DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-04279
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Paul E. Carreras, Esquire

08/21/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on November 14, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on December 5, 2014, 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 for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on December 19, 2014, and he answered it the same day. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on February 9, 2015, and I received the case assignment on March 2, 2015. DOHA issued a Notice of Hearing on April 16, 2015, and I convened the hearing as scheduled on May 12, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant and three witnesses testified. He submitted exhibits (AE) marked as AE A through AE D, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 19, 2015. I held the record open until June 2, 2015, for Applicant to submit additional matters. On June 11, 2015, Applicant submitted AE D - AE I, which were received and admitted without objection. The record closed on June 11, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegation in ¶ 1.a of the SOR. His admission is incorporated herein as a finding of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 42 years old, works as a logistics and supply technician for a DOD contractor. Applicant began his current employment in May 2010. Applicant previously held the same position for two other DOD contractors from 2003 until May 2010. During these employments, Applicant deployed overseas to the Middle East in support of the United States military mission in Iraq approximately seven times. His previous employers lost the Government contract, which necessitated a change in employers for Applicant.[1]

Applicant and his wife married in February 2009. They have an 11-year-old daughter. His wife works as a pharmaceutical technician.[2]

In 2009, Applicant earned $28 an hour for total yearly income of $58,240 without overtime. When he started his current employment in May 2010, his employer paid him $20 an hour for the same job. He continues to earn $20 an hour after five years of employment. His annual salary is $41,600 without overtime. He earns $16,640 a year less than he previously earned performing the same duties.[3]

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[1]GE 1; Tr. 20-21.

[2]GE 1; Tr. 28, 36

[3]AE G; Tr. 21-22.

Based on the earnings statements submitted, Applicant currently earns $3,201 a month in regular pay, plus $605 a month in Sca (not defined) pay[4] for a total gross monthly income of $3,806. His regular net monthly income totals $2,519.[5] His wife earns $30 an hour. Her earnings statements reflect a small fluctuation in the hours worked over a month. Her hours averaged 81.5 for each pay period. Her net income averages about $3,622 a month for a total net monthly household income of $6,141.[6] Applicant's usual and customary monthly expenses paid from net income include $1,600 for housing, $791 for transportation, $575 for food and eating out, $45 for pet food and care, $170 for personal care, $100 for other, and $100 for miscellaneous expenses totaling $3,381. His budget included as a monthly expense $40 for vehicle licensing, an expense that is usually once a year or less and is not included in the above total. Based on the information provided, Applicant has $2,720 a month in discretionary income. He and his wife have approximately $17,000 in savings and available cash.[7]

In March 2004, Applicant purchased a house in his name only. He financed his purchase with a primary mortgage of $268,000 and second mortgage of $67,000. His monthly payments totaled approximately $2,680. Two years later, he refinanced the house. At this time, he combined the two mortgages into one mortgage for $345,000. The combination reduced his monthly payment to $2,188. At the same time, he took a $85,000 second mortgage on his property with a monthly payment of $559. Applicant used the money from the second loan to pay debts. Applicant made his monthly payments without difficulty until 2009, when his income declined after losing his job of nearly ten years. [8]

Applicant paid an individual, whom he believed to be an attorney, $3,000 in 2009 to assist Applicant with obtaining a modification of his mortgage loans. This individual did little work for Applicant, and the loan modification never occurred.[9] In early 2010, Applicant attempted to sell his house through a short sale. He found a purchaser and

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[4]His earnings statement indicate that much of this income is placed in his 401(k) account and treated as pretax income. AE G.

[5]Applicant occasionally works overtime at the rate of $30 an hour. In April 2015, he worked eight hours of overtime, earning $240 in gross income and receiving $124 in net income. In April 2015, Applicant converted 10 hours of vacation time to cash, receiving $200 in gross income and $151 in additional net income. AE G.

[6]Applicant submitted a monthly budget showing total monthly income of $6,780 (not identified as net or gross income) and total monthly expenses of $6,059. His budget income does not match the information on the earnings statements submitted for him and his wife. I note that the listed expenses included taxes, union dues, and 401(k) loan payments and monthly contributions withheld from their pay. The budget does not reflect all items withheld from their pay. AE F; AE G.

[7]AE F - AE I.

[8]GE 2 - GE 4; Tr. 22, 28-30.

[9]At the hearing, Applicant's counsel advised that he tried to locate this attorney, but could not find any information on an attorney with the name Applicant provided. The state bar does not have an attorney by the name provided by Applicant. Tr. 68, 73.

submitted the offer of purchase to the first and second mortgage lenders. His primary mortgage lender agreed to the sale, but the mortgage lender holding the second mortgage would not agree to the sale. Applicant lost the buyer for his house. In February 2011, the primary mortgage lender foreclosed on his property. The balance remaining on the second mortgage is $61,000 and it provides the basis for the SOR.[10]

At some point after the foreclosure, the mortgage lender holding the second mortgage contacted Applicant to resolve the debt. Applicant was unable to pay the amount of money requested to resolve the debt. After receiving the SOR, Applicant contacted the lender holding the second mortgage and reached an agreement about paying his debt. They agreed that Applicant would pay $100 a month for three months beginning in March 2015. At the end of the payment period, Applicant and the lender would discuss a longer and possibly permanent payment plan to resolve his debt. Applicant made the three required payments, the last on May 13, 2015. The results of further negotiations with the lender are unknown.[11]

