



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



In the matter of:)	
)	
)	ISCR Case No. 11-03282
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison O’Connell, Esq., Department Counsel

For Applicant: *Pro se*

12/03/2012

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant has made some progress in reducing his financial delinquencies, the financial impact of a recent marital separation has cast uncertainty on his ability to continue his payment plan. Clearance is denied.

Statement of the Case

On June 7, 2012, 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 September 1, 2006.

Applicant answered the SOR on June 7, 2012 admitting all of the allegations except subparagraph 1.i.¹ He requested a hearing, and the case was assigned to me on September 13, 2012. A notice of hearing was issued on September 19, 2012, scheduling the case for October 23, 2012. I held the hearing as scheduled and received six Government exhibits, (GE) marked as GE 1 through 6, and one Applicant exhibit (AE) marked as AE A. Also, I considered Applicant's testimony. At the close of the hearing, Applicant moved to keep the record open for him to submit additional exhibits. Department Counsel did not object, and I granted the motion. Within the time allotted, Applicant submitted three additional exhibits that I incorporated into the record as AE B through AE D. DOHA received the transcript (Tr.) on November 1, 2012.

Findings of Fact

Applicant is a 41-year-old married man with two children, ages 15 and 20. He and his wife have been separated since August 2012. (Tr. 13)

Applicant is a high school graduate and has taken some college courses over the years. (GE 1 at 12-14). Applicant served in the U.S. Marine Corps from 1990 to 1999. He was honorably discharged. While in the Marines he earned several awards and commendations including the Navy Achievement Medal, the SouthWest Asia Medal, and the Good Conduct Medal. (Tr. 15)

Since leaving the Marines, Applicant has been working for various defense contractors as a security consultant. His duties include assessing network systems for security vulnerabilities, and providing compliance measures based on government mandates. (Tr. 16) He has worked with his current employer since 2007. (GE 1 at 27)

While in the military, Applicant never developed good money management skills. Consequently, shortly after leaving the military, he began applying for multiple credit cards, accruing balances that he could not afford, and "robbing Peter to pay Paul." (Tr. 17)

In 1999, Applicant purchased a home for \$160,000 with no money down. At the time, his salary was \$38,000 and his wife was not working. Applicant underestimated the ancillary costs of owning a home, and promptly fell behind on the mortgage payments. Within six months after he purchased the home, it was foreclosed. (Answer to SOR subparagraph 1.o) There is a deficiency balance, but Applicant does not know the amount. (Tr. 28-31)

Applicant and his wife rented for the next five to six years before purchasing another home in 2004. (Tr. 18) By then, they were both working. Their combined salary was \$83,000, and the home's purchase price was \$235,000. (Tr. 35) Shortly after

¹The SOR is misnumbered. It is listed as subparagraphs 1.a through 1.o, but does not contain a subparagraph 1.j or 1.k.

purchasing the home, Applicant obtained a home equity line of credit to “pay off some bills.” (Tr. 19)

Applicant again underestimated the costs of owning a home. Specifically, he could not afford the property taxes. In 2006, he fell behind on both the mortgage payments and the property taxes. (Tr. 35) By 2009, Applicant completely stopped making payments on the home. (Tr. 46) Applicant’s financial problems were compounded in June 2009 when his wife experienced an on-the-job injury that caused her to stop working. (Tr. 18, 72)

Applicant applied for a loan modification. It was rejected. Applicant then attempted to short sell the property. This effort was unsuccessful (Tr. 46) In August 2009, Applicant’s mortgage was foreclosed. (Answer to subparagraph 1.n) The bank resold Applicant’s home. (Tr. 47) The record is inconclusive as to whether he owes a deficiency balance.

Applicant owes \$51,500 on the second mortgage. (SOR subparagraph 1.e) In June 2012, Applicant made a \$100 payment. (Answer at 12) He contends that he has been making \$100 monthly payments since 2009, but provided no corroborating evidence.

