



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



In the matter of:)	
)	
)	ISCR Case No. 11-06120
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq. Department Counsel
For Applicant: *Pro se*

04/29/2013

Decision

CURRY, Marc E., Administrative Judge:

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

Statement of the Case

On September 13, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J, criminal conduct; 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 DOD on September 1, 2006.

On October 2, 2012, Applicant answered the SOR, admitting all of the allegations except SOR subparagraph 1.d, and requesting a hearing. The case was

assigned to me on December 4, 2012. A notice of hearing was issued on January 11, 2013, scheduling the case for January 31, 2013. I held the hearing as scheduled and received ten Government exhibits (GE 1-10), 19 Applicant exhibits (AE A - S), and Applicant's testimony. At Applicant's request, I left the record open for him to submit additional exhibits. Within the time allotted, he submitted eight additional exhibits that I incorporated into the record as AE T through AA. DOHA received the transcript (Tr.) on February 15, 2013.

Findings of Fact

Applicant is a 54-year-old man with two children, ages 26 and 22. He was married in 1986 and divorced in 2011 after a four-year separation. (AE S) A previous marriage ended in divorce.

Applicant has a high school education. For the past 34 years, he has worked for a defense contractor as an electronics technician and inspector. (Tr. 23) Applicant is highly respected on the job. According to his supervisor, he is a "team player who keeps customer needs and expectations a priority." (AE L at 9) In 2012, he received a special award for his exceptional "display of teamwork and inclusiveness." (AE L at 2)

In 1982, Applicant purchased a home for \$55,000. He financed it, in part, with a \$30,000 mortgage. (AE R at 4) In 1997, Applicant, at his wife's request, took out a \$50,000 home equity line of credit (HELOC) to finance some major upgrades to the home. (AE R at 4) He was unable to qualify for the loan without consideration of his wife's income. Consequently, upon the bank's recommendation, he added her to the deed, then jointly applied for the loan. (AE R at 5)

In 1998, Applicant's wife lost her job. She did not work again for the remainder of the marriage. With only one income, Applicant and his wife began to incur debt. In June 2001, they took out another mortgage. It totalled \$80,000. They used it to pay the HELOC opened in 1997 and approximately \$30,000 of credit card debt that Applicant's wife had incurred. (AE R at 5)

Two years later, Applicant and his wife took out a third mortgage, for an additional \$50,000, on the home. By then, the total amount owed was \$130,000. (AE R at 5) In 2005, Applicant's marriage began to deteriorate. By October 2005, he and his wife were living in separate rooms in the home. In January 2007, Applicant filed for divorce and moved out of the home. (AE S at 1)

In May 2008, the court ordered, among other things, Applicant to pay the mortgage, taxes, insurance, and utilities on the home. (AE Q at 58) The court order also memorialized a stipulation between the parties that Applicant and his wife work together to refinance the home to lower the monthly mortgage expense. (AE Q at 5; 55-56; AE S at 3) Applicant's wife did not cooperate with him in re-financing the mortgage. Consequently, Applicant paid the court-ordered expenses, but gradually began falling behind because he could not afford to maintain his home and his apartment. (Tr. 24)

On March 3, 2009, Applicant filed a motion for contempt against his wife. (AE S at 3) On November 24, 2010, the divorce court denied the motion, ruling that “[n]o evidence was offered in support of [Applicant’s] claim that Defendant refused to cooperate or that he suffered damage as a result of her refusal.” (AE S at 14)

In November 2010, Applicant sought a reconsideration of the court’s order. In July 2011, the court entered a final judgment of divorce. It granted the divorce, ruling for Applicant, but again reiterated that Applicant had to pay the mortgage on the home. (AE A at 25; AE S at 2) Also, the court ordered that the parties sell the house and that Applicant use his share of the proceeds to pay the delinquent mortgage payments. On October 13, 2011, Applicant filed a notice of appeal.

By August 2010, Applicant had stopped making mortgage payments. (AE J) On November 7, 2011, the holder of the mortgage served Applicant with a notice of default. Applicant was advised that he was behind on his mortgage payments in the amount of \$24,454. Also, the mortgage company provided Applicant with a list of government-approved housing counseling agencies and recommended that he contact one immediately. (AE J at 65)

In May 2012, the mortgage holder filed a notice of foreclosure. (AE J at 2) The balance of the principal due was \$116,000. (AE S at 8) There is no record evidence as to whether Applicant contacted any counseling agencies, as the mortgagee advised him before filing the foreclosure notice. Applicant reiterates his contention that his inability to pay the mortgage occurred after that his ex-wife reneged on the stipulation to refinance the home to lower the mortgage cost. He was unable to maintain the mortgage costs, ultimately leading to the home’s foreclosure. (AE Q at 5)

Currently, Applicant’s home remains in foreclosure. Applicant also owes a delinquent property tax bill in the approximate amount of \$124, as alleged in SOR subparagraph 1.b. (Answer at 1; GE 9) It remains unpaid.

In September 2007, Applicant cosigned a student loan in the amount of \$25,000 for his youngest daughter. (AE M at 2) She failed to make payments, rendering him responsible. By February 2011, the balance had increased to \$29,991. (AE M at 10) Applicant has been making monthly payments since then ranging from \$50 to \$467. (AE M at 1) He seldom pays the total monthly payments. (AE M at 2) Rather, he pays what he can afford.¹ (Tr. 49)

SOR subparagraph 1.d. alleges another delinquent student loan account. Applicant is aware of this account, but contends that it was obtained without his knowledge or permission by his oldest daughter from whom he is estranged. (AE K at 1) In June 2009, shortly after discovering the existence of the loan, Applicant filed a fraud affidavit disputing the debt with the loan company. (AE K at 18) In September 2009, he

¹This debt is listed in SOR subparagraph 1.c.

filed a criminal complaint against his daughter. (AE K at 24; Tr. 51) After he continued to receive delinquent notices, he then retained an attorney who wrote the loan company twice between December 2012 and January 2013 to dispute the debt. (AE K at 1, 2)

Applicant is currently not making any mortgage payments on the home where his ex-wife lives. He continues to pay the utilities. (AE T-X) Applicant has three debts that were not listed on the SOR. Two are with the same company. They were loans he obtained over the past five years to help him pay attorney fees² stemming from the divorce litigation and to make the court-ordered payments on his home. (Tr. 85-86)

The two loans with the same company originally totalled approximately \$40,000. Since February 2012, he has paid down approximately \$28,000. Twelve-thousand constitutes money he inherited after his brother passed away. Applicant paid \$16,000 through monthly payments. (Tr. 85-86) Typically, he pays \$1,000 per month to this creditor. (AE Z; Tr. 89, 92) As of January 2013, the balance was \$3,993. (AE Z at 1; Tr. 92) The balance on the other unlisted debt is \$1,331. Applicant recently made a \$300 payment. (AE Y) Applicant anticipates satisfying both of these debts in full by August 2013. (Tr. 92) After paying these debts, he will increase the amount he is paying for his daughter's student loan listed in 1.c.

Applicant earns approximately \$71,000 per year. (AE Q at 57) His monthly discretionary income is nominal. (Tr. 90)

In May 2003, Applicant was arrested and charged with driving under the influence of alcohol. After a trial, he was found guilty and fined \$600. Also, his license was suspended for six months, and he was placed on probation for one year. (Answer at 2)

On July 23, 2007, Applicant's estranged wife accused him of grabbing and pushing her during a heated argument. (AE I at 8) Subsequently, she obtained a protective order that forbid Applicant from having any contact with her for three years. (AE I at 7)

Because the alleged domestic abuse occurred in the presence of Applicant's younger daughter, the court referred the case to the state's child protective services (CPS) for an additional investigation. Upon investigating the case, CPS, on September 26, 2007 concluded that maltreatment was indicated. (AE I at 28) Applicant appealed the CPS decision and requested a hearing. At the hearing, Applicant's daughter testified that the statements her mother made about her father were not true. Also, she testified that the social worker who prepared the report interviewed her mother, but did not interview her. (AE I at 29) Based upon the daughter's testimony, CPS, on March 11, 2009, reversed its finding and concluded that the maltreatment allegations were unfounded. (AE I at 30)

² Over the years, Applicant spent approximately \$50,000 in litigation fees related to his divorce. (Tr. 12)

In May 2008 Applicant was charged with criminal contempt for violating the protective order, as alleged in SOR subparagraph 3.b. He pleaded guilty to second degree harassment, and the court extended the protective order for an additional six months. (Answer at 3; GE 3 at 15; Tr. 46) Applicant contends that he pleaded guilty to the harassment charge because he did not have the money to retain an attorney and contest the charge. (Tr. 66)

In July 2008, Applicant was arrested and charged with driving while intoxicated (DWI), operating a motor vehicle with a blood/alcohol content of greater than 0.08%, and aggravated DUI. He pleaded guilty and was sentenced to 20 days in jail, fined \$3,000, ordered to complete 36 weeks of alcohol counseling, (Answer at 2)

Applicant attended the alcohol counseling, as ordered from October 23, 2008 to June 12, 2009. (AE F) He was diagnosed with alcohol abuse. According to the program's counselor, Applicant "assumed responsibility for his actions, experienced remorse, and improved his judgment." (AE F) While in the program, Applicant was administered 15 random breathalyzers. He passed all of them. Upon Applicant's discharge, the therapist noted that his "progress toward treatment goals, level of participation, insight, and acceptance of chemical dependence rated good." (AE F) Applicant was successfully discharged from probation on February 1, 2012. (GE 3 at 18) Applicant has reduced his alcohol consumption, and has had no alcohol-related incidents since 2008. (GE 3 at 18)

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 delinquent mortgage, property taxes, and student loans trigger the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

Applicant has taken comprehensive steps to contest the debt listed in SOR subparagraph 1.d including filing a police report alleging fraud against his estranged daughter, notifying the credit reporting agencies in writing, and retaining an attorney to help him resolve the issue. I conclude AG ¶ 20(e) “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,” applies. Applicant has mitigated SOR subparagraph 1.d.