The credit reports of record reflect that Applicant timely pays his bills and his debts. Except for the foreclosure on his house and the unpaid second mortgage debt, Applicant has always paid his bills. The credit reports do not show collection or charge-off accounts.[12]

Applicant's older brother, his best friend, and his department head, who is his second level supervisor, testified on his behalf. His brother described him as a "real honest person" and "a man of his word". His friend views him as a good father, husband and friend. Both consider him honest, trustworthy, dependable, and reliable and not a security risk. His department head and second level supervisor described him as a person who performs his job exceptionally well and above standard. Applicant has a proven ability to do his duties. He is a good natured person, a dedicated employee, a team player, and a nice guy. He also considers Applicant absolutely trustworthy, honest, dependable, and reliable.[13]

Applicant submitted 11 citations for his work performance, particularly related to his work in the middle east. He also submitted two acknowledgments for years of service in two separate companies. Applicant has not violated the rules for handling classified information or the proprietary rules of his employer. He has not been disciplined at work.[14]

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[10]GE 2 - GE 4; AE D; Tr. 31-32.

[11]AE B; AE E; Tr. 26-27, 32-34.

[12]GE 2 - GE 4.

[13]Tr. 46-60.

[14]AE A; Tr. 21.

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. Instead, 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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

> 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

> (a) inability or unwillingness to satisfy debts; and
>
> (c) a history of not meeting financial obligations.

After a loss in income, Applicant experienced difficulties paying his first and second mortgages on his house. The primary lender foreclosed on his property, and he has not resolved the second mortgage. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following 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 lost approximately 25% of his income in 2009 when his employer lost the government contract on the job Applicant was performing. Applicant continues to perform this job at a reduced salary and without an increase in salary in five years. The loss of income is a factor beyond his control. When his income initially declined, Applicant attempted to obtain a modification of his mortgage, but was unsuccessful. He then listed his house for sale as a short sale and found a buyer. Although his primary lender agreed to the sale price, the second mortgage lender did not. As a result, the sale of his house failed. The refusal of the second mortgage lender to accept the sale price of his house is also a factor beyond his control. His efforts to sell his house and obtain a loan modification show he acted reasonably in 2009 and 2010 after experiencing financial difficulty. Sometime after this, he and the second mortgage lender, the SOR creditor, discussed payment of his debt. Applicant could not afford the amount of money requested by the second mortgage lender, and all efforts to resolve the debt ended. He took no further action until receiving the SOR. In January 2015, he initiated contact with the lender and agreed to a trial payment period. A final payment plan had not been reached at the time of the hearing, and the status of the agreement is not known. AG ¶ 20(b) applies.

Applicant manages his monthly income and expenses. He lives well within his income and is working on a resolution of his outstanding debt. AG ¶ 20(c) applies. Applicant's efforts to modify his mortgage and his efforts to sell his house in 2009 and 2010 show a good-faith effort to resolve his mortgage debt at that time. His recent contact with the second mortgage lender to resolve his debt also reflects a good-faith effort on his part. Because he took no action for nearly five years to resolve his outstanding mortgage, AG ¶ 20(d) is not fully applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

> In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." *See, e.g.*, ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. *See, e.g.*, ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." *See, e.g.*, ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. *See, e.g.*, ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant and his wife have a long track record of managing their household income. They pay their bills every month. They live frugally, not extravagantly, as shown by their savings and cash on hand. In 2009, Applicant's long-time employer lost the Government contract for the job Applicant worked. Applicant moved to the company with the contract and that company lost the contract a year later. When Applicant accepted the job offer with his current employer to perform the same work he had been doing for 10 years, he also agreed to work at a lower salary, which decreased his income by 25%. While he paid all his other bills, the loss of income impacted his ability to make his two mortgage payments on his house. He immediately sought help to reduce his monthly payments with a home loan modification. This endeavor was unsuccessful. He then listed his house for short-sale and found a buyer. Both mortgage lenders had to accept the terms of the sale. The primary lender did, and the secondary lender did not, causing the sale to fail. Both acts of Applicant reflect his efforts in late 2009 and early 2010 to resolve his mortgage debt issue. Through no fault of his, neither worked. The second mortgage lender approached him to resolve the debt sometime ago, but would not agree to a reasonable repayment plan. Because the second mortgage lender would not work with him, Applicant took no further action to resolve this debt until he received the SOR. His failure to continue communication with the second mortgage lender is not viewed as a lack of responsibility because he did not have any expectation that the second mortgage lender would work with him to develop a reasonable payment plan. Five years later, the second mortgage lender appears to be more willing to work with Applicant to negotiate either a reasonable payment plan or a possible full settlement of the debt. Applicant's track record of debt payment convinces me that he will continue to work with the creditor to resolve this substantial debt. Considering all the evidence of record, Applicant's long history of stable finances, his reputation for honesty, trustworthiness, and hard work, I find that the unpaid second mortgage debt does not show lack of judgment and failure to abide by rules, contracts, and financial commitments. *See* AG ¶ 18. Of course, the issue is not simply whether his debt is paid: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. This one debt is insufficient to raise security concerns. (*See* AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F.

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
Subparagraph 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 a security clearance is granted.

MARY E. HENRY
Administrative Judge