary evidence reflecting that Applicant ceased making payments on a line of credit in 2014. That account became, and remains, delinquent. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;
and

AG ¶ 19(c): a history of not meeting financial obligations.

Under these facts, three conditions could mitigate related security concerns:

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problems from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

In 2004, Applicant acquired a home funded through a first and second mortgage. A year later, in 2005, he received a line of credit. He used this line of credit to pay off his second mortgage. A 2008 economic downturn led to Applicant's home value becoming "under water." After securing a new home in which to live, he volitionally chose to cease making payments on the line of credit previously acquired. He had a choice to honor his debt or walk away from it; he chose the latter. He provided no documentation reflecting efforts to address this debt in a different manner or to work with his lender toward an alternative resolution.

Moreover, there is no documentation showing Applicant has received or is receiving financial counseling from a legitimate and credible source. There are no indications that the problem was resolved or is under control. Indeed, while Applicant argues that his strategy is supported under state law because the account at issue was a mortgage, he provided insufficient documentation to challenge its description elsewhere as a line of credit. Because there is insufficient documentation to refute this description, and given the timing of his acquisition of this account long after the home was funded by a first and second mortgage, Applicant's strategy does not release him from responsibility for the delinquent debt at issue. Consequently, none of the available mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 44-year-old college graduate who has worked as a senior solutions manager for the same employer since October 2018. He has been steadily employed for the past two decades. He has two minor children. Applicant was divorced in 2018. This case involves an account charged-off for almost \$70,000.

In 2005, Applicant and his former wife bought a home funded by a first mortgage for \$244,000 and a second mortgage for \$61,000. A year later, in 2006, he used a newly acquired revolving line of credit to pay off the second mortgage. He ultimately chose to stop making payments on this account under the theory that this account was actually a mortgage, a theory which, under state law, could absolve him of responsibility for this debt.

However, Applicant concedes the line of credit was used to satisfy the second mortgage secured a year earlier to acquire his home. If it was something other than a mortgage, Applicant cannot simply declare it to have been one in order to avail himself of a protection offered in his state. Here, Applicant's documentation fails to refute the evidence suggesting that this line of credit was, in fact, a line of credit used to satisfy a second mortgage – and not a second mortgage. With this debt thus acquired and ignored, financial considerations security concerns remain. This is true regardless of whether he is currently in a solid and secure financial situation. Consequently, I find Applicant has mitigated 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:	AGAINST APPLICANT
Subparagraphs 1.a:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge