



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



In the matter of:)
)
) ISCR Case No. 13-00628
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: *Pro se*

06/11/2014

Decision

CURRY, Marc E., Administrative Judge:

All of the delinquent debts that Applicant incurred related to the failure of his car dealership in 2006. Since then, he has satisfied or is steadily paying down all of the debts except the mortgages on a foreclosed investment property. Per state law, Applicant is not liable for any deficiency between the foreclosure price and any remaining balance on either loan. This fact, alone, does not mitigate the security concern. However, when considered in light of the cause of Applicant's financial problems, the steps he has taken to satisfy the other SOR debts, his satisfaction of multiple unlisted debts, and his current financial stability, I conclude that he has mitigated the security concern. Clearance is granted.

Statement of the Case

On December 6, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The DOD acted 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.

Applicant answered the SOR on December 20, 2013, denying all of the allegations except subparagraphs 1.e and 1.d. He requested a decision on the written record instead of a hearing. On February 20, 2014, Department Counsel prepared a File of Relevant Material (FORM). Applicant received it on February 26, 2014. On April 18, 2014, DOHA received a 52-page response. Department Counsel did not object to the response or any of the attachments, and it was incorporated into the record. The case was assigned to me on May 6, 2014.

Findings of Fact

Applicant is a 56-year-old married man with two adult children. He has a high school education and has earned some college credits. Since February 2012, he has been working for a defense contractor overseas in a combat theater as a translator. He worked for another defense contractor from 2010 through 2012 in another capacity. (Item 6 at 14)

Before working in the defense industry, Applicant sold cars. (Item 3 at 6) In 2001, he opened a used car dealership. His business was successful until the local economy began slowing down in 2006. (Item 3 at 6) As consumers reduced spending, his automobile sales decreased. Applicant “tried [his] best to keep [his] business afloat by selling cars for minimum profits” while cutting extra expenses, but ultimately had to close the business in May 2007. (Item 3 at 6)

Applicant was able to find a job as a sales manager for another car dealership; however, he remained saddled with debts from his failed business. Ultimately, he lost an investment property to foreclosure, and incurred multiple delinquencies in excess of \$800,000. Approximately \$168,000 of this debt is not listed in the SOR, including delinquent sales taxes totalling \$8,000 (Item 6 at 44; Item 10 at 37), delinquent car insurance, totaling \$8,900 (Item 6 at 45), two delinquent loans, totaling \$24,600 and \$22,500, respectively (Item 6 at 45, 47), and two delinquent credit cards totaling \$100,000 and \$5,000, respectively, (Item 6 at 46, 51-52). Applicant satisfied all of these debts. (Item 6 at 44-52)

The SOR debts total approximately \$632,000, and include the first and second mortgage loans on an investment property (subparagraphs 1.a and 1.b), a home-equity line of credit (subparagraph 1.c), a judgment debt owed to an individual who had loaned him money (subparagraph 1.d), and a judgment that a bank obtained against Applicant’s car dealership (subparagraph 1.e). Applicant purchased the investment property in November 2004 for approximately \$380,000, with two mortgage loans. Subparagraph 1.a was the primary mortgage and subparagraph 1.b was the junior mortgage. ((Item 7 at 5) In 2006, after Applicant’s car dealership began to struggle, he decided to sell his investment property. (Item 3 at 6)

In July 2007, Applicant sold the house. Applicant and the buyer executed a deed of trust under which the buyer received title to the house, while Applicant retained responsibility for the two mortgages. Per the agreement, the buyer was to pay Applicant a monthly amount equalling Applicant's mortgage payments. (Item 3 at 6, 13) The buyer paid Applicant consistently for two years. Then, she defaulted. Subsequently, the bank foreclosed on the property and sold it. It is unknown from the record whether there was a deficiency remaining after the property was resold. Applicant denies subparagraphs 1.a and 1.b contending that, under state law, he is not subject to liability for a deficiency, if one exists.

The home-equity line of credit listed in subparagraph 1.c has a balance of approximately \$140,000. As of March 2014, there was no amount past due, and Applicant has been making monthly payments as agreed since June 2011. (Response at 19)

The judgment debt listed in subparagraph 1.d, totalling \$28,065, was obtained by an individual in January 2011. (Item 3 at 10). Since July 2011, Applicant has been making monthly payments ranging between \$500 and \$1,000. (Item 3 at 9-10; Response at 48-49). As of November 2013, the balance was approximately \$8,200. (Item 3 at 10)

Subparagraph 1.e is a delinquent bank loan in the amount of approximately \$100,000 stemming from the failure of Applicant's business. The bank obtained the judgment in October 2008. (Response at 50) By June 2011, Applicant had settled the account. (Response at 50) It is unknown from the record if this debt was settled by liquidating the car dealership's inventory or by making installment payments.

Applicant maintains a budget. Currently, he has approximately \$1,400 of monthly discretionary income, \$150,000 in savings, and \$42,000 invested in stocks and bonds. In addition, his home is worth approximately \$200,000. (Response at 40)

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 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.*).

Applicant’s financial delinquencies trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 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; and

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

Applicant did not begin experiencing financial difficulties because of any extravagant spending or reckless business decisions. Instead, his financial problems occurred after his business failed around the time of his state’s economic downturn.

Applicant’s largest SOR debts are the two mortgage loans that he used to purchase his investment property in 2004, as listed in subparagraphs 1.a and 1.b. In the state where Applicant purchased the property, there can be no deficiency judgment after foreclosing on a mortgage that was used to purchase a property.¹ This law also applies to secondary mortgages that are used to secure the purchase of property. The

¹Item 3 at 14 and Item 13 discuss the relevant state statute. Item 3 is Applicant’s answer to the SOR and Item 13 is a submission by Department Counsel. In reaching my conclusion, I reviewed these Items and independently researched the statute and relevant state case law. Because of privacy concerns, I have not included the exact citations.

legislative intent of this statute is “to prevent the aggravation of an economic recession which would result if debtors lost their property and were also burdened with personal liability” for any resulting deficiency. (*Cadlerock Joint Venture, L.P. v. Lobel*)²

The property that Applicant financed with the two mortgage loans was an investment property. Under the state law where Applicant resides, the statutory protection for property owners who default on their mortgages typically does not extend to investment properties. However, in 2007, Applicant transferred equitable title to someone else, and memorialized this transaction with a deed of trust. The bank then foreclosed on the home after the person who received equitable title defaulted on her agreement to pay Applicant, rendering him unable to make the mortgage payments. If a mortgagee transfers equitable title to a home secured by a mortgage which is subsequently foreclosed, the mortgagee is shielded from liability for any deficiency, as he would be if his primary property was foreclosed.

Of course, the negative security ramifications surrounding a foreclosure are not mitigated depending on whether or not Applicant remains liable for any resulting deficiency. Applicant defaulted on two debts in excess of \$370,000. This is a significant amount regardless of whether he remains legally responsible. Conversely, Applicant satisfied \$168,000 of unlisted debt, \$100,000 of debt, as listed in subparagraph 1.e, and he has been paying subparagraphs 1.c and 1.d as agreed. He maintains a budget, has ample monthly discretionary income, and has nearly \$200,000 of savings and investments. Under these circumstances, the seriousness of the defaulted mortgage loans is outweighed by the surrounding circumstances, as discussed above, and the strong presence of rehabilitation, rendering the likelihood of a recurrence of these financial problems minimal. I conclude that all of the mitigating conditions apply, and that 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.

I applied the whole-person concept factors in my analysis of the mitigating conditions, and have reached a favorable outcome.

²See n.1, *supra*.

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.e:	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