



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



In the matter of:)
)
-----) ISCR Case No. 11-06119
)
Applicant for Security Clearance)

Appearances

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

10/24/2012

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On January 26, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing version of a Security Clearance Application (e-QIP).¹ On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on April 9, 2012.² On May 9, 2012, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December

¹ GE 1 (e-QIP), dated January 26, 2011.

² GE 2 (Applicant's Answers to Interrogatories, dated April 9, 2012).

29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (financial considerations), and detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on May 21, 2012. In a sworn statement, dated July 5, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On August 9, 2012, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on August 9, 2012. A Notice of Hearing was issued on September 5, 2012, and I convened the hearing, as scheduled, on September 24, 2012.

During the hearing, four Government exhibits (GE 1 through GE 4) and one Applicant exhibit (AE A) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on October 2, 2012. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted 32 additional exhibits (AE B through AE AG) that were admitted into evidence without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted two of the factual allegations pertaining to financial considerations (§§ 1.a. and 1.c. of the SOR). Those admissions are incorporated herein as findings of fact. He denied the remaining allegation (§ 1.b.). After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 37-year-old employee of a defense contractor who, since June 2007, has been promoted to various positions as his original employers were acquired by his current employer. He now serves as a network administrator. He also held a variety of positions with previous employers, where he was a desktop administrator, an e-mail migration technician, a field technician, and a custom protection officer (security guard). He was also unemployed from June 2005 until March 2006, while he attended school full-time.³ He served on active duty as an enlisted member of the U.S. Navy Reserve from April 1994 until May 1998, when he was temporarily retired due to a disability and issued an honorable discharge certificate.⁴ During his military service, he was awarded the National Defense Service Medal, the Armed Forces Expeditionary Medal, the Armed Forces Service Medal, the NATO Medal, and the Good Conduct Medal.⁵ Because of his service-connected disability, he currently receives a monthly

³ GE 1, *supra* note 1, at 15-21.

⁴ AE E (Certificate of Release or Discharge from Active Duty (DD Form 214), dated May 22, 1998). Applicant was also issued an honorable discharge certificate, dated December 18, 2003 (AE F), but there has been no explanation regarding military service during the period between 1998 and 2003. The disability has been described as a congenital knee condition and asthma. Tr. at 52-54.

award of \$864.⁶ He initially received a security clearance in 1995⁷ and currently holds a secret security clearance.⁸

Applicant obtained an associate's degree in an unspecified discipline in December 2000; a bachelor's degree in an unspecified discipline in August 2006; and a master's degree in business administration in August 2008.⁹ He was married on three occasions: the first time in 1994 and divorced in 2001; the second time in 2002 and divorced in 2003; and the third time in 2004. He and his wife have a son (born in 2009), and he has a daughter from an earlier relationship (born in 1998).¹⁰

Financial Considerations

Although there were previously isolated instances in the past when Applicant was evicted from his apartment for nonpayment of rent in 2001 (when his disability checks failed to arrive on time); his automobile was repossessed in 2002; and some accounts became delinquent,¹¹ his real financial problems started in about 2006 when he purchased a residence with the belief he "would be able to handle the payments."¹² Applicant attributed his first financial difficulties to "changes in our family dynamics,"¹³ but failed to explain what he meant by that term. He commented about the perils of his adjustable rate mortgage on his residence, high interest rates, mildew and mold issues with his residence, unforeseen medical issues, mounting medical bills, and the loss of his wife's income associated with her maternity leave, as contributing factors to his financial difficulties.¹⁴ He added: "Although we both have decent jobs and income, we continue to be over extended through life, health, and homeownership circumstances."¹⁵

Applicant's gross annual salary is \$69,049,¹⁶ and his wife's gross annual salary is about \$44,000 or \$45,000.¹⁷ In March 2012, Applicant submitted a personal financial

⁵ AE E, *supra* note 4.

⁶ Tr. at 54. But see AE C (Letter from Department of Veterans Affairs, dated December 21, 2009) wherein the award is reflected as \$936.

⁷ GE 1, *supra* note 1, at 40.

⁸ Tr. at 6.

⁹ GE 1, *supra* note 1, at 12-15; Tr. at 5.

¹⁰ GE 1, *supra* note 1, at 25-30.

¹¹ GE 2 (Personal Subject Interview, dated February 7, 2011), at 2-3.

¹² Applicant's Response to the SOR, dated July 5, 2012, at 3.

¹³ Applicant's Response to the SOR, *supra* note 12, at 3.

¹⁴ Applicant's Response to the SOR, *supra* note 12, at 3.

¹⁵ Applicant's Response to the SOR, *supra* note 12, at 3.

¹⁶ GE 2 (Earnings Statement, dated April 1, 2012), attached to Applicant's Answers to Interrogatories.

statement that reflected the monthly combined net income for himself and his wife as \$6,816.55.¹⁸ He claimed \$6,090 in monthly expenses and \$720 in debt payments, leaving a monthly net remainder of \$6.55 available for discretionary spending or saving.¹⁹ Applicant never received financial counseling.²⁰

The SOR identified three purportedly continuing delinquencies, totaling approximately \$53,280. Each account is described below, reflecting both the original and present status, as follows:

(SOR ¶ 1.a.): This is an educational loan with a nationally recognized career training school, specializing in skills and certification training for various careers, including information technology. In 1997, Applicant enrolled for a particular course. The high credit was listed in his 2011 credit report as \$7,035.²¹ Because he was either late in making a payment, or he was late in completing the course, he called the school director and requested a 10-day extension. The extension was granted. However, on the second of the ten days, the school restricted his access to the school resources for the course.²² After Applicant made his payment, access was still denied.²³ Applicant's position was that if they refused to permit him to complete the course, he questioned why he should pay the remaining balance.²⁴ The entire account was placed for collection with a past due balance of \$9,380, including interest and late fees.²⁵ Applicant did not press the issue at that time, focusing instead on another major issue with his mortgage holder.²⁶ Compounding his problems over this account is the fact that the training campus in the state closed.²⁷ Applicant's wife eventually called the school headquarters in another state and was furnished two names of individuals who were supposedly handling the financial matters related to the school closure. Neither of the named individuals could be reached.²⁸ Applicant's wife also contacted the collection agent and requested validation of the debt, but she was advised that it would take up to

¹⁷ Tr. at 65-66.

¹⁸ GE 2 (Personal Financial Statement), dated March 1, 2012).

¹⁹ GE 2 (Personal Financial Statement), *supra* note 18.

²⁰ Tr. at 90.

²¹ GE 4 (Combined Experian, TransUnion, and Equifax credit report, dated February 1, 2011), at 7.

²² Tr. at 37; GE 2 (Personal Subject Interview), *supra* note 11, at 2.

²³ Tr. at 37.

²⁴ GE 2 (Personal Subject Interview, *supra* note 11, at 2.

²⁵ GE 4, *supra* note 21, at 7; GE 2 (Personal Subject Interview), *supra* note 11, at 2.

²⁶ Tr. at 37.

²⁷ Tr. at 37.

²⁸ AE B (E-mail from Applicant's wife, dated October 8, 2012).

three weeks to do so.²⁹ That period has passed without validation. The account does not appear in Applicant's 2012 credit report.³⁰ It remains unclear if the account has been resolved by the statute of limitations or some other reason.

(SOR ¶ 1.b.): This is loan for a time-share, vacation rental property, which Applicant purchased in 2004 for \$25,900.³¹ The terms of the loan called for 120 monthly payments of \$382.93, and as of September 2012, Applicant had made 97 such payments and had 23 payments remaining.³² The payoff amount on the loan, as of September 2012, was \$8,915.26.³³ Applicant's 2012 credit report reflects the account as \$900 past due,³⁴ but the loan holder acknowledged Applicant is "current on [his] monthly payments and [is] scheduled to make [his] next payment by auto draft on September 28, 2012."³⁵ The account has been resolved.

(SOR ¶ 1.c.): This is a \$170,000 home adjustable rate mortgage loan that Applicant obtained in March 2006 when he purchased his residence for approximately \$195,000.³⁶ He paid \$20,000 towards the purchase price. Because of financial difficulties, Applicant applied for, and received a loan modification with a reduced interest payment for one year. At the end of the year, the interest payments resumed. While most of the payments were made, additional issues caused him to make several late payments.

In May 2009, he applied for another loan modification and was granted a trial period which was more affordable to him. In March 2010, after making reduced timely payments for eight or nine months, Applicant was informed that the mortgage lender had denied the loan modification. The payment of the full monthly payment of \$1,500 would not have been a problem for Applicant, but a payment to the mortgage lender of \$10,000 was required within one month, and that was a condition that Applicant was unable to afford.³⁷ Additionally, construction defects and continuing maintenance issues arose requiring costly renovations to the residence, so Applicant put the residence on the market for sale in October 2009. He voluntarily vacated the residence in August

²⁹ AE B, *supra* note 28.

³⁰ GE 3 (Equifax Credit Report, dated February 10, 2012).

³¹ AE G (Loan Profile, dated September 25, 2012), at 1.

³² AE G, *supra* note 31, at 1.

³³ AE G, *supra* note 31, at 1.

³⁴ GE 3, *supra* note 30, at 2.

³⁵ AE I (E-mail from Creditor, dated September 25, 2012). See also, AE H (Loan Statement, dated September 25, 2012); Loan Payments History Report, dated June 4, 2012, attached to Applicant's Response to the SOR.

³⁶ Tr. at 46-47, wherein Applicant estimated the sale price to be between \$190,000 and \$199,000. See also, GE 2 (Personal Subject Interview, *supra* note 11, at 1, wherein he estimated the sale price as around \$205,000.

³⁷ Applicant's Response to the SOR, *supra* note 12, at 3; Tr. at 49-51, 77-78.

2010,³⁸ when a complaint seeking foreclosure was filed against Applicant.³⁹ At the time, Applicant had a “preliminarily approved” “pre-foreclosure” pending contract for sale.⁴⁰

In October 2010, although the residence was still legally owned by Applicant, the mortgage lender took over and “secured” and “winterized” the property.⁴¹ Shortly thereafter, Applicant determined that the mortgage lender had trashed the property by ripping up and removing all the carpeting, and cutting all the pipes and plumbing.⁴² When the buyer saw the condition of the residence, he withdrew from the sale,⁴³ and the house went back on the market. Applicant noted that the mortgage lender had rendered the home as unlivable.⁴⁴ Applicant continues to receive code violations on the property, and has spent in excess of \$400 to secure the property, including damage to the fence caused by the mortgage lender when it covered the swimming pool.⁴⁵

When Applicant purchased the residence in 2006, it was appraised at almost \$200,000. When he vacated the residence in 2010, the appraisal value was between \$135,000 and \$145,000. The property is now worth about \$30,000 to \$40,000.⁴⁶ The property has continued to be for sale, and Applicant’s realtor recommended a sales price of \$40,100.⁴⁷ In October 2010, the mortgage lender approved a sale price of \$44,400.⁴⁸ In February 2011, Applicant received an offer of \$22,000,⁴⁹ but despite numerous exchanges of correspondence between Applicant and the mortgage lender, no action was taken by the mortgage lender until August 11, 2011, when a counter offer of \$60,000 was made.⁵⁰ Because of the damage to the property, the would-be

³⁸ Tr. at 59, 82; Applicant’s Response to the SOR, *supra* note 12, at 4.

³⁹ AE AD (Defendant’s Motion to Dismiss the Plaintiff’s Complaint With Embedded Memorandum of Law, dated March 8, 2011), at 3. It is unclear if the foreclosure action has been completed for it appears that the bank filing the action failed to comply with various legal requirements pertaining to: pooling, servicing, and trust agreements allowing the bank to bring the action; failing to verify the complaint; failure to allege an owner and holder of the mortgage and note; and failure to attach a valid assignment of mortgage.

⁴⁰ AE U (Letter from Mortgage Lender, dated October 11, 2010; AE T (Letter from Mortgage Lender, dated October 11, 2010).

⁴¹ Tr. at 27, 57.

⁴² Tr. at 27-28, 57, 59-60. See also, AE AF (Client Portal, dated October 4, 2012), at 3, wherein, on August 19, 2011, the mortgage lender acknowledged causing the damage to the property.

⁴³ Tr. at 27-28, 56-57.

⁴⁴ Tr. at 28, 57. See also, AE W (Photocopies of Photographs, undated).

⁴⁵ AE Z (E-mail stream, dated October 18, 2011); Applicant’s Response to the SOR, *supra* note 12, at 4.

⁴⁶ Tr. at 63-65.

⁴⁷ AE X (Comparative Market Analysis, undated).

⁴⁸ AE Y (E-mail stream, dated September 8, 2011).

⁴⁹ AE AC (Residential Contract for Sale and Purchase, dated February 22, 2011).

⁵⁰ AE AF, *supra* note 42, at 3.

purchaser disputed the comparative prices used to support the counter, and on September 8, 2011, the counter was reduced to \$45,000.⁵¹ Negotiations ceased, and the contract fell through on November 8, 2011.⁵²

Applicant sought guidance from the mortgage lender to avoid foreclosure through the government Home Affordable Foreclosure Alternatives Program, but in January 2012, the mortgage lender apologized for failing to respond to that request.⁵³ In February 2012, Applicant again furnished the mortgage lender a request for a short sale.⁵⁴ In April 2012, the mortgage lender issued a counter offer of \$38,000, which was refused by the would-be purchaser.⁵⁵

In June 2012, the mortgage lender declined Applicant's "deed-in-lieu" application to voluntarily transfer the ownership of the property to the mortgage lender in exchange for a release from the mortgage loan and payments.⁵⁶ The mortgage lender explained that a property valued less than \$50,000 does not qualify for the program.⁵⁷ In August 2012, Applicant requested a U.S. Government-sponsored independent foreclosure review to determine if he suffered financial injury as a result of errors or other problems during the foreclosure process.⁵⁸ The review decision has not yet been issued. In September 2012, Applicant engaged the services of an attorney to negotiate a successful short sale of the property and mitigate any losses.⁵⁹ The account is in the process of being resolved.

⁵¹ AE AF, *supra* note 42, at 3; AE Y, *supra* note 48.

⁵² AE AF, *supra* note 42, at 3.

⁵³ Letter from Mortgage Lender, dated January 20, 2012, attached to Applicant's Answers to Interrogatories.

⁵⁴ Letter from Mortgage Lender, dated February 2, 2012, attached to Applicant's Answers to Interrogatories.

⁵⁵ AE AB (E-mail from Realtor, dated April 5, 2012).

⁵⁶ AE AF, *supra* note 42, at 2.

⁵⁷ AE AF, *supra* note 42, at 2.

⁵⁸ AE AG (Letter from Independent Review Administrator, dated August 20, 2012). As part of a consent order with federal bank regulators, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, fourteen mortgage servicers and their affiliates, including Applicant's mortgage lender, were to identify customers, and an independent foreclosure review process was started to determine if borrowers suffered financial harm directly resulting from errors, misrepresentations, or other deficiencies that may have occurred during the foreclosure process. The servicers are required to compensate borrowers for financial injury resulting from deficiencies in their foreclosure processes.

⁵⁹ AE A (Letter from Attorney, dated September 25, 2012); AE A (Borrower Signature Authorization & Notice of Representation, dated August 21, 2012).

Character References and Work Performance

Various program managers and work colleagues have praised Applicant's accomplishments and have characterized him in highly favorable terms. He was the first and only employee to hold all five valid CCNA certifications, covering a broad range spectrum of technology, simultaneously;⁶⁰ and only one of three out of 75 candidates selected to take advanced technology training.⁶¹ Applicant excels with strong initiative, meeting his commitments, wide ranging technical strengths, and keeping his credentials current.⁶² He is always dependable and responsible, a team player, and is "definitely" a man of trust.⁶³ Applicant continues to "impress with [his] knowledge, attitude and work ethic."⁶⁴ In the past three years, Applicant has received three special payment awards in recognition of exemplary performance or achievement.⁶⁵ His pastor characterized him as loyal, faithful, respectful, and dependable.⁶⁶

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."⁶⁷ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."⁶⁸

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

⁶⁰ AE O (E-mail, dated November 23, 2010).

