



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



In the matter of:)
)
) ISCR Case No. 11-02811
)
Applicant for Security Clearance)

Appearances

For Government: Candace Garcia, Esquire, Department Counsel
For Applicant: Christopher Graham, Esquire

05/03/2012

Decision

MASON, Paul J., Administrative Judge:

In July 2006, Applicant opened two mortgages to purchase a home for about a million dollars. He regularly paid the mortgage for more than two years. During his overseas deployment in August 2008, his wife informed him the home had lost 60 per cent of its value. In response to his wife’s request for a loan modification, the lender indicated no assistance could be provided until their mortgages were 90 days delinquent. In November 2008, Applicant and his wife stopped paying the mortgage, believing that a loan modification could be negotiated. After repeated efforts to reach a modification, Applicant suddenly received a foreclosure notice at the end of May 2009, requiring him to either pay the delinquent mortgage or vacate the premises by June 11, 2009. Applicant’s decision to proceed with the foreclosure occurred under unusual circumstances that will not be repeated. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified his Electronic Questionnaire for Investigations Processing (e-QIP)(GE 1) on February 26, 2010. He was interviewed by an investigator from the Office of Personnel Management (OPM) on March 30, 2010. A summary of his interview appears within Applicant's interrogatory answers dated July 18, 2011. (GE 3) In response to question 3 of the exhibit, Applicant checked "No," indicating that the interview was not accurate, and made several modifications and additions. (*Id.* at 163)¹ After making the modifications, Applicant checked "Yes" under question 6, indicating that he agreed with his changes to the interview summary, and that it could be admitted in evidence to determine his security suitability. (*Id.* at 165)

On November 16, 2011, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). 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.

Applicant submitted his answer to the SOR on November 24, 2011. DOHA issued a notice of hearing on February 16, 2012, for a hearing on February 29, 2012. The hearing was held as scheduled. At the hearing, eight exhibits (GE 1 through 8) were admitted in evidence (without objection) in support of the Government's case. Applicant testified and offered three exhibits (AE A through AE C) which were admitted without objection. I admitted one additional exhibit labeled Hearing Exhibit 1 (HE 1), six pages in length, identifying changes in statute concerning when a court shall not award a deficiency judgment on the foreclosure of a mortgage or deed of trust. DOHA received the transcript (Tr.), and the record closed on March 7, 2012.

Findings of Fact

SOR ¶ 1 lists two allegations under the financial considerations guideline. Under SOR ¶ 1.a, Applicant admitted he intentionally stopped paying his monthly mortgage because the mortgage exceeded the value of the property. He denied he owed a deficiency balance after the property was sold. Applicant denied SOR ¶ 1.b. There is one allegation under the personal conduct guideline. Applicant denied SOR ¶ 2.a, averring that his decision to stop paying the mortgage alleged in SOR ¶ 1.a does not show poor judgment under the personal conduct guideline.

¹ Handwritten page numbers appear in lower right hand corner of page.

Applicant is 43 years old. He has been married since June 1993. He has a 15-year-old daughter and a 13-year-old son from this marriage. He also has two adult stepchildren. Applicant graduated from a military academy in May 1990 with a bachelor's degree in business and economics. He served on active duty in the U.S. Army from June 1990 to July 1997, when he received a medical discharge for an eye injury. (GE 2; Tr. 19) He held a security clearance throughout his military career between 1990 and July 1997. He was granted a security clearance in December 2005 by OPM. (GE 3 at 171) Between May 2005 and June 2007, Applicant took graduate management and business courses, and was awarded a master's degree in management and business in June 2007.

After his medical discharge from the military in July 1997, Applicant was employed by several federal contractors and private companies 1998 and July 2006. He was a general manager for a private limited liability company. He was an engineering and planning supervisor for a federal contractor. He was a senior project manager for a federal contractor. From March 2005 to December 2005, Applicant was unemployed. He was a construction services manager for a private company.

From July 2006 to the present, Applicant has been employed as a lead project manager for a federal contractor. He works in improvised explosive device direct energy systems. He has been stationed most of the past six years in the Middle East, except for periods when he was on leave visiting his family or in training and recruiting new personnel at a military base in the United States.

In July 2006, Applicant purchased a home for approximately \$1,000,000. To consummate the purchase, he opened two mortgages from the same lender. The first mortgage was for \$784,000, and the second was for \$220,000. (Tr. 40; GE 3 at 166) The mortgage payments were \$8,000 a month. Applicant's wife regularly made the monthly mortgage payments for more than two years until November 2008. She has always handled the finances because he has been deployed outside the country most of the time since 2006. (Tr. 21)

In approximately August 2008, his wife informed Applicant (who was deployed in the Middle East) that their home had depreciated in value by sixty per cent. (GE 3 at 166) After consulting with Applicant, his wife sought a loan modification, but the lender advised her that no modifications could be effectuated until the mortgage was 90 days delinquent. (*Id.*; Tr. 21-22) Applicant explained to the lender that he could still afford to pay the mortgage of \$8,000 a month because he was deployed overseas. But if his employment location changed, his income would change (decrease) as well. (*Id.*) Applicant and his wife decided to act on the lender's implied recommendation, so they intentionally made no mortgage payments from November 2008 to June 2009. (*Id.*; Tr. 41) Applicant's wife kept calling the lender about the status of the loan modification, but the lender provided rationalizations for not having any remedy available. (Tr. 24, 47-48)

Applicant never attempted to short-sell the house because he and wife wanted to keep it. (Tr. 46)

Although the record is not absolutely clear, Applicant came home on leave in late 2008 or early 2009 because he was in-between projects. In the next two months, he was assigned to a U.S. military base to receive additional training and to recruit new personnel for another project in the Middle East. He also wanted to check with his wife on the status of his house. (Tr. 23)

Some time in early March 2009, Applicant redeployed to another country in the Middle East. Then his father, with whom he had developed a close relationship from serving several years together in the Middle East, died. The impact of his father's death caused Applicant to temporarily lose focus on reaching a home modification agreement with the lender. (Tr. 23-24, 46-47)

At the end of May 2009, Applicant was able to schedule some leave from his overseas assignment to meet his brother at his father's funeral, and help his wife obtain the loan modification. (Tr. 25) Applicant was notified by the bank that the only solution was for Applicant to pay the delinquent mortgage arrears (approximately \$84,000) which he did not have, or vacate the premises in about 11 days and accede to the foreclosure. (Tr. 25, 48-49) Applicant chose the foreclosure because the housing crisis had reduced the value of the home to a level far below the original purchase price of the home. (Tr. 49-50) He realized he could no longer provide his children a permanent home where they could establish roots in the community as they matured. (Tr. 50)

Between the end of May 2009 and June 11, 2009, Applicant relocated his family into a home that they rent for \$2,500 a month (Tr. 51). Then, he returned to his overseas assignment. On June 11, 2009, the house was foreclosed and sold at auction for about \$420,000 on July 20, 2009. Applicant received an Internal Revenue Service (IRS) tax form (1099-A) indicating that June 11, 2009 (date of foreclosure) was the date of the lender's acquisition of the property, and that Applicant was liable for the balance owed on the property. (GE 3 at 201) Appellant never received an IRS 1099-C form on the property. The sale of the property apparently resolved the first mortgage. (SOR ¶ 1.a) The credit reports reflect a zero balance owed on the first mortgage. (GE 6, GE 7)²

Applicant never received an IRS 1099-A or 1099-C form for the second loan (\$168,000). When he called the lender, he was informed the loan had been "charged off,"

² In his interrogatory answers, Applicant stated that he utilized a software program to report the first mortgage 1099-A information on his 2009 tax return. (GE 4 at 221). He testified that according to an IRS tax publication, once it was determined that the property was his primary residence for more than a year, he did not have to report the 1099-A information on his 2009 tax return (Tr. 55)

which he mistakenly understood to mean he was no longer liable. He now understands he owes the loan. He hired an attorney on February 27, 2012, to resolve the loan. (AE B) The attorney informed him that it usually takes about 30 days for the lender to begin discussions on the loan. (Tr. 57-58, 64) Applicant is able to settle the loan, but cannot pay the entire amount in a single payment. One reason is that while he is stationed stateside, his income is only \$6,000 or \$7,000 a month. He is living in one area of the United States while his family is living in another area. His employer will not deploy him overseas while his security clearance is under review. (Tr. 65-67)

The only delinquent credit entry in Applicant's credit reports is the second loan for \$168,000. GE 5 (May 29, 2004) reflects an unrelated bank loan that was 30 days late, but was paid and closed. The remaining entries show the accounts were paid satisfactorily, in good standing, or paid as agreed. (*Id.*)

GE 6 (March 23, 2010) shows a lien filed in 2007 that was released in June 2006. (GE 3 at 172) The lien does not appear in more recent credit reports. The exhibit also reflects a student loan in collection and charged off. (*Id.* at 7) Next, the exhibit lists the first and second mortgages of the house that was foreclosed. The first mortgage is listed as having a zero balance. The second mortgage is \$168,000. (*Id.* at 8) Except for an entry listed as 30 days late, the remainder of the report indicates the accounts were being paid as agreed. (*Id.*)

GE 7 (April 17, 2011) reflects no delinquent accounts except for the second mortgage. (*Id.* at 192A) The most recent credit report dated November 3, 2011, lists the second mortgage on the foreclosed property as Applicant's only delinquent account. (GE 8) The school loan does not appear in the most recent credit report.

Character Evidence

Applicant provided character statements from five individuals who are coworkers and friends. The first character statement comes from a lead scientist who observed Applicant while he was team leader on a project from February 2011 to January 2012. According to the scientist, Applicant delivered a reliable and professional performance. (AE C)

The second reference believes Applicant is trustworthy and reliable. A coworker for the past three years has found Applicant to be trustworthy. Another coworker of six years credits Applicant's outstanding leadership qualities. In February 2010, a fifth reference indicated that he had known Applicant for several years as a coworker and friend, and recommended him for a position of trust. (*Id.*)

Policies

Under Directive ¶ E3.1.4., 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

Financial Considerations

The security concern for financial considerations is 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.

There are three disqualifying conditions under AG ¶ 19 that apply:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19 (c) a history of not meeting financial obligations.

In July 2006, Applicant purchased a home he could afford with his overseas duty pay. After regularly paying the mortgage for the next two years, his wife informed him the property had lost 60% of its value. In November 2008, Applicant decided to accept the lender's implied recommendation to let the mortgage lapse for three months, believing that a loan modification could be negotiated. Although he could have continued to pay the mortgage, he decided to let the property foreclose because of the huge loss in the property's value. Applicant's unwillingness to pay the delinquent mortgage falls within the scope of AG ¶ 19(a).

The 10-month period when Applicant's first mortgage loan was in default represents a history of not meeting financial obligations. The second loan is still in default. AG ¶ 19(c) also applies.

Four conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness:

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;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances;

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; and

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

The foreclosure of Applicant's property occurred in June 2009. Between August 2008 and June 2009, both Applicant and his wife repeatedly tried to obtain a loan modification. When Applicant received the foreclosure notice at the end of May 2009, he decided to allow the property to be foreclosed. The only alternative to the foreclosure was to pay the delinquent mortgage on property that had lost 60 per cent of its value. Faced with two unappealing options, Applicant decided to accept the foreclosure and move on with his life. I am confident Applicant is not going to place himself in similar circumstances in the future. The mortgage cited in SOR ¶ 1.a has been resolved. Now that he knows he is responsible for the \$168,000 second mortgage, he is taking responsible action to address the delinquency. His affirmative conduct is indicative of trustworthiness and good judgment under AG ¶ 20(a).

Applicant receives mitigation under AG ¶ 20(b). When his wife informed him about the 60 per cent drop in their home's value, they contacted the lender to arrange a loan modification agreement. They acted responsibly under the circumstances by repeatedly calling lender to procure a loan adjustment. Obviously, the inaction by the lender was due to being inundated with similar requests by borrowers that the lender was not equipped to handle. Rather than continue to pay the mortgage for property that was worth less than half the mortgage, Applicant acquiesced to the foreclosure.

Applicant's first mortgage has been resolved by the sale of the property in July 2009. He is actively addressing the second mortgage. The credit bureau reports, which show that

Applicant has no other delinquent debt, demonstrates that he is living within his means and has incurred no new debt. Applicant receives some mitigation under AG ¶¶ 20(c) and 20(d).

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

AG ¶ 15. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 contains one disqualifying condition that may be applicable:

AG ¶ 16(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that he may not properly safeguard classified information.

When viewed in isolation, Applicant's decision to stop paying his mortgage in November 2008 establishes a deliberate breach of his mortgage contract with the lender to pay his monthly mortgage on a regular basis. AG ¶ 16(c) applies because Applicant's rules violations constitutes a whole-person assessment of poor judgment.

There is one mitigating condition under AG ¶ 17 that is potentially applicable to the circumstances in this case. Those conditions is:

AG ¶ 17(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur.

Because Applicant wanted to save his home, he relied on the lenders's veiled advice to allow the mortgage to become delinquent, an extenuating circumstance that ultimately resulted in Applicant losing his home to foreclosure when the lender could not structure a modification agreement after ten months. Applicant no longer owns the property. The first mortgage has been resolved and Applicant is taking responsible action to resolve the

second mortgage. The factors that caused the foreclosure are unlikely to recur. AG ¶ 17(d) applies.

Whole-Person Concept

In evaluating Applicant's security clearance worthiness, the administrative judge should consider the following factors of the whole-person concept:

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 the participation was 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.

The determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the financial guideline, which is to be evaluated in the context of the whole person. AG ¶ 2(c)

The potentially disqualifying and mitigating conditions have been considered in light of all the facts and circumstances of this case. Applicant graduated from a military academy in 1990. He served his country for seven years until he had to leave the service in 1997 because of an eye injury. He has worked for the same employer since 2006. His work occurs inside combat zones and his job involves neutralizing improvised explosive devices. He is considered trustworthy and reliable with outstanding leadership qualities.

In August 2008, Applicant's wife told him their home had lost 60 per cent of its value. Because he wanted to save his home, he yielded to the lender's veiled recommendation of not paying his mortgage. He had a reasonable expectation the lender was going to negotiate an agreement that allowed him to retain his home. When the lender instead notified him ten months later that his home would be foreclosed, he faced a difficult decision which he had to make in approximately 11 days. Though he could have continued to pay the mortgage, he did not want to continue to pay a mortgage that was more than twice the value of the home. Except for the second mortgage, no other delinquent accounts appear in Applicant's credit reports. Having weighed and balanced the disqualifying evidence with the mitigating evidence, the financial and personal conduct guidelines are resolved in Applicant's favor.

Formal Findings

Paragraph 1 (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a, 1.b: For Applicant

Paragraph 2 (Personal Conduct): FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant access to classified information. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge