



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



In the matter of:)	
)	
)	ISCR Case No. 11-08541
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr. Esquire, Department Counsel
For Applicant: *Pro se*

05/17/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant produced sufficient evidence to demonstrate that he has initiated good-faith efforts to resolve his delinquent debts, but he did not produce enough evidence to demonstrate that his financial problems are under control. Clearance is denied.

Statement of the Case

On August 6, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOD acted 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).

Applicant answered the SOR on October 4, 2012, admitting all of the allegations, and requesting a decision on the written record instead of a hearing. On January 22, 2013, Department Counsel prepared a File of Relevant Material (FORM). Applicant

received it on January 23, 2013, and did not file a response. The case was assigned to me on April 25, 2013.

Findings of Fact

Applicant is a 41-year-old married man with two children, ages 22 and 19. He is a high school graduate and has taken some college courses. Applicant is a U.S. Navy veteran. He served honorably from 1990 to his retirement in 2010. Since then, he has worked for a defense contractor as a network engineer. (Item 4 at 16)

Between 2008 and 2010, Appellant incurred approximately \$157,000 of delinquent debt. Approximately \$137,000 of this debt, as listed in SOR subparagraph 1.d, constitutes the second mortgage on his home.

Applicant's finances began deteriorating in early 2008 after the interest rate for his primary home loan mortgage rose, increasing the monthly payment from \$2,900 to \$5,000 per month. (Item 5 at 4) By April 2008, Applicant's primary loan (unlisted on the SOR), the debts listed in 1.a (a credit card company), 1.b (a delinquent car lease), and 1.d (second home mortgage) had all become delinquent, and by May 2010, SOR subparagraph 1.c (a car loan) had become delinquent.

In September 2009, the mortgagee of Applicant's primary home loan initiated foreclosure proceedings. (Item 6 at 3) In May 2012, the principal loan was modified under a federal government plan. (Item 7 at 2) Since then, Applicant has been paying \$2,900 monthly, and has brought the mortgage current. (Item 5 at 13)

At or about the time Applicant's primary loan was modified, he retained an attorney to assist him with a modification of the second mortgage loan. The bank rejected the proposed modification. With the help of his attorney, Applicant is again attempting to modify the loan. (Item 5 at 3) Currently, under the terms of the second loan, Applicant is supposed to pay \$1,200 monthly. (Item 5 at 10) He did not provide any evidence of payments.

In July 2012, Applicant retained a debt repayment agency. (Item 5 at 4) He contends that he has been making monthly \$570 payments to his creditors through the credit agency, and has reduced his debt by approximately \$6,000. (Item 5 at 7) Applicant produced documentary evidence indicating that he made two monthly payments to the credit agency between May and June of 2012. (Item 5 at 13) He failed to produce any evidence of additional payments to the credit agency, or any evidence that the balance of the debts owed to any of the creditors have decreased.

Applicant maintains a budget. He earns approximately \$77,000 annually, receives approximately \$18,000 annually through his pension. (Item 5 at 10) He has approximately \$3,100 of monthly discretionary income.¹

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 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). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*). Applicant’s financial delinquencies trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.” The following mitigating conditions under AG ¶ 20 are potentially applicable:

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem

¹Applicant’s monthly expenses are his mortgages, totaling \$4,100, and the \$570 paid monthly to the credit agency.

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's financial problems began when the interest rate on his adjustable rate primary mortgage increased, raising his monthly payment by more than \$2,100. Although Applicant alluded to the nationwide collapse of the housing market in 2008, he did not allege nor provide any evidence that the mortgagee unscrupulously induced him to enter into the mortgage agreement. Under these circumstances, AG ¶ 20(b) does not apply.

Applicant successfully obtained a modification of the primary mortgage and retained an attorney to assist him in modifying the second loan. Also, Applicant contacted a credit agency to help him develop a payment plan. Per the plan, he is to pay \$570 per month.

The secondary mortgagee rejected Applicant's loan modification efforts. As for the payment plan, Applicant only produced evidence of two payments executed approximately a year ago. Under these circumstances, AG ¶ 20(d) applies, but not AG ¶ 20(c).

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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 made some good-faith efforts to resolve his financial problems. Without more evidence of monthly payments, or evidence establishing how much he has reduced the debt, I cannot conclude he has mitigated the security concern.

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.d:

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