In 2008, Applicant purchased a high-end luxury automobile for \$38,000. As of June 2012, Applicant was behind on the monthly payments in the amount of \$877. (Answer to subparagraph 1.i) In August 2012, Applicant sold the car for a sales price that enabled him to satisfy the car note. (AE D)

In October 2009, Applicant obtained a student loan, as listed in subparagraph 1.d, for approximately \$30,700. (AE B at 10). By February 2010, it was in default status. By July 2010, the balance had increased to approximately \$36,700. At or about that time, Applicant received an \$8,000 on-the-job bonus. He applied approximately \$6,000 of the bonus to the student loan delinquency.² (Tr. 53-54) He has been making monthly payments since then. The loan is no longer in default status and the current balance is \$19,890. (AE B at 10-18)

By early 2012, Applicant had also accrued multiple other delinquent debts including several credit cards (SOR subparagraphs 1.a, 1.f, 1.h, 1.i, and 1.m), a cell phone bill (SOR subparagraph 1.b), homeowner’s fees related to his second foreclosed home (SOR subparagraph 1.c), and a bounced check fee (SOR subparagraph 1.g). These bills collectively total approximately \$6,000.

Applicant paid the delinquent bounced check fee, as listed in SOR subparagraph 1.g. Applicant contends that he consolidated, with the help of a credit repair company, the debts listed in SOR subparagraphs 1.a through 1.c, 1.h, and 1.m into a payment

²Applicant used the remaining \$2,000 from the bonus to satisfy back property taxes. (Tr. 54)

plan. (Tr. 51; AE B at 5) Applicant submitted evidence of a payment plan that indicates he has been paying creditors \$220 per month since March 2012 through a credit repair company. The plan includes the debt listed in SOR subparagraph 1.m, totalling \$311, as paid, and it lists several debts as “in progress.” (AE B at 5) None of these remaining creditors listed in the plan appear to correspond with the creditors listed in the SOR.

Applicant’s salary has steadily increased over the past ten years. Between 2004 and 2007, he averaged approximately \$85,000 annually. When he started his current job, his salary increased to \$105,000. Now, he earns \$129,000 per year. (Tr. 33-34)

Applicant maintains a budget. Before Applicant and his wife separated in August 2012, he had approximately \$2,800 of discretionary income. Now, he must pay approximately \$3,000 monthly in rent, child support, and alimony. Consequently, his expenses exceed his income by \$200. (Tr. 58-61)

In 2007, Applicant applied for a security clearance with another agency. He was denied because of his troubled finances. (Tr. 43)

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 history of financial delinquencies triggers the application of AG ¶¶ 19(a) "inability or unwillingness to satisfy debts," 19(c) "a history of not meeting financial obligations," and 19(e), "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis."

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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 readily admits that his financial problems occurred because of financial mismanagement. Although his second foreclosure was caused, in part, when a disability forced his wife to quit her job, he purchased an expensive luxury automobile during the period immediately preceding the foreclosure when he was behind on his mortgage payments. AG ¶ 20(b) does not apply.

Applicant has satisfied nearly half of his student loan bill, as listed in SOR subparagraph 1.d. It is no longer in delinquent status. Also, he satisfied SOR subparagraphs 1.g, 1.l, and 1.m in their entirety. I resolve these allegations in his favor.

Applicant is working with a credit counselor, and is making good faith efforts to repay his creditors, as demonstrated by the \$17,000 that he has paid over the past three years to reduce the student loan. AG ¶ 20(d) applies.

Although Applicant has satisfied a significant amount of his debt, more than \$55,000 remains outstanding. The record is unclear as to whether Applicant owes deficiencies from either of the two foreclosures, and his contention that he is paying down the delinquent second mortgage on his second foreclosed property is not supported by corroborating documentary evidence. Moreover, only one of the debts listed in the debt repayment plan corresponds with any the SOR debts. Under these

circumstances, I cannot conclude that the debts are under control. Therefore, AG ¶ 20(c) only partially applies.

Applicant's financial problems are longstanding. Although he has made progress, his finances have recently become unsettled again because of the costs of a marital separation that have caused his monthly expenses to exceed his monthly income. Consequently AG ¶ 20(a) does not 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 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 working to satisfy his delinquent debts, and has made progress. Also, he is working with a credit counselor. However, he has been aware that his finances posed a security concern since the government rejected an earlier security clearance application in 2007. Given his salary and the amount of time he has had to get his finances under control, his progress thus far has limited probative value. Also, the likelihood of continuation or recurrence remains high because his monthly expenses currently exceed his monthly income. Under these circumstances, I conclude that Applicant has not carried his burden of persuasion.

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.c	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e-1.f:	Against Applicant

Subparagraphs 1.g:	For Applicant
Subparagraph 1.h-1.i:	Against Applicant
Subparagraphs 1.l -1.m:	For Applicant
Subparagraphs 1.n -1.o:	Against 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