⁶¹ AE R (E-mail, dated October 4, 2012).

⁶² AE Q (Character Reference, dated October 1, 2012).

⁶³ AE P (Character Reference, dated September 28, 2012).

⁶⁴ AE M (E-mail, dated September 24, 2012).

⁶⁵ AE N (Cash Awards, dated September 25, 2012).

⁶⁶ AE S (Character Reference, dated September 28, 2012).

⁶⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶⁸ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."⁶⁹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁷⁰

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁷¹

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."⁷² Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are

⁶⁹ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁷⁰ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁷¹ *Egan*, 484 U.S. at 531

⁷² See Exec. Or. 10865 § 7.

reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out 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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *"inability or unwillingness to satisfy debts"* is potentially disqualifying. Similarly, under AG ¶ 19(c), *"a history of not meeting financial obligations"* may raise security concerns. Aside from some isolated instances during the period between 1997 (when his education loan was apparently defaulted) and 2002 (when his vehicle was repossessed), Applicant's financial problems commenced in about 2006 when some issues occurred causing him to seek a loan modification of his home loan. He was able to remedy his financial problems until March 2010 when he was informed that his request for another loan modification had been denied. With a demand for \$10,000 from the mortgage lender, Applicant's mortgage loan became delinquent and went to a pre-foreclosure status. He also allowed two other accounts to become delinquent. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *"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."* Also, under AG ¶ 20(b), financial security concerns may be mitigated where *"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."* When *"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(c) may apply. Similarly, AG ¶ 20(d) applies where the evidence shows *"the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."*⁷³ Also, when

⁷³ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

“the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue,” AG ¶ 20(e) may apply.

AG ¶¶ 20(a) and 20(b) apply. Applicant’s financial problems commenced in about 2006 when some issues occurred causing him to seek a loan modification of his home loan. He remedied those financial problems until March 2010 when he was informed that his request for another loan modification had been denied. Because he was unable to comply with the mortgage lender’s demand for \$10,000, Applicant’s mortgage loan became delinquent and went to a pre-foreclosure status. Applicant put the residence on the market for sale in October 2009. He voluntarily vacated the residence in August 2010, when a complaint seeking foreclosure was filed against him, and he had a “preliminarily approved” “pre-foreclosure” pending contract for sale. When Applicant purchased the residence in 2006, it was appraised at almost \$200,000. When he vacated the residence in 2010, the appraisal value was between \$135,000 and \$145,000. It is now worth about \$30,000 to \$40,000. The property has continued to be for sale, and the mortgage lender has entertained various offers for short sales, but decisions by the mortgage lender took significant delays, and its apparent reluctance to accept reasonable offers resulted repeatedly in several failed contracts.

Another problem encountered by Applicant was the actions taken by the mortgage lender when it took over and “secured” and “winterized” the property. The property was trashed when the mortgage lender ripped up and removed all the carpeting, and cut all the pipes and plumbing. Would-be purchasers saw the condition of the residence and either lowered or withdrew their offers. Although the house remained on the market, it was essentially unlivable. Other would-be purchasers made offers, but the mortgage lender either took no responsible action for months at a time or made inconsistent counters, sometimes increasing the amount from previous counters.

Applicant sought guidance from the mortgage lender to avoid foreclosure through the government Home Affordable Foreclosure Alternatives Program (HAFAP), but the mortgage lender failed to respond to that request. In June 2012, the mortgage lender declined Applicant’s “deed-in-lieu” application. Finally, in August 2012, Applicant requested an independent foreclosure review to determine if he suffered financial injury

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that she or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

as a result of errors or other problems during the foreclosure process. In September 2012, Applicant engaged the services of an attorney to negotiate a successful short sale of the property and mitigate any losses.

