DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 10-06676
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

06/22/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the alcohol consumption security concerns, but failed to mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On February 9, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and G, alcohol consumption. 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 September 1, 2006.

DOHA received Applicant's answer on March 9, 2012. Applicant admitted all of the allegations except subparagraphs 1.d, 1.e, 1.l, 1.n, 1.p, and 1.q. He requested a hearing. The case was assigned to me on April 18, 2012. A notice of hearing was

issued on April 20, 2012, scheduling the case for May 9, 2012. I held the hearing as scheduled and received four Government exhibits (GE 1-4) and 15 Applicant exhibits. (AE A-O) Also, I considered Applicant's testimony. At the close of the hearing, I left the record open at Applicant's request for him to submit additional exhibits. Applicant submitted ten timely, additional exhibits. (AE P-Y) DOHA received the transcript (Tr.) on May 17, 2012.

Findings of Fact

Applicant is a 45-year-old married man with two children, ages 11 and 8. He has been previously married three times. His first marriage was from 1991 to 1993, his second marriage was from 1997 to 2006, and his third marriage was from January 2009 to December 2009. All of his prior marriages ended in divorce. He married his current wife in March 2012. Both of his children are from his second marriage.

Applicant served in the U.S. Air Force from 1991 to 1994. (AE D) He was honorably discharged. He has two years of college education. Since April 2010, Applicant has worked for a defense contractor as a computer programmer. (Tr. 56) His duties include systems installation, integration, and modification. (Tr. 23) According to the company's chief executive officer, Applicant is "a crucial asset" who handles himself with professionalism and enthusiasm. (AE A) According to Applicant's division director, the company consistently receives positive feedback about Applicant from their client agency. (AE B)

From 2000 to 2009, Applicant was the sole proprietor of an information technology company. (Tr. 23) The company was a defense subcontractor, and its entire operation centered on a contract with one company. (GE 2 at 4)

When Applicant was managing his own business, his finances were stable. (Tr. 57) His net profit averaged approximately $84,000. (Tr. 23) In October 2009, his contract was cancelled, leading to the failure of his business. (GE 2 at 4)

Although Applicant never experienced a significant period of unemployment after the failure of his business, his income from two part-time jobs that he held between October 2009 and April 2010, until he began his current job, was approximately half of his previous income. (GE 2 at 4)

The failure of Applicant's business coincided with the failure of his third marriage. His third wife was a spendthrift who overextended his credit and exhausted his savings. (Tr. 60-61)

The combination of Applicant's business failure and his failed third marriage caused him to accrue delinquent debt in excess of $150,000. Three debts comprise nearly 75 percent of Applicant's delinquent total. They are set forth in the following subparagraphs:

1.b. a credit line Applicant used for his defunct business, totaling approximately $50,000;

1.f. a home equity credit line totaling approximately $61,000; and

1.k. a miscellaneous debt totaling approximately $13,000.

Applicant has not begun to make payments on subparagraph 1.b. Instead, he has been focusing on first satisfying smaller delinquencies with higher interest rates. As he gradually satisfies the smaller debts, he will then begin satisfying the larger ones.

Subparagraph 1.f became delinquent after Applicant relocated to begin working at his current job in April 2010. The home from where he moved was located in a state that was acutely affected by the 2008 collapse of the real estate market. Consequently, when he prepared to sell it, he discovered that it was worth $150,000, half of its purchase price. Unable to sell the home, Applicant rented it. His property management endeavor was unsuccessful, as the tenant's rent failed to cover the combined cost of both mortgages. Ultimately, Applicant's effort at renting the property exacerbated his financial problems as the tenant seldom paid rent, and did not pay a $355 utility bill that now appears on Applicant's credit report. (subparagraph 1.c)

Currently, Applicant is four months behind on the primary mortgage, as listed in subparagraph 1.l. The balance is approximately $2,100 and the total mortgage equals $229,000. (GE 2 at 17) For the past four months, Applicant has been working with the lender to negotiate a short sale. It is inconclusive from the record whether the mortgagee has approved a short sale. (Tr. 64)

Subparagraph 1.k is owed to a collection agent. He last made a payment on this account in July 2008. (GE 4 at 4) Applicant does not know who was the original creditor. On May 23, 2012, two weeks after the hearing, Applicant made a $50 payment. (AE X) He contends that he will continue to make monthly payments until the delinquency is satisfied.

Of the remaining delinquencies, Applicant has settled and satisfied subparagraphs 1.c through 1.e. (AE J, K) These debts totaled approximately $1,300. Applicant has implemented payment plans for subparagraphs 1.a, 1.h, 1.j, 1.j, and 1.o. (AE F, T, V, and E) The initial payments for these debts were made between April and May of 2012.

Applicant has not made payment arrangements with the creditor for the debt listed in subparagraph 1.n. The delinquency totals approximately $2,400. (GE 2 at 6) Applicant has been unable to identify the original creditors of the debts listed in subparagraphs 1.g and 1.m. These unresolved debts total approximately $13,500.

Applicant has paid two bills that were not listed in the SOR. They total approximately $520. (AE L, M)

Applicant currently earns approximately the same amount of annual income that he did when he was in business. He maintains a budget, and has approximately $2,280 of monthly discretionary income.[1] (AE O)

In 2000, Applicant was arrested and charged with driving under the influence of alcohol (DUI) He pleaded guilty to the lesser charge of reckless driving. (Tr. 49), In 2005, Applicant was arrested and charged with DUI. He pleaded guilty and was ordered to attend a state-sponsored alcohol counseling program. (Tr. 50) He completed the program as ordered.

In January 2008, Applicant was again arrested and charged with DUI. He pleaded guilty and was again ordered to complete a counseling program. After Applicant's third DUI, he quit drinking alcohol. He has abstained from alcohol since then. (Tr. 50)

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

[1]Applicant's budget lists his discretionary income as $2,564, but does not include the outgoing payments under the payment plans he recently organized.

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 delinquent mortgages trigger the application of AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 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.

Before Applicant's business failed in 2009, his finances were stable. Ironically, his finances initially worsened after he gained his current job, because he was unable to sell his home after he relocated. Applicant is working to short sell his home, and has made payment arrangements with several of his creditors. Moreover, he has satisfied delinquencies that were not listed on the SOR. AG ¶¶ 20(b) and 20(d) apply.

Conversely, I conclude AG ¶ 20(c) does not apply. I remain concerned about the outstanding mortgages and the amount of delinquent unsecured debt still outstanding. Applicant's testimony about his home's drastic depreciation in value was particularly persuasive given the state where he owned it. However, he provided little supporting evidence of the status of the short sale efforts. Also, the amount of unsecured debt that Applicant has satisfied is minimal compared to the amount overdue, and he just started making payments toward the majority of them in the past three months. Under these circumstances Applicant has not demonstrated a sufficient track record of reform to conclude he has mitigated the financial considerations security concern.

Guideline G, Alcohol Consumption

Under this guideline, "excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness" (AG ¶ 21). Applicant's history of alcohol consumption and alcohol-related charges trigger the application of AG ¶¶ 22(a), "alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent," and 22(c), "habitual or binge consumption of alcohol to the point of

impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

Applicant quit drinking alcohol in 2008, and has not been charged with DUI since then. It is particularly impressive that he has maintained abstinence despite undergoing the failure of his business and the related financial crisis. Under these circumstances, I am persuaded that Applicant has mitigated the alcohol consumption security concern. AG Mitigating Condition (MC) ¶ 23(a), "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," applies.

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 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.

Applicant is an industrious employee who is well-respected by his supervisors and colleagues. His debts were largely caused by circumstances beyond his control. Although he has begun satisfying them, his progress has been minimal in comparison to the amount outstanding. Also, he has just started implementing the majority of his payment plans even though he has been working at his current job for more than two years and earning approximately the same annual income he made before the business failed. Upon considering this case in the context of the whole-person concept, I conclude that Applicant failed to mitigate the security concerns.

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.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant

Subparagraphs 1.f-1.q:	Against Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For 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