



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



In the matter of:)	
)	
)	ISCR Case No. 12-04960
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq. Department Counsel
For Applicant: Alan V. Edmunds, Esq.

11/26/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant has mitigated the financial considerations security concern generated by the deficiency stemming from the foreclosure of his home in 2007. Clearance is granted.

Statement of the Case

On March 7, 2014, the Department of Defense Clearance Adjudication Facility (DOD CAF) issued an SOR to Applicant detailing security concern under Guideline F, Financial Considerations. DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 answered the SOR on April 16, 2014, denying the allegation and requesting a hearing; whereupon the case was assigned to me on August 12, 2014. On September 12, 2014, a notice of hearing was issued, scheduling the hearing for October

22, 2014. At the hearing, I received six Government exhibits (Government Exhibits (GE) 1 through 6), and 24 Applicant exhibits (AE A through X). Also, I considered the testimony of one witness, the Applicant. Additionally, at Department Counsel's request, I took administrative notice of a discovery letter, dated June 6, 2014, that Department Counsel mailed to counsel for Applicant. The transcript (Tr.) was received on November 3, 2014.

Findings of Fact

Applicant is a 44-year-old married man with three children, ages 22, 20, and 12, stemming from a previous marriage that ended in divorce in 2007. He is a high school graduate and needs to complete a few more classes to earn a bachelor's degree. (Tr. 31)

Applicant is a veteran of the U.S. Army, serving from 1992 to 2000. He served the first four years on active duty and the last four in the Army National Guard. (GE 1 at 12) He was discharged honorably. (AE O at 7)

Applicant works for a defense contractor as an information assurance engineer. (Tr. 30) He is highly respected on the job. The vice president of the company where Applicant works describes him as an employee who consistently performs his job duties at a professional level while providing excellent value to their customers. (AE A at 2) A coworker who describes Applicant as his mentor characterizes him as a "person of impeccable solid character, and a true professional." (AE A at 1)

In August 2005, Applicant and his then wife purchased a house for \$419,000. (GE 2 at 5) They financed the purchase with two mortgages from the same lender. (GE 4 at 16) The primary mortgage was approximately \$335,000 and the secondary mortgage was approximately \$83,000. The primary mortgage was an interest-only loan with a variable rate that was set to adjust two years later. (Tr. 43) The initial monthly mortgage payment was \$2,900.

Applicant made the payments, as agreed for the first year that he owned the home. Then, in June 2006, his wife left him and the children, and informed him that she was no longer going to help make the mortgage payments. (AE C at 2; AE O at 4) Applicant became solely responsible for the mortgages, the children,¹ and all of the remaining joint marital debt.

Unable to afford the home, Applicant, tried to sell it. His efforts were unsuccessful. (Answer at 2) Similarly, efforts at refinancing the mortgages during the summer that his wife left him were unsuccessful because the value of the home had dropped substantially, corresponding to the national real estate market collapse at the time. Consequently, he owed more on the mortgages than the home was worth. (AE O at 2)

¹Applicant's ex-wife, per their separation agreement, did not pay Applicant any child support. (AE C at 2)

In January 2008, the bank holding the primary mortgage began foreclosure proceedings. (Answer at 2) Subsequently, the home was resold at auction. Applicant thought that he owed no deficiency after the resale of his home. Subsequently, he began focusing on his unsecured delinquent debt, totalling approximately \$12,000, that he incurred jointly with his ex-wife. In early 2009, he retained a credit counselor to help him resolve these debts. (AE V at 8) Between 2009 and 2013, Applicant gradually satisfied them. (AE K-M; GE 4 at 23) None of these debts is listed on the SOR.

In May 2013, Applicant, together with his fiancée, decided to finance the purchase of a new home. (Answer at 2) When the loan officer ran a credit check, Applicant discovered that the primary mortgage had been satisfied through the foreclosure, but the secondary mortgage, which had been transferred to another lender shortly after he purchased the house, was still outstanding. (GE 4 at 16)

Subsequently, Applicant contacted the assignee of the second mortgage to confirm the outstanding debt. Applicant then contacted his ex-wife to develop a joint payment plan. (AE Q) On March 14, 2014, Applicant and his ex-wife reached an agreement and incorporated it into an addendum to their separation agreement. (AE D) Per the addendum, Applicant's ex-wife agreed to satisfy the secondary mortgage in \$1,000 monthly payments, beginning April 2014, over seven years, whereupon Applicant would pay any remaining balance. In exchange, Applicant agreed to pay all of the college tuition and related expenses for their two oldest children. (AE D)

Applicant's ex-wife missed the April 2014 payment. She told Applicant that she could not afford it. She then missed the May payment and told Applicant she had no intention of abiding by the addendum to the separation agreement. (Tr. 54)

By then, another creditor had purchased the second mortgage loan. (Tr. 44; AE Q) Applicant informed the new creditor of the problem with his ex-wife, and proposed to settle the debt. In August 2014, Applicant and the new creditor negotiated a settlement under which the creditor agreed to release Applicant from any further liability in exchange for a lump sum payment of \$23,900. (AE R at 1) Using an employee stock option distribution,² Applicant paid the debt as agreed; whereupon the creditor released him from any further liability. (AE R, U)

On October 1, 2014, Applicant contacted a financial counselor. They conducted a comprehensive budget assessment and concluded that he had a net worth of \$391,822, and monthly discretionary income of \$4,800. (AE V at 4)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the

²As of February 2013, Applicant approximately \$546,000 invested in an employee stock ownership plan. (AE G)

complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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 (applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F: Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” (*Id.*)

The following mitigating conditions under AG ¶ 20 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems did not begin until the separation from his first wife in 2006. After he lost his home through foreclosure, he consulted a credit counselor and gradually began satisfying his delinquent marital debt. By 2013, he had eliminated all of the debt of which he was aware. He did not know of the mortgage deficiency from the 2008 foreclosure until he met with a loan officer to purchase another house five years later. After unsuccessfully seeking his ex-wife's help in satisfying the outstanding debt, he settled and paid it; whereupon the creditor released him from any further obligation.

Currently, Applicant has no delinquencies, a net worth in excess of \$300,000, and \$4,800 in monthly discretionary income. He maintains a budget and is working with a financial counselor to help him manage his money. Under these circumstances, all of the mitigating conditions, as listed above, apply. Applicant has mitigated the financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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.

Applicant's financial problems were not caused by extravagant spending. Instead, they occurred when his first wife, who was jointly responsible for the family expenses, left him, leaving him solely responsible for the finances and the children. During the first six years after the separation, he satisfied all of the jointly incurred debts of which he was aware. When he was informed that there was one additional delinquency stemming from his failed marriage - the second mortgage from the home that was foreclosed - he ultimately settled and satisfied it. Upon considering these facts together with Applicant's outstanding character and work ethic, I conclude that he has mitigated the 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:	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.

MARC E. CURRY
Administrative Judge