Applicant’s financial problems stem from the circumstances leading to his divorce, the court orders related to the divorce, and his attorney fees. Specifically, he contends that the house went into foreclosure because he could not afford to pay the mortgage payments and household expenses of his wife’s home, together with the costs of his apartment. Further, he contends that his wife reneged on a stipulation to cooperate with him by jointly applying for a home refinance loan to lower the monthly mortgage costs.

Since February 2012, Applicant has satisfied approximately \$28,000 of debt that is not listed on the SOR. Also, he has been making payments on the student loan listed in SOR subparagraph 1.c.

Conversely, Applicant has still not made any mortgage payments on the home even though more than two years have elapsed since the divorce court ordered him to pay them.

Applicant’s testimony that he could not afford the upkeep of his wife’s home and his apartment where he moved after they separated was credible. However, the mortgagee, before moving for foreclosure, contacted Applicant and informed him of several organizations that counsel struggling homeowners, and Applicant provided no evidence that he contacted any of them. Consequently, the first prong of AG ¶ 20(b) applies,³ but not the second prong.⁴

³ The conditions that resulted in the financial problem were largely beyond the person’s control . . .

⁴ The individual acted responsibly under the circumstances.

Applicant's satisfaction of \$28,000 of unlisted debt, and his payments toward the satisfaction of the student loan listed in SOR subparagraph 1.c constitute "good-faith effort[s] to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(c))

Applicant's most significant debt, his mortgage, remains in foreclosure, and he is not currently doing anything to address it. Also, he provided no evidence that he has paid the property tax delinquency. Although he is making payments to satisfy the student loan, as noted above, he is not consistently making the full monthly payments. AG ¶ 20(c), "the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," does not apply. Applicant has not mitigated the financial considerations security concerns.

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-related arrests and his diagnosis of alcohol abuse triggers the application of the following disqualifying conditions under 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;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment . . . ; and
- (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant's last alcohol-related arrest occurred nearly five years ago. Since then, he completed an alcohol evaluation program, receiving a good prognosis, and has been discharged from probation. Although he continues to drink alcohol, as SOR subparagraph 1.d alleges, he was evaluated as alcohol abusive, not alcohol dependent. Under these circumstances, he is only required to establish a pattern of responsible use, not abstinence (AG ¶ 23(b)) Upon considering Applicant's testimony, I am persuaded that he is drinking moderately and responsibly. I conclude the following mitigating conditions under AG ¶ 23 apply:

- (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;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation . . . has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations . . . and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Guideline J, Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Moreover, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (AG ¶ 30) Applicant’s two alcohol-related arrests together with his 2008 criminal contempt charge trigger the application of AG ¶ 31(a), “a single serious crime, or multiple lesser offenses.”

The criminal contempt charge of May 2008 stemmed from a violation of a no-contact order that the court imposed in July 2007. In the resulting CPS administrative hearing, Applicant’s daughter testified that the statements her mother made about her father, in seeking the no contact order, were not true. CPS then ruled in Applicant’s favor and concluded that allegations of maltreatment were unfounded.

Although the CPS decision considered the same facts as the divorce court, it is a different forum. Therefore, it did not invalidate the divorce court’s no-contact order. Moreover, regardless of whether the criminal court order was flawed, it was still a valid order, which Applicant later violated in May 2008. AG ¶ 32(c), “evidence that the person did not commit the offense,” does not apply. Nevertheless, Applicant’s daughter’s contention, adopted by the CPS administrative forum, that her mother falsified the allegations against Applicant when she obtained the no contact order minimizes the negative inference of Applicant’s contempt charge.

Applicant has not committed a crime in more than four years. As he is now legally divorced and his children are adults, many of the flashpoints that could trigger conflict with his ex-wife are unlikely to recur. The following mitigating conditions under AG ¶ 32 apply:

(a) so much time has elapsed since the criminal behavior happened . . . that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

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's financial problems stem from his divorce, the litigation costs of his divorce, and his financial inability to comply with the court order to pay the mortgage and expenses on his home after he moved. Applicant appealed the provision in the divorce order, requiring him to continue paying the mortgage after he moved. Since the divorce, Applicant has satisfied approximately \$28,000 of unlisted debt and has been making student loan payments. However, his home remains in foreclosure and he owes delinquent property taxes.

Applicant's contention that his wife violated a stipulation by not helping to seek a mortgage refinance to lower the mortgage payments constitutes a good faith argument; however, the divorce court rejected it more than two years ago. Since then, Applicant has not made any efforts to make mortgage payments, and he has presented no evidence that he has sought the help of any housing counseling agencies, as the mortgagee recommended, before filing the notice of foreclosure. Applicant was exercising his legal rights when he appealed the divorce judgment, but he had a corresponding responsibility to either abide by the judgment or seek a stay of the judgment pending appeal. Because he took neither step, I cannot conclude that there is enough presence of rehabilitation to conclude that he has mitigated 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
Subparagraph 1.c-1.d:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraphs 3.a-3.b:	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