DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 15-01850
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

07/11/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his wife bought a home in March 2004 while on temporary duty for their employer for three years. In 2006, they opened a home-equity loan for home improvements. They deeded the property in 2007 to a limited liability company, which paid the mortgage for them until 2010. The home was taken in foreclosure and sold in 2011 to cover the defaulted mortgage. The home-equity loan was charged off for $45,014, but there is no evidence Applicant is being pursued for the debt. He has no record of other delinquency. His poor judgment appears to be an aberration not likely to be repeated. Clearance is granted.

Statement of the Case

On October 22, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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 (AG) effective within the DOD on September 1, 2006.

On November 9, 2015, Applicant answered the lone SOR allegation and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 15, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On January 18, 2016, I scheduled a hearing for February 9, 2016.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and two Applicant exhibits (AEs A-B) were admitted into evidence without objection. Applicant testified on his behalf, as reflected in a transcript (Tr.) received on February 16, 2016.

I held the record open until March 10, 2016, for post-hearing documentary submissions from Applicant. On March 2, 2016, Applicant submitted two documents, which were entered into evidence without objection as AEs C and D. On March 4, 2016, I received documentation (AE E) from an attorney who had represented Applicant regarding the financial matter at issue. On March 8, 2016, Department Counsel indicated he had no objection to its admission. Accordingly, AE E was admitted into evidence. No additional documents were received by the March 10, 2016 deadline for submissions, so the record closed on that date.

Findings of Fact

The SOR alleges that Applicant owed a charged-off debt of $45,014 as of October 22, 2015. In response, Applicant provided a copy of a letter sent to a debt resolution law firm in which he requested that a mortgage and the home-equity loan (SOR ¶ 1.a) be removed from his credit record. About the loan in SOR ¶ 1.a, Applicant explained that it was a charge-off the creditor expected him to pay "while someone else owned it." After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 66-year-old high school graduate who served in the military from 1969 to 1972, including a combat tour in Vietnam. (GE 1; Tr. 19-20.) Applicant was married to his first wife from June 1974 to February 1976. He and his second wife have been married since January 1994. Applicant has no biological children, although he adopted his nephew, now age 46 from whom he is estranged. (GE 1; Tr. 21.)

Applicant has worked for his current employer, a defense contractor, on and off since he graduated from high school in 1969. Lengthier periods of previous employment with the company include from January 1979 until a strike in 1988 and from January 2001 to February 2007. His recent employment has been since February 2009. (GEs 1, 2; Tr. 22- 24.) Applicant held DOD security clearances over the years for his work with the defense contractor, including a secret clearance granted around November 2002. (GEs 1, 5.)

In February 2004, Applicant and his spouse began three-year assignments in another state (state X) for their employer. They bought a home in state X in April 2004 with a mortgage of $164,247. (GE 4.) They kept their previous home, which was apparently a mobile home, and their employer covered the mortgage for the three years they were away. (Tr. 25, 57-58.)

The mortgage on their home in state X was transferred in October 2004. In November 2005, Applicant and his spouse refinanced their mortgage for $169,600. In the refinancing, they obtained a home-equity loan of $42,400 (SOR ¶ 1.a) for upgrades to the house and to pay off a car loan. (GEs 4, 5; Tr. 28.)

Applicant and his spouse finished out their contract in state X in February 2007. In anticipation of their return to their current locale, Applicant tried to sell the home, but it did not sell. Applicant and his spouse did not try to rent the property after they moved. They paid the mortgage on the property for six months using credit cards. (AE A; Tr. 26-27.)

Applicant responded to a flyer from a limited liability company in state X (hereafter Purchaser),[1] who indicated that it could sell the property in state X and complete all the paperwork for Applicant's and his spouse's signatures. Applicant did not seek the advice of a realtor or attorney. Nor did he conduct any research into the company's business practices. (Tr. 29.) On May 22, 2007, the Purchaser generated a contract of purchase for the property, which Applicant and his spouse signed on May 25, 2007. Under the terms of the contract, Applicant and his spouse agreed to sell the property for $225,000 to the Purchaser in return for a $10 cash deposit. Applicant and his spouse did not receive $215,000 to pay off their mortgage on the property. Instead, the existing mortgage of $220,000 encumbering the property was taken subject to a $4,990 purchase-money loan to Applicant and his spouse as seller. In an addendum to the contract executed by Applicant and his spouse on May 24, 2007, they agreed that the mortgage encumbering the property would stay in their name until it was satisfied or assumed by a future buyer.[2] They legally acknowledged that the Purchaser had no intentions of assuming the mortgage and that no promises had been made to them that the loan would be assumed or paid by the company. In the event that the Purchaser defaulted, Applicant and his spouse as sellers would retain the deposit ($10) as full settlement of any claim. On July 7, 2007, Applicant and his spouse conveyed the deed to the property to the Purchaser. (AE E.)

