



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-03066
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq. Department Counsel  
For Applicant: *Pro se*

07/14/2014

**Decision**

CURRY, Marc E., Administrative Judge:

The financial problems that compelled Applicant to obtain a Chapter 7 bankruptcy discharge in 2002 and the financial problems that led to the foreclosure of his home mortgage occurred more than five years apart. Both periods of financial difficulty were caused by circumstances beyond his control. Currently, Applicant, despite a modest income, is managing his finances without using credit, and has saved \$20,000 toward his retirement. Applicant has mitigated the financial considerations security concerns.

**Statement of the Case**

On October 15, 2013, the Department of Defense Clearance Adjudication Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) 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 November 15, 2013, admitting the allegations, and requesting a decision on the written record instead of a hearing. March 27, 2014, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on April 2, 2014, and he filed a response on May 8, 2014. The case was assigned to me on June 2, 2014.

### **Findings of Fact**

Applicant is a 61-year-old married man with two adult children from a previous relationship. He has an associate's degree in the field of ornamental horticulture that he earned in 1981. (Item 7 at 8) Through his career, he has worked in a variety of fields including restaurant management, bartending, and golf course landscaping. (Item 4 at 11; Response to FORM at 8) Since November 2011, he has worked as a janitor and groundskeeper at the facility of a defense contractor. (Item 4 at 11) His duties include vegetation control and chemical inventory reduction. (Response at 51)

Applicant is highly respected on the job. Over the years, he has been honored several times for excellence in maintaining the facility's grounds and for readying the facility for inspections. (Response at 49-51)

In the mid-1990s, Applicant began struggling with severe back and neck pain. After six years of conservative treatment proved ineffective (Response at 2-44), he underwent cervical spine surgery in 2001. (Item 3 at 5) After the surgery, his insurance company declined to cover the payment. (Item 7 at 9) The non-reimbursed medical bills totalled \$90,000. Applicant was unable to afford paying them, and they became delinquent.

While struggling with his medical problems, Applicant fell behind on his credit card bills. (Item 3 at 5) By 2002, he had incurred approximately \$40,000 of additional delinquencies including a credit card and a personal loan. (Item 7 at 9) In September 2002, Applicant filed for Chapter 7 bankruptcy protection. (Item 3 at 4) Two months later, his debts, totalling \$130,000, were discharged. (Item 3 at 4)

Applicant's financial situation gradually improved after the bankruptcy release. (Item 4 at 8) However, in January 2008, his wife lost her job. (Item 3 at 2) For the next two years, he tried unsuccessfully to keep current with his mortgage payments before attempting to short sell his home in 2010. (Item 3 at 5) After the secondary mortgagee learned that Applicant had initiated short sale proceedings, it charged off the debt. The balance totalled \$33,464, as listed in subparagraph 1.c. (Item 7 at 6) In October 2011, the primary mortgagee, as listed in subparagraph 1.b, rejected the short sale and moved to foreclose upon the property. In December 2011, the primary mortgage account was foreclosed upon. The loan totalled \$260,000. Applicant was approximately \$18,000 delinquent on mortgage payments when the foreclosure was finalized. (Item 7

at 5) According to Applicant's credit report of March 2014, he owes no balance on the primary mortgage listed in subparagraph 1.b. (Item 8 at 2)

Currently, Applicant and his wife earn approximately \$44,300 annually. They maintain a budget and have approximately \$130 in discretionary, monthly income. (Item 7 at 16) Applicant has approximately \$19,000 invested in a 401k account, and his wife has approximately \$9,500 invested in a 401k account. (Item 7 at 23-24) They are current on their state and federal income tax payments. (Item 7 at 18-22) Other than utilities and car insurance, Applicant has no revolving debts. (Item 7 at 16) The charged-off debt, as listed in subparagraph 1.c is the only debt on his most recent credit report that is not identified as either closed or paid off. (Item 8)

### **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.*)

Several years after obtaining a Chapter 7 discharge of \$130,000 of delinquent debt, Applicant's financial problems recurred, leading to the loss of his home through the foreclosure process. AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations," apply. 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 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.

The debt that Applicant incurred, which was later discharged in bankruptcy, stemmed from a chronic, disabling medical problem. He underwent surgery, and was unexpectedly responsible for the expense after his insurance carrier declined to cover the surgery. Applicant managed his money responsibly after the bankruptcy discharge. His problems did not recur until after his wife lost her job.

Applicant tried unsuccessfully to short sell his home before the bank foreclosed the mortgage. Applicant owes no deficiency balance. Moreover, in the state where Applicant purchased the home, deficiency balances are non-collectible. Although this fact, alone, does not minimize the security ramifications of the foreclosure, it minimizes the potential vulnerability to coercion, assuming for the sake of argument that there was a deficiency balance when the property was resold.

Currently, Applicant and his wife earn approximately \$44,300 annually. They maintain a budget and have approximately \$130 in discretionary, monthly income. (Item 7 at 16) Together, Applicant and his wife have approximately \$29,000 invested in their respective 401k accounts. (Item 7 at 23-24) They are current on their state and federal income tax payments. (Item 7 at 18-22) Other than utilities and car insurance, Applicant has no revolving debts. (Item 7 at 16)

I conclude that Applicant's financial problems stemmed from circumstances beyond his control and that his finances are under control. AG ¶¶ 20(b) and 20(c) apply.

Ideally, Applicant could have executed a payment plan to satisfy the debts he incurred relating to his surgery. However, the bankruptcy process is a legitimate manner to resolve one's debts. The second prong of AG ¶ 20(d) applies.

**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’s financial problems were not caused by financial irresponsibility or exorbitant spending. Instead, they occurred after his health insurance carrier declined coverage for cervical spine surgery, and recurred years later after his wife lost her job.

Applicant earns a modest income. Nevertheless, he is managing his personal finances without using credit cards and he has approximately \$20,000 invested in a 401k account. Under these circumstances, he has mitigated the negative inferences generated by his bankruptcy filing and subsequent foreclosure.

**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:	FOR APPLICANT
Subparagraphs 1.a-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.

MARC E. CURRY  
Administrative Judge