

Findings of Fact

Applicant denied the SOR allegation. He is a 38-year-old project manager employed by a defense contractor since May 2010. His past clearance record is unknown.

The SOR alleges, and Government exhibits establish, one delinquent debt totaling \$51,000. The amount represents the past-due balance on a \$234,000 mortgage that Applicant cosigned with his mother in about September 2008.

The original mortgage was cosigned by Applicant's sister. Applicant's mother had insufficient income from her church secretary position to qualify for the mortgage. In 2008, Applicant's sister wanted to buy her own home, so it was necessary to refinance the mortgage to get her off it. Applicant then cosigned his mother's mortgage. The refinanced balance was \$238,000. Applicant was either unaware or indifferent to the legal obligations cosigning the note placed upon him.

The house encumbered by the mortgage was originally purchased by Applicant's mother as her residence, and it was so when Applicant's name was put on the mortgage in September 2008. However, after the refinancing, Applicant's mother converted the house to rental property. She had difficulty keeping the house rented and getting the tenants to pay the rent. There is no evidence of the efforts she undertook to enforce payment of the rent or evict the tenants. She apparently did not communicate these financial issues to her son.

In June 2011, Applicant executed a clearance application to upgrade his clearance (GE 1). He reported no financial difficulties. However, by June 2011, the mortgage was 120 days past due: \$14,000 on a balance of \$234,000. The record is unclear concerning whether Applicant knew this at the time he executed his clearance application.³ However, the Government did not allege falsification of the clearance application.

During his July 2011 interview, Applicant acknowledged the debt to the Government investigator, and implied that he would address it. Applicant made the same representations in October 2011, when the investigator re-interviewed Applicant. However, Applicant took no meaningful action to address the delinquent mortgage. He thought his mother would take care of it, because she owned the house. In March 2013, she was dealing with a third-party negotiator to modify the mortgage (GE 2). The record is unclear to what extent Applicant was involved in this process.

³The Government investigator who interviewed Applicant in July 2011 recorded that Applicant was aware of the delinquency, but did not list it on his clearance application because it was his mother's house (GE 2). However, Applicant testified (Tr. 47) that he first became aware of the delinquency in July 2011, when the Government investigator confronted him with his June 2011 credit report (GE 3).

Applicant testified (Tr. 67-68) that he was not more aggressive dealing with the delinquent mortgage because until he received the SOR in June 2013, he was unaware that the delinquent mortgage could be the basis for losing his clearance. Given the financial questions on the clearance application, and two interviews with a Government investigator discussing the debt, no reasonable person can believe this to be true. Nevertheless, the SOR galvanized Applicant into action. He dismissed the third-party negotiator and began dealing with the lender directly. By 27 July 2013, he had submitted the loan modification paperwork required by the lender (AE A). On 30 July 2013, Applicant was approved for a trial period plan (AE B). The plan required Applicant to execute a plan agreement and return it by 29 August 2013, followed by three trial mortgage payments of approximately \$1,500 on 1 September, 1 October, and 1 November 2013. After completion of the trial program, the lender would determine if Applicant remained eligible for a permanent loan modification.

Applicant and his mother planned to sell the property if they were able to obtain the permanent loan modification. He did not document his acceptance of the trial plan, or his ability to make the trial mortgage payments.

Applicant submitted no work or character references. Except for the debt alleged in the SOR, his credit accounts are current.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, disputed facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own.

The “clearly consistent with the national interest” standard compels deciding any reasonable doubt about an Applicant’s suitability for access in favor of the Government.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has over \$51,000 in delinquent debt that he has only recently begun to address.⁵ Applicant became aware of his indebtedness by June 2011, yet took no meaningful action to address the debt for nearly two years. While he may be on the verge of a satisfactory resolution of the debt through loan modification, complete resolution of the debt hinges on his ability to sell the house once the delinquency is removed, a contingency that is by no means certain.

In addition, Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are recent and ongoing.⁶ Applicant’s responsibility as cosigner for his mother, and his ability to monitor the status of that loan, were certainly within his control. Further, he cannot be considered to have acted responsibly in addressing this debts under the circumstances because of the length of time it took him to begin to address the delinquency.⁷ Further, while his recent efforts to address the delinquency have borne partial results, his failure to act sooner means that it is too early to tell if he will be successful in completing the trial mortgage program, obtaining a permanent loan modification, and ultimately selling the property.⁸

The concern with Applicant is that while he credibly stated his intent to resolve this debts, successful resolution remains speculative. He has not produced a budget, or documented that he has received financial counseling. He certainly has not demonstrated that the delinquent mortgage can be resolved with his current financial means.⁹ I conclude Guideline F against Applicant.

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁶¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . . ;

⁷¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances;

⁸¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

⁹¶ 20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge