



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



In the matter of:)	
)	
)	ISCR Case No. 12-07063
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

04/20/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

On May 30, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense 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.

On July 15, 2015, Applicant answered the SOR, denying subparagraph 1.a, and admitting, in part, and denying, in part, subparagraphs 1.b and 1.c. He requested a decision on the record rather than a hearing, whereupon Department Counsel, on May 30, 2015, prepared a File of Relevant Material (FORM). Applicant received the file on

November 6, 2015, and was informed that he had until December 16, 2015, to submit a response. On December 1, 2015, Applicant submitted a three-page response with two attachments. FORM Response, Attachment 1 is a bank tax statement for 2013 and FORM Response, Attachment 2 is a copy of Applicant's 2013 federal income tax return. The case was assigned to me on December 17, 2015.

Findings of Fact

Applicant is a 54-year-old man who has been married since 2007. He has three children. Two of the children are adults from a prior marriage that ended in divorce in 2006, and one is a teenage stepdaughter from his current marriage, whom he adopted.

Applicant earned a high school diploma in 1985 and he has earned various college credits and certifications over the years. (Item 2 at 11-12) Applicant served in the U.S. Navy from 1980 through his retirement in 2000. His service was honorable. While in the Navy, he earned multiple awards and accolades including five Navy Good Conduct Medals, three Navy and Marine Corps Commendations Medals, and a Humanitarian Service Medal. (Answer, Attachment G) Since retiring from the Navy, he has worked as a federal contractor in the fields of communications, networks, and cyberdefense. (Answer, Attachment) He has been with the same employer since 2013.

Applicant is highly respected on the job and in his community. According to a former supervisor, he has an excellent reputation, and his U.S. government client considers him a subject-matter expert. (Answer, attachment M) A retired commander who has worked with Applicant since 2002 characterized him as "the person who made things 'go'" at the agency he supported. (Answer, Attachment J) According to his current supervisor, Applicant's dedication to the company is unparalleled. (Answer, Attachment N at 2)

Since 2007, Applicant has managed a network to help veterans transition from the military to the civilian workforce. (Answer at 6) Through his job network, veterans forward him their resumes and he reviews them, if requested, assisting with formatting and content. He also forwards them to potential employers. (Answer at 6)

In April 2006, Applicant and his then wife purchased a home. (Answer at 2) They financed its purchase with two mortgages. Shortly thereafter, they separated, ultimately divorcing in December 2006. Applicant kept the house and agreed to pay alimony to his ex-wife. In 2007, Applicant remarried. He and his current wife spent \$40,000 on the wedding ceremony, financing much of this cost with credit cards.

Shortly after getting remarried, Applicant's current wife quit her job and started a business as a wedding planner. Her wedding planner income was significantly less than the income she earned from her previous job. Applicant's debt began to increase.

In January 2008, Applicant attempted to refinance the mortgages on his home, with the goal of cashing out the accrued equity and satisfying his debts. (Answer at 6)

During the refinance process, the housing market crashed, leading to an extreme decrease in the value of Applicant's home, to a value lower than what he owed. Consequently, the bank rejected the refinance loan application.

Applicant continued to make the mortgage payments; however, he fell behind on debts owed to credit card companies, such as the creditor listed in subparagraph 1.b., totalling approximately \$23,400. Applicant's finances were further exacerbated by college expenses for one of his children.

In 2009, Applicant attempted to sell the house, but was unable because of the decrease in its value. After consulting with a financial counselor, he considered a short sale. In order to initiate the short sale, he had to discontinue his mortgage payments. (Answer at 3) In December 2010, Applicant received a short-sale offer. In May 2011, the bank approved the offer (Answer, Attachment D), and in June 2011, the short sale was completed. Approximately \$203,000 was legally cancelled. (Answer, Attachment F) The U.S. Mortgage Forgiveness Debt Relief Act of 2007 enabled Applicant to write off his mortgage debt that the banks forgave. (Answer at 4) He owes no deficiency.

In February 2010, Applicant contacted the creditor alleged in subparagraph 1.b and arranged a payment plan. Under the plan, \$50 per month is deducted from Applicant's checking account. (Answer at 3) By July 2015, Applicant had reduced the balance from \$23,400 to \$21,966. (Answer, Attachment C)

The SOR includes a debt, totalling \$9,918, alleged in subparagraph 1.a. Applicant and his first wife incurred this debt when they were married. (Answer at 1) As part of their divorce settlement agreement, his ex-wife agreed to pay this debt. (Answer, Attachment C at 3) In November 2013, the creditor legally cancelled it. (Answer, Attachment B)

Applicant had approximately \$24,000 of additional debt that was not alleged in the SOR. He satisfied it in 2011 after cashing out his 401k investments upon switching jobs. (Answer at 4)

Applicant maintains a budget. Together with his wife, he has approximately \$2,200 of monthly discretionary income and \$48,000 invested in 401k plans. (Answer at 4) Their income increased significantly in 2011 when his wife returned to full-time work with a company. (Answer at 4) Since the short sale, Applicant has learned to maintain an affordable lifestyle without using credit and to save money. (Answer at 4)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the 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 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 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) Applicant’s history of delinquent mortgage payments and credit card debt triggers the application of. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 disputes the debt alleged in subparagraph 1.a, contending that per a divorce settlement agreement encapsulated within a divorce decree, his first wife agreed to be solely responsible for its payment. He provided a copy of the settlement agreement and a copy of the IRS cancellation of debt form. Divorce decrees that divide responsibility between ex-spouses for jointly incurred debt do not supersede the legal right of the creditors to collect from either ex-spouse. Moreover, the fact that a creditor has cancelled a debt ordinarily has limited security significance. Here, however, Applicant has provided documentation of both the divorce decree indicating that his wife is responsible for the debt, and documentation of the creditor's charge off and legal cancellation of the debt. These facts, considered in tandem, are sufficient to trigger the application of AG ¶ 20(e).

Applicant's financial problems followed a divorce and the national housing market decline. However, at or about this time, he spent \$40,000 on a wedding party. Consequently, his financial problems were not largely caused by circumstances beyond his control. AG ¶ 20(b) does not apply.

Applicant satisfied \$24,000 of debt that was not alleged in the SOR, successfully disputed the debt alleged in subparagraph 1.a, and developed a payment plan for the debt alleged in subparagraph 1.b, to which he has been adhering. Moreover, he executed a short sale of his house after a precipitous drop in its value, and utilized federal law, passed at the height of the national housing crisis, to write off the difference between the short sale price and his mortgage.

Currently, Applicant keeps a budget. Aided by his wife, who returned to full-time employment after attempting to start a business, he has approximately \$2,200 of monthly discretionary income, and has rebuilt his retirement savings. I conclude that AG ¶¶ 20(c) and 20(d) apply. Applicant has mitigated the financial considerations security concern.

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.

In reaching my decision, I considered Applicant's sterling history of exceptional job performance and volunteerism. These attributes strengthened the probative value of his testimony that he has learned how to live within his means and manage his finances. I conclude that the presence of rehabilitation renders the likelihood of recurrence minimal.

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.c:	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