Applicant's financial problems can be partially attributed to the perils of his adjustable rate mortgage on his residence, high interest rates, mildew and mold issues with his residence, unforeseen medical issues, mounting medical bills, the loss of his wife's income associated with her maternity leave, and the devastation to the national economy and the housing market. No-one could have foreseen the value of the residence plunge from nearly \$200,000 to \$30,000.

His financial problems were exacerbated by the actions of the mortgage lender in a number of ways, for it: accepted Applicant into a trial period for a loan modification, but, eight months later, determined Applicant did not qualify for the loan modification without explaining the reasons, and demanded an immediate payment of \$10,000; acted irresponsibly in failing to timely respond to Applicant's request under HAFAP; failed to respond to purchase offers within a reasonable time, thereby dissuading possible sales; countered to purchase offers inconsistently, sometimes increasing current counters from previous counters; trashed Applicant's residence, thereby dramatically reducing the value of the property; and failed to comply with state law by improperly entering into bundling arrangements with other mortgage lenders and servicers in suing Applicant for foreclosure. Applicant's mortgage lender was one of those fourteen mortgage servicers who were identified as having caused such significant damage to other borrowers that the independent foreclosure review process was established. While the mortgage lender's history pertaining to other borrowers is not conclusive as to Applicant, it is of substantial relevancy. Applicant's financial problems occurred under such circumstances that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. Furthermore, he acted responsibly under the circumstances.⁷⁴

AG ¶¶ 20(c) and 20(d) apply. While there is no evidence that Applicant has ever received counseling for his financial problems, other than guidance from his realtor and attorney, there are clear indications that those financial problems are being resolved or are under control. Applicant resolved one account and has attempted to resolve another one for which there is a legitimate dispute. However, while he has not yet resolved the issues regarding his mortgage, it is apparent that he has made continuing efforts to do so. Those efforts are supported by considerable documentation reflecting his actions as well as the actions of the mortgage lender.⁷⁵

⁷⁴ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁷⁵ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

AG ¶ 20(e) only partially applies. Applicant may have a reasonable basis to dispute the legitimacy of the past-due educational loan debt. The creditor ceased operations in the state and Applicant has been unable to contact responsible parties associated with the organization. Although his wife contacted the collection agent and requested validation of the debt (which is no longer listed on his 2012 credit report), no such validation has been received. Unfortunately, Applicant has failed to provide documented proof to substantiate the basis of the dispute, and has only provided oral explanations of his actions to resolve the issue.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁷⁶

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available,

⁷⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

There is some evidence against mitigating Applicant’s conduct. His handling of the family finances permitted three accounts to become delinquent. As a result, one account was past-due, one was placed for collection, and one went to pre-foreclosure.

The mitigating evidence under the whole-person concept is more substantial. It might be argued that Applicant’s financial problems commenced in 1997 when he encountered a dispute with the training school, resulting in a delinquent education loan. However, his real financial problems commenced with his purchase of a residence in 2006. He remedied those financial problems until March 2010 when he was informed that his request for a loan modification had been denied. He was unable to comply with the mortgage lender’s demand for \$10,000, so the mortgage loan became delinquent and went to a pre-foreclosure status. Applicant put the residence on the market for sale, and watched its value plunge from almost \$200,000 to about \$30,000 to \$40,000. This was due, in part, to the actions of his mortgage lender, and, in part, to the devastated economy and local housing market. He tried to avoid foreclosure through HAFAP and a “deed-in-lieu” application. Neither application was approved. He has attempted short sales, but the untimely responses of the mortgage lender discouraged would-be purchasers. Applicant is a military veteran, the holder of a security clearance, a good husband and father, and exceptional person, and an outstanding employee.

I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁷⁷ Applicant has demonstrated a meaningful track record of debt reduction and elimination. He has resolved one of the three debts, and has attempted to resolve the other two. Overall, the evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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:

⁷⁷ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:

For Applicant

Subparagraph 1.c:

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.

ROBERT ROBINSON GALES
Administrative Judge