The Purchaser obtained tenants for the property and paid the mortgage for Applicant and his spouse with the rental income, which exceeded the mortgage. Applicant believes the Purchaser collected a percentage of the rental income. (Tr. 34.) Applicant now claims that he thought he entered into a two-year contract with the Purchaser to sell the house for him; that in the meantime, the Purchaser could lease the property to tenants

[1] An attorney that Applicant and his spouse retained after they began having issues with the mortgage on the property indicates that Applicant and his spouse were approached by the Purchaser. (AE E.) Applicant discrepantly testified that he "got a hold of a flyer" from the company and called them. (Tr. 26.)

[2] The contract does not mention the home-equity loan, which appears to have been tied into the mortgage. *See* AE C.

already under contract to purchase; and that he had sold the property to the tenants living in the property. (Tr. 31-33.) Around March 2009, Applicant and his spouse retained a local attorney who demanded of the Purchaser that the property be immediately re-conveyed to them. The mortgage was paid on time until November 2009. No payments were made on the mortgage after January 2010. With the mortgage in default, the Purchaser agreed to re-convey the property to Applicant and his spouse on payment of reasonable expenses. Before those expenses could be determined, Applicant's counsel received in April 2010 a letter from an attorney (suspected to be the principal for the Purchaser) indicating that the mortgage gets paid when the tenants pay the rent. Should Applicant choose to have the tenant evicted, the Purchaser would not be able to make the payment on a vacant property. On May 17, 2010, the Purchaser offered to transfer title to Applicant and his spouse on payment of $5,636.21, half of what the Purchaser had invested in the property, and them assuming payment at $62.50 per month on a $5,000 lien on the property. According to Applicant's attorney, Applicant did not have the funds to pay the settlement. (AE E.) Applicant testified that he would not pay because he owed the Purchaser nothing and that all he did was sign papers and the Purchaser took his home. (Tr. 34.) The creditor holding the note secured by the deed of trust executed in November 2005 foreclosed on the loan and redeemed the property, and sold it in March 2011 to settle the defaulted mortgage. (AEs B, E.) Applicant understands that he made a mistake in not consulting with a lawyer before selling the house in state X. (Tr. 56.)

In May 2012, the home-equity loan was charged off in the amount of $45,014 for nonpayment since August 2010. (GE 4; AE B.) Applicant had called the bank holding the home-equity loan around May or June 2010 and asked to restructure it to a personal loan not tied to the home in state X so that he could make payments.[3] The bank advised him that there were no options. (AE B; Tr. 37-38.)

On September 17, 2012, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). In response to inquiries into any delinquency involving routine accounts, Applicant disclosed the charged-off home-equity loan for $42,000 in May 2012, and stated, "HOUSE WAS SOLD AND THE HOME EQUITY WAS TAKEN AWAY FROM IT. I MADE SEVERAL ATTEMPTS TO TALK WITH THE [BANK]." (GE 1.) A check of Applicant's credit on September 20, 2012, revealed that the home-equity loan had been charged off and was in collection for $45,014, but that he owed nothing on the mortgage for the property in state X after it was redeemed in a foreclosure. (GE 4.)

Applicant was on medical leave from his job from September 2012 to December 2012 related to an injury at work sustained in May 2012. Shortly after he returned to work on light duty, he was interviewed by an authorized investigator for the Office of Personnel Management (OPM) on December 14, 2012. Applicant indicated that he had sold his home and the home-equity loan to the Purchaser through a sales contract, and that the bank turned to Applicant for payment after the Purchaser stopped paying the mortgage. The

[3] Applicant inaccurately recalled that the bank informed him that he had no options before he retained legal counsel. (Tr. 41.) Records from his attorney (AE E) show that he was retained more than a year before the June 2010 letter from the bank.

bank then took the property and sold the house for the debt balance. However, the bank continued to pursue Applicant for the home-equity loan, which Applicant claimed had been bought by the Purchaser. Applicant claimed that the home-equity loan should have been paid through the sale of the property. He had no explanation for how the bank was able to separate the mortgage from the home-equity loan and pursue him for the balance. Applicant denied any financial problems and attributed the mortgage and home-equity loan defaults to the actions of the Purchaser. (GE 5.)

In May 2014, Applicant and his spouse bought a new home with a mortgage of $189,039. Applicant sold their mobile home to his cousin for $1,500. (Tr. 57-58.) Before they were approved for the mortgage, their lender verified that they were not being held liable for the balance of the home-equity loan in that the $45,014 charged-off balance had been included in the foreclosure and that no deficiency balance was owed. (AE C; Tr. 44-45.) As of February 3, 2015, Equifax Mortgage Solutions was still reporting a $45,014 balance owed on the account, but as of May 2012. (GE 3.)

In May 2015, Applicant requested verification of the listing of the foreclosed mortgage account on his credit report. He retained the services of a law firm to dispute with the credit reporting agencies the listing of the derogatory mortgage and home-equity loan information on his credit record and to monitor his credit. (AE D; Tr. 49.) He did nothing to verify its business practices before paying them. He responded to an advertisement on television. When asked by Department Counsel how he knew that he could trust the law firm, Applicant responded, "Shot in the dark." (Tr. 49.) As of February 2016, Applicant and his spouse were paying the law firm only for credit monitoring. (Tr. 49.)

As of September 9, 2015, Trans Union was reporting that it had verified the $45,014 charged-off balance on the home-equity loan as Applicant's debt. In contrast, Applicant reportedly owed nothing on the mortgage loan after foreclosure and then sale of the collateral. (AE B.) As recently as January 5, 2016, the bank that held the mortgage on the home in state X was still in the process of reviewing his inquiry about the mortgage loan. (AE A.) Applicant has not received a cancellation of debt (1099-C) for the home-equity loan. (Tr. 52.)

Applicant has been making timely payments on the mortgage for his new home and on an automobile loan obtained in October 2014 for $40,697. His car payments are $634 per month. (GE 3; Tr. 55.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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, 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 to obtain 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are set forth 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.

Applicant and his spouse signed a contract of purchase agreeing to sell a property that served as their residence while on a long-term assignment in state X for their employer. For a purchase price of $215,000, they received $10 and a promissory note of $4,990 in return for the Purchaser making the payments on the mortgage encumbering the property. Applicant and his spouse contractually acknowledged that the mortgage would not be assumed by the Purchaser and would remain in their names. Consequently, they and not the purchaser defaulted when the Purchaser stopped making payments on their mortgage for them in 2010. Applicant now claims that he thought that he entered into a two-year contract with the Purchaser to sell the home for them, and that he had sold the property to the tenant. However, records filed in circuit court show that Applicant and his spouse signed over the deed to the Purchaser for $10 consideration in July 2007. Applicant knowingly accepted the risk that the Purchaser would default on the payments. Applicant was notified by his mortgage lender around April 2010 that the mortgage payment was late. The home-equity loan was considered delinquent as of July 2010. Applicant made no effort to pay the mortgage or home-equity loans after learning that the payments were delinquent. Presumably because Applicant owed no deficiency on the mortgage after the foreclosure sale, the mortgage default was not alleged in the SOR. However, disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations" are established because of the home-equity loan, which, as alleged, was charged off for $45,014.

Concerning potentially mitigating conditions, AG ¶ 20(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," applies in that the loan default at issue was an aberration. Applicant has otherwise managed his finances responsibly. That being said, Applicant exercised such poor financial judgment regarding the sale of his home in state X to cast doubt on his judgment, reliability, and trustworthiness. He now claims that he "unknowingly" signed a contract that gave ownership of the property to a limited liability company. About the charged-off home-equity loan, Applicant indicated that his lender wanted him to pay the debt when someone else owned the home. Applicant was naive and assumed facts not borne out in the contract. The evidence shows that he and his spouse signed a brief, straightforward addendum in which they legally acknowledged that the Purchaser would not assume the mortgage. There is no evidence that Applicant and his spouse were pressured into signing the contract or, six weeks later, into deeding the house to Purchaser for $10 in consideration. The contract does not mention the home-equity loan. Even so, Applicant and his spouse benefitted from the relationship in that the Purchaser made two years of payments on the mortgage before falling behind when the tenant had problems paying the rent. It was only then that Applicant contacted a lawyer, who told him he had little legal recourse.

There is conflicting evidence with respect to whether Applicant still owes the $45,014 charged-off balance of the home-equity loan. All the credit reports in evidence list the debt as having an unpaid balance of $45,014 with no payment since August 2010. However, Applicant submitted evidence after his hearing showing that he was granted a mortgage in May 2014 to purchase his current residence only after the lender verified that

he had a zero balance on the home-equity loan. Account information and the letter from his current mortgage provider indicate that the charged-off home-equity loan was verified as included in a foreclosure and that no deficiency balance is owed. *See* AE C. Applicant's post-hearing evidence tends to indicate that the home-equity loan was tied to the mortgage and the foreclosure and sale of the property resolved both loans. There is a basis to apply AG ¶ 20(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." AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," has limited applicability. When the loans came into default in 2010, Applicant contacted his lender about possible restructuring the home-equity loan so that he could make payment. However, after he was informed in June 2010 that there were "no available workout options," he made no efforts to pay the debt. While Applicant's credit score may be adversely affected by the $45,014 charged-off balance on his credit record, there is no evidence that he is being pursued for any or all of the debt. Without other evidence of financial overextension, there is little risk that Applicant will engage in illegal acts to generate funds.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).[4] The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

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 the evidence to determine if a nexus exists between established facts and a legitimate security concern. The concern in this case is whether the poor judgment Applicant exercised with respect to the sale of property X is likely to recur. To that end, Applicant understands that he made a costly mistake. He lost a home on which he made payments for three years with adverse consequences to his own credit. Some concern arises because Applicant is currently paying a law firm to monitor his credit, and he did nothing to verify its business practices before paying them. He responded to an advertisement on television. When asked by Department Counsel how he knew that he could trust the law firm, Applicant responded, "Shot in the dark." However, there is no evidence that Applicant

[4] The factors under AG ¶ 2(a) 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.

is not meeting his current financial obligations. Applicant's financial situation is sufficiently stable to grant or continue his security clearance eligibility.

Formal Findings

Formal finding for or against Applicant on the allegation set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, is:

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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski
Administrative Judge