



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



In the matter of:)	
)	
)	ISCR Case No. 11-13306
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel

For Applicant: *Pro se*

11/15/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On April 24, 2013, 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on May 21, 2013, admitting SOR subparagraph 1.a and denying SOR subparagraph 1.b. He requested a decision on the written record instead of a hearing. On July 9, 2013, Department Counsel prepared a File of Relevant

Material (FORM). Applicant received it on July 15, 2013, and did not file a response. The case was assigned to me on September 24, 2013.

Findings of Fact

Applicant is a 54-year-old married man with two adult children. He graduated from college in 1996. Since 2000, he has been working for a defense contractor as a mechanical engineer. (Item 4 at 6)

In 2006, Applicant purchased a home. (Item 9 at 1) He financed the purchase with a \$285,000 mortgage. (Item 9) In December 2011, the bank that financed the purchase foreclosed upon the mortgage. (Item 6) According to Applicant, he first fell behind on the mortgage payments in 2008 when he mistakenly thought his wife was making the payments while he was on extended business travel. (Item 8 at 10) Per Applicant, they did not realize their mistake until they had missed two mortgage payments.

After realizing that the mortgage payments were late, Applicant contends that he contacted the bank and arranged a payment plan. Under the plan, the mortgage delinquency was rolled into the remaining mortgage, requiring him to make subsequent mortgage payments that were slightly higher. (Item 8 at 10)

Applicant contends that he forgot to make a mortgage payment in 2010 before going on vacation. (Item 8 at 12) He contends that he continued to make monthly payments, but remained one month behind, with the understanding that the bank would prorate the delinquent mortgage payment in a similar fashion as it prorated the missed mortgage payments in 2008. (Item 8 at 14) Per Applicant, the bank chose to initiate foreclosure proceedings in September 2011 despite the fact that he was less than a month behind on his mortgage payments. (Item 8 at 13) Applicant contends the home was sold in a foreclosure sale. (Item 8 at 10) Applicant denies that he owes any deficiency related to the mortgage foreclosure and asserts that attempts to contact the bank since the foreclosure have been unsuccessful. (Item 2 at 1)

Applicant's monthly mortgage payment was \$2,000 per month. (Item 9 at 1) As of August 1, 2011, the month before the bank initiated foreclosure proceedings, Applicant was more than \$20,000 behind on his mortgage payments. (Item 5 at 4) The outstanding principal balance totals \$267,914.

The remaining SOR debt is a cable television bill totalling \$67. (Item 1 at 1) Applicant admits this debt and promises to pay it as soon as he receives a copy of the bill. (Item 2) Applicant provided no proof that he ever paid this bill.

Applicant maintains a budget. He has approximately \$3,300 in monthly discretionary income. (GE 8 at 3)

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 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 fell behind on his mortgage as a result of carelessness, not circumstances beyond his control. He provided no documentary evidence supporting his contention that the bank sold his foreclosed home with no remaining deficiency. In addition, Applicant's assertion that he was only a month behind on his mortgage payments when the bank initiated foreclosure proceedings contradicts the documentary record evidence indicating that he was approximately \$20,000 behind on his mortgage when the bank initiated foreclosure proceedings. Applicant's lack of credibility undermines both his contention that no deficiency remains from the foreclosure process as well as the probative value of his promise to pay the delinquent utility listed in subparagraph 1.a. I conclude that none of the mitigating conditions apply.

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.

Upon considering the whole-person concept in my analysis of the disqualifying and mitigating conditions, I conclude that they do not warrant a favorable conclusion. Applicant has failed to mitigate the financial considerations 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.b:	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