



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



In the matter of:)	
)	
)	ISCR Case No. 10-04277
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie E. Mendez, Esquire, Department Counsel
For Applicant: Joseph W. Kastl, Esquire

December 29, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns generated by his delinquent debt. Clearance is granted.

Statement of the Case

On May 23, 2011, the Defense Office of Hearings and Appeals (DOHA) 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 Department of Defense on December 1, 2006.

Applicant answered the SOR on June 24, 2011, admitting all of the allegations and requesting a hearing. The case was assigned to me on October 24, 2011. A notice of hearing was issued on November 8, 2011, scheduling the case for November 14,

2011. I held the hearing as scheduled, receiving four Government exhibits, marked as Government Exhibits (GE) 1-4, two Applicant exhibits (Applicant Exhibits (AE) A - B), and considering the testimony of Applicant and two witnesses.

At the close of the hearing, I left the record open, at Applicant's request, for him to submit additional documents. Within the time allotted, Applicant submitted five additional exhibits marked as AE C through G. Department Counsel did not object to the admissibility of AE D through G, and I admitted them. Department Counsel objected to AE C, an e-mail compilation of post-hearing questions and answers. I sustained Department Counsel's objection to AE C, and did not consider it. DOHA received the transcript (Tr.) on November 22, 2011.

Findings of Fact

Applicant is a 33-year-old single man with two children, age five, from previous relationships. Both children live with their mothers. Applicant has a high school education, and is working toward an associate's degree. (Tr. 14)

Applicant is a U.S. Marine Corps veteran, where he served from 1996 to 2002. He was honorably discharged. (Tr. 15) While in the Marines, Applicant worked primarily as a security guard. After his discharge, he has remained in this line of work with various civilian employers. (Tr. 62) Since approximately October 2009, Applicant has been working in a combat zone as a biometrics security officer. (Tr. 22) His duties include screening foreign nationals who work at the U.S. base where he is assigned. Among other tasks, Applicant takes fingerprints, and collects geographic data and family histories of various base workers. (Tr. 33) Applicant works approximately 85 hours per week. (Tr. 30)

Applicant's job is dangerous. Recently, seven coworkers were killed when a suicide bomber drove a truck armed with explosives into their armored bus. (Tr. 30)

In 2006, Applicant purchased a home for \$120,000. He financed all of the purchase price with a mortgage, as listed in subparagraph 1.b. (Tr. 44) Later that year, Applicant obtained a second mortgage. (GE 2 at 1)

Increased criminal activity in the neighborhood compelled Applicant to move about two or three months after purchasing the home. (Answer at 3; Tr. 45) He purchased another home and kept the home from where he moved with the intention of renting it.

Applicant's efforts at finding responsible renters were unsuccessful. Tenants did not properly maintain the property and seldom paid rent consistently. Consequently, turnover was high, and Applicant incurred costly maintenance expenses. (Tr. 70)

Applicant gradually fell behind on both his first and second mortgages. In September 2008, the primary mortgagee (subparagraph 1.b) contacted Applicant and

offered to modify the loan if Applicant agreed to make three consecutive payments followed by a lump-sum payment. (AE 4 at 6) Applicant made the three monthly payments, but was unable to afford the lump-sum payment. The mortgagee extended the trial modification offer into 2009, again promising that if Applicant could make three consecutive mortgage payments followed by a lump-sum payment, it would modify the loan.

Applicant lost his job in April 2009, and was subsequently unemployed for six months. (Tr. 73) Consequently, his effort at complying with the terms of the loan modification agreement failed. At or about this time, Applicant retained legal counsel. They advised him to focus on making the mortgage payments on his residence and stop trying to make mortgage payments on his rental property. (Tr. 80-81)

Applicant followed the attorney's advice. Subsequently, the mortgagee initiated foreclosure proceedings. (Tr. 81) By October 2009, the account with the primary mortgagee was in foreclosure status with a balance of approximately \$82,100, and the account with the secondary mortgagee was delinquent in the amount of \$19,000. (GE 2 at 1; Tr. 56)

In June 2011, Applicant retained another law firm to assist him in resolving these delinquencies (Tr. 49).¹ With their assistance, Applicant settled the secondary mortgage account for \$12,000, satisfying it with one lump-sum payment. (AE D at 18)

The primary mortgage remains outstanding. Applicant's attorney, who is helping him resolve this delinquency, testified that he is attempting to negotiate either a short sale or a deed in lieu of foreclosure.² (Tr. 79) He is "having a little bit of trouble" with the lender that is an assignee of the original mortgagee. Its records initially indicated that Applicant owed no debt. (Tr. 79) Applicant is working diligently through his attorney to resolve the problem. (Tr. 82)

A realtor, qualified as an expert in the real estate market where Applicant owns the rental property, testified. (Tr. 95-106) She noted that as the neighborhood continued to deteriorate and the real estate market continued to be depressed as a result of the 2008 market collapse, Applicant's rental property has continued to lose value. Homes in that neighborhood have depreciated nearly 75 percent since 2008. (Tr. 97)

Applicant earns approximately \$110,000 per year. (AE D at 4) Approximately 85 percent of his income is tax-free. (Tr. 50) He has been earning this salary since starting his job in October 2010. Applicant did not move more promptly to resolve the mortgage delinquency because he mistakenly thought the property was foreclosed, and that a borrower's responsibility to pay a mortgage ends with a property's foreclosure. (Tr. 54)

¹It is unknown from the record why Applicant terminated the services of the attorney with whom he worked originally.

²The attorney helping Applicant with the delinquency is not the attorney representing him in this matter.

Applicant has \$3,000 in savings and \$2,400 in monthly after-expense income. (Tr. 54; AE D at 8-9) He is current on his child support payments. Since beginning his current job, Applicant has satisfied a credit card debt, unlisted on the SOR, in the amount of approximately \$8,700. (Tr.54)

In the mid 2000s, Applicant allowed his teenage brother and his brother's best friend, "who had no one to turn to," to move in with him. (Tr. 26) Through Applicant's mentoring, Applicant's younger brother earned an associate's degree and now serves in the U.S. Air Force, and the other young man graduated from high school. (Tr. 27; AE F-G)

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 mortgage 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's difficulties paying the mortgage coincided with troubles maintaining paying tenants in the property. His subsequent efforts at complying with a loan modification plan failed after he lost his job in April 2009. In June 2011, Applicant retained an attorney to help him resolve the mortgage delinquencies. With the attorney's help, he settled and satisfied subparagraph 1.b, and is working on settling the mortgage delinquency listed in subparagraph 1.a.

Department Counsel asserts that it was irresponsible for Applicant to wait 18 months after he began his current job to begin attempting to settle the outstanding mortgage delinquencies. Applicant's delay was not caused by irresponsibility or procrastination. Rather, it was caused by a good-faith, mistaken belief that the property had been foreclosed rendering him no longer responsible for payment. In gauging Applicant's credibility, I considered his satisfaction of a fairly substantial unlisted debt during his first 18 months on his current job, and his diligent efforts to resolve the mortgage delinquency since retaining an attorney six months ago.

Applicant maintains a budget and has ample disposable income to satisfy the delinquent mortgage. I conclude that all of the mitigating conditions listed above apply.

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 the applicant's conduct and all the 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.

Applicant served honorably as a member of the Marines for six years. For the past two years, he has been serving the country working as a civilian contractor in a combat zone. He is a role model in his family who has mentored and helped raise both his younger brother and his younger brother's friend. Evaluating these factors together with mitigating conditions, in the context of the whole-person concept, I conclude Applicant has carried the burden.

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.b:	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