



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



In the matter of:)
)
) ISCR Case No. 14-00902
)
Applicant for Security Clearance)

Appearances

For Government: Phillip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2015

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant has made some progress in reducing his delinquent debts, it is too soon to conclude that he has mitigated the security concern, given that he remains approximately six months behind on his mortgage payments. Clearance is denied.

Statement of the Case

On April 30, 2014, 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 May 19, 2014, Applicant answered the SOR, admitting all of the allegations except subparagraph 1.e. He requested a hearing whereupon the case was assigned to me on November 14, 2014. DOHA issued a notice of hearing on December 10, 2014, scheduling the hearing for January 7, 2014. The hearing was held as scheduled. At the hearing, I received five Government exhibits (GE 1-GE 5), nine Applicant exhibits (AE A -AE I), and I considered Applicant's testimony.

At the close of the hearing, I left the record open, at Applicant's request, to allow him to submit additional exhibits. Within the time allotted, he submitted two more exhibits that I incorporated into the record as AE J and AE K. DOHA received the transcript (Tr.) on January 7, 2015.

Findings of Fact

Applicant is a 39-year-old man with one child, age seven. He and his wife are separated and in the process of getting a divorce. They share joint custody of their child. Applicant has a high school diploma and has earned some college credits.

Applicant works for a defense contractor as a senior applications developer. (Tr. 19) His job involves building websites. According to one of his government clients, he is an outstanding employee who ably resolves design issues and concerns as they arise. (AE C) According to another government client, Applicant is proactive, and he always "volunteers for the hard things and isn't afraid to tackle" major projects. (AE B)

Since 2008, Applicant has incurred approximately \$48,000 of delinquent debt including delinquent state income taxes (subparagraph 1.a), two delinquent medical accounts (subparagraphs 1.b and 1.c), a delinquency owed to a college (subparagraph 1.d), a delinquent mortgage (1.f), and two delinquent loans (1.f and 1.g). The tax lien listed in subparagraph 1.a was for tax year 2011 and totalled \$2,176. The lien was discharged in 2014 after Applicant satisfied it. (AE D) Applicant satisfied the two medical bills listed in subparagraphs 1.b and 1.c, totalling \$240, in May 2014. (AE E; Tr. 20-21)

The delinquency owed to the college totals \$446 and represents an enrollment fee that Applicant was supposed to pay when he decided to return to school in November 2013. He changed his mind a month later and withdrew. (Tr. 21) Under an agreement with the college, Applicant paid \$351 of the \$446 balance, and the college agreed to waive the remainder. (AE G; Tr. 21)

The first of the two loans listed in the SOR (subparagraph 1.f) was procured by Applicant and his wife when they were together. His estranged wife satisfied this debt in January 2015. (AE J)

Subparagraph 1.g, totalling \$5,000, represents a loan that Applicant obtained in 2008 to pay for wedding expenses. Appellant contends that it has been closed. (Tr. 22) According to Applicant's January 2015 credit report, it has been charged off. (Ex. H at 10)

Applicant does not attribute the aforementioned delinquent debts to his marital separation. (Tr. 28) He does attribute his mortgage delinquency to his separation. Specifically, Applicant and his wife first separated in November 2011. (Tr. 43) Before she moved, she helped pay the mortgage. Her contribution totalled approximately 20 percent of the mortgage. After she stopped helping with the mortgage, Applicant was unable to afford the payments, and gradually fell behind. (Tr. 28-29)

After falling four months behind on the mortgage, Applicant applied for a loan modification. In April 2012, while the modification was pending approval, Applicant and his wife reconciled, and she returned to their home. (Tr. 49) In May 2012, the bank approved the modification, reducing the interest rate by two percent, and resulting in a \$121 decrease in the monthly mortgage from \$2,100 to \$1,979. (Tr. 47; AE K at 1-2) The delinquency was consolidated into the new principal payments.

Applicant made his payments timely for the next seven months. Then, in December 2012, his wife moved again, causing Applicant to fall behind on his mortgage the following month. He made no mortgage payments between January 2013 and May 2013. He then applied for another loan modification. In September 2013, the bank approved the modification, and reduced the monthly mortgage payment to \$1,700. (Tr. 50)

Applicant made the modified mortgage payments for the next seven months. In April 2014, Applicant's car broke down and he had to spend approximately \$2,000 in repairs. (Tr. 50) He again fell behind on his mortgage payments.

Applicant made no mortgage payments for the next six months. (Tr. 51) He chose to focus on paying his other bills first. (Tr. 52) In October 2014, he applied for another loan modification. (AE 7) His application is currently pending. The credit report that he submitted (AE H) lists his last mortgage payment as March 2014. (AE H at 13) Applicant contends that he resumed mortgage payments in November 2014 after he applied for the latest loan modification. (Tr. 41) He provided no supporting documentary evidence.

Applicant earns \$105,000 per year. (Tr. 55) His budget accounts for a mortgage payment of \$1,979 and indicates that he has approximately \$1,619 of monthly discretionary income. (AE K at 2)

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) Since 2008, Applicant has incurred approximately \$48,000 of delinquent debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

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 satisfied the debts in subparagraphs 1.a through 1.d, and 1.f. I resolve these in his favor. The resolution of these debts is sufficient to trigger the application of AG ¶ 20(d).

Applicant’s difficulties with paying his mortgage stemmed from his marital problems. His satisfaction of the aforementioned debts, together with his efforts at modifying the mortgage are sufficient to partially apply AG ¶ 20(b). This mitigating condition is not totally applicable because he remains several months behind on his

mortgage despite the fact that his budget reveals that he has ample income to make his mortgage payments.

Applicant continues to struggle with paying his mortgage. There is no record evidence that he has made any mortgage payments since March 2014. As for the loan listed in subparagraph 1.g, Applicant contended that it was closed, as opposed to satisfied, and the most recent credit report lists it as charged off. (AE H) Under these circumstances, the derogatory security implications of this outstanding debt remain unchanged.

Given Applicant's recurrent problems with paying his mortgage and the \$5,000 charged-off loan, I cannot conclude that Applicant has his financial situation under control. AG ¶ 20(c) is inapplicable.

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 is an excellent employee. His most significant financial delinquency, his mortgage, stems from his separation from his wife, and he has made significant progress in satisfying his delinquencies. However, his two largest delinquencies, the mortgage and the wedding loan, remain in delinquent and charge-off status, respectively. Moreover, it is unclear how he consistently struggles to make mortgage payments when his budget, accounting for a monthly mortgage payment, indicates that he has approximately \$1,619 of discretionary income. This incongruity creates doubt, and any doubt must be resolved in favor of the government.

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-1.d:	For Applicant

Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f:	For Applicant
Subparagraph 1.g:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge