



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXX) ISCR Case No. 14-07001
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esquire, Department Counsel
For Applicant: Bradley P. Moss, Esquire

10/07/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 13 May 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 21 August 2015, and I convened a hearing 5 October 2015. DOHA received the transcript 13 October 2015, and the record closed.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4 and Applicant exhibits (AE) A-G.

²DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted SOR financial allegation 1.b. He denied allegation 1.a and documented that the judgment had been satisfied (Answer, Attachment 1).³ He is a 38-year-old managing director at the defense contractor that has employed him since January 2014 (Tr. 37).⁴ He is a May 2000 graduate of a United States (U.S.) service academy (GE 1; Tr. 35). He has been continuously employed since leaving active duty in December 2006 (GE 1).⁵ He seeks to retain the clearance he has held, as necessary, since entering the academy (Tr. 38).⁶ He has never had any security violations.

The SOR alleges two delinquent debts totaling over \$134,000, a June 2013 judgment for \$900 that has been satisfied, and an allegedly-foreclosed mortgage, over \$133,000 past-due on a balance of nearly \$500,000. Applicant's September 2013 credit report (GE 2) reports the mortgage in foreclosure as alleged in SOR 1.b. Applicant's December 2014 credit report (GE 3) reports the past-due balance as alleged in SOR 1.b. Applicant's October 2015 credit report (GE 4) reports that the past-due balance had grown to nearly \$175,000. Applicant's September 2013 clearance application (GE 1) reported his being \$35,000 delinquent on his mortgage, which he attributed to disputes with his wife, his separation, and pending divorce. He anticipated selling the house in spring 2014. He is currently pursuing a deed in lieu of foreclosure with the lender (Tr. 53, 67).⁷ This should be accomplished by November 2015. If successful, Applicant would be relieved of responsibility for the \$500,000 outstanding balance on the mortgage.

Applicant attributes his mortgage problem to his wife losing her job in late 2011-early 2012 (Tr. 39).⁸ He never stated how much family income was lost. They began to use their savings to continue making the mortgage payment. Applicant wanted to sell the house and move into a more affordable residence. Applicant's wife did not want to

³However, the proof of satisfaction does not indicate when the judgment was satisfied.

⁴He has also served as the executive vice president of the parent company division to which his employing company reports, since about January 2015 (Tr. 27). From December 2008 to December 2013, he was employed at another contractor, where he eventually rose to the title of senior manager.

⁵He mistakenly testified (Tr. 36) that he left active duty in January 2006. However, I accept as more likely correct the dates reported on his clearance application. He was commissioned in May 2000, so his active duty obligation would not have expired until May 2006. Moreover, he reports his two-year employment with another Government agency (AGA) from December 2006 to December 2008 (GE 1).

⁶He must have an industrial clearance. However, he reported none on his September 2013 clearance application (GE 1).

⁷However, technically his mortgage is in review for a loan modification (Tr. 53, 67).

⁸Applicant later corrected the date to 2011 (Tr. 61).

sell the house. Instead, in 2011,⁹ she opened a small business with Applicant's support.¹⁰ He described his support as rooted in his thought that the business might succeed and as a last-ditch effort to try to save their marriage. He did not otherwise reveal what the problems were in the marriage.

Applicant claims that they funded the new business with a \$38,000 additional loan on the house (Tr. 41).¹¹ The venture was not a success, and was closed in 2013. In 2012, Applicant's annual salary was \$170,000-175,000, not including an \$11,000 bonus at year's end (Tr. 45).

In the meantime, Applicant and his wife were supposedly going into debt to make the mortgage payment. In early 2012, they applied for a loan modification.¹² In March or April 2012 (Tr. 62), Applicant consulted a county housing assistance office, where a staffer told him they were unlikely to get the lender's attention unless they were delinquent on their mortgage. Applicant and his wife stopped paying the \$4,200 per month mortgage in April 2012 (Tr. 48-49).¹³ Applicant has made no payments since, although he estimates he could have continued to make payments for another five or six months after he stopped making the payments initially. Even today, he could make the mortgage payments long enough to put the house on the market (Tr. 68).¹⁴

Applicant left the marital home in August 2012. They are legally separated, and they have been through two rounds of mediation to reach a settlement agreement, which they expect to file shortly for judgment of absolute divorce (Tr. 51).¹⁵ Applicant's wife and children left the marital home in September 2015, and moved to a different city. Applicant and his wife apparently discussed renting the house, selling the house, or attempting a short sale at various times after they decided to separate, but the house was never put on the market (Tr. 72-73).

⁹Applicant initially put this event in 2012 (Tr. 40-41), but later amended the date to 2011 (Tr. 62).

¹⁰The company was organized as a limited liability corporation (LLC) and Applicant was part of the corporation (Tr. 43-43).

¹¹However, none of Applicant's credit reports list a second mortgage on the house, or any other joint loan aside from the first mortgage, that could possibly serve as a source for this funding. Applicant did not explain how a loan was obtained with the house as collateral without his signature since the first mortgage is a joint account.

¹²Which Applicant is unable to document (Tr. 63).

¹³Applicant's September 2013 credit report (GE 2) reports April 2012 as the date of last activity. His December 2014 credit report (GE 3) reports March 2012 as the date of last activity. Applicant's October 2015 credit report (GE 4) April 2012 as the date of last payment.

¹⁴Perhaps as many as six-eight months (Tr. 72).

¹⁵Applicant did not submit a copy of the marital settlement agreement, so it is unknown whether any provision was made for mortgage payments. Moreover, Applicant did not submit the preliminary settlement agreement which obligated Applicant to assume all the joint debt (Tr. 80).

Applicant and his wife re-submitted a loan modification request in October 2013 (AE B). By this time, Applicant's wife had started a job in mid-to-late 2013 (Tr. 79), and they reported over \$245,000 gross annual income.¹⁶ They re-submitted again in June 2014 (AE C), reporting nearly \$280,000 gross annual income. Finally, in August 2015, Applicant, through counsel, demanded that the lender make a decision on the loan modification after the lender apparently sought a fourth submission (AE D). The lender promised to respond by early September 2015, but did not.¹⁷

Applicant's annual salary in January 2014 was \$235,000 (Tr. 31). He currently earns \$250,000 annually (Tr. 30, 58) and is eligible for a 30% bonus (\$75,000)¹⁸ if certain business metrics are met. Ten percent of the bonus is discretionary to Applicant's performance rater (Tr. 32). Applicant's bonuses are taxable income, and he has owed additional Federal income taxes in recent years (Tr. 69).

Applicant submitted a personal financial statement (PFS) for 2012 showing \$850 negative monthly cash flow with Applicant making the \$4,175 monthly mortgage payment (AE A). Of course, after April 2012, Applicant was not making the monthly mortgage payment, so he had \$3,325 positive monthly cash flow which Applicant was using to pay his and his wife's consumer debt (Tr. 50). His October 2015 PFS (also AE A) shows \$860 positive monthly cash flow after a \$1,700 monthly rent payment.

Applicant documented no credit or financial counseling. His neighbor considers him honest and trustworthy, says he does not live beyond his means, and recommends him for his clearance (Tr. 17-22). The Chief Executive Officer (CEO) of Applicant's parent company, and Applicant's performance rater, is aware of the SOR, but still considers Applicant an outstanding employee and recommends him for his clearance (Tr. 24-34). A former supervisor echoes those sentiments, although he also stated his confidence that Applicant would make all financial restitutions on his mortgage (AE G).

Policies

The adjudicative guidelines (AG) list factors for evaluating 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 reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to

¹⁶Applicant testified to a \$190,000 base salary plus a \$10,000-11,000 bonus (Tr. 76, 79). His wife was making \$50,000-55,000 annually.

¹⁷As is sadly typical with modification requests, the lender required the borrowers to submit updated information while each request was pending, then demanded that the borrowers re-submit the entire application when the lender was unable to make a decision within some established time line.

¹⁸Applicant estimated this year's bonus as \$60,000-70,000 (Tr. 78).

classified information. 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, controverted 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 requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.¹⁹

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns, which largely relate to Applicant's judgment. Applicant deliberately stopped paying his mortgage after April 2012. Although he submitted loan modification applications in early 2012, October 2013, and June 2014—none of which were acted upon—Applicant sought no other solution with the lender despite having the apparent means to do so.²⁰

The essence of the case is this: once the Government established its case, the burden shifted to Applicant to refute, extenuate, or mitigate the Government's case. Thus, it was Applicant's burden to establish the essential time line of the case, including his wife's alleged job loss, the establishing of a new business with commensurate funding, and the circumstances of their subsequent separation, settlement negotiations, and ultimate divorce. Applicant failed to establish those elements to my satisfaction.

Applicant's time line is not a model of clarity, and while I do not cite the discrepancies in his chronology to undercut his credibility, I nevertheless must conclude that Applicant's evidence does not establish that he could not make his mortgage payments after his wife lost her job in 2011. At the very most, the period of time when Applicant's family was a single-income family ran from late 2011 to mid-to-late 2013. Applicant puts this job loss in late 2011. The absence of any greater precision seriously undercuts Applicant's claim that he had little other choice in dealing with his mortgage.

¹⁹ See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

Applicant's chronology must have these data points between late 2011, when his wife lost her job, and April 2012, when there is objective proof that Applicant stopped paying his mortgage:

1. Applicant's wife loses her job.
2. Applicant and his wife discuss disposition of the house.
3. Applicant's wife establishes new company.
4. Applicant and his wife apply for and obtain second mortgage.
5. Applicant and his wife apply for a mortgage modification.
5. Applicant consults state housing assistance office.
7. Applicant stops paying his mortgage.

These data points omit necessary integral steps required to accomplish each larger step. But these steps alone take time. To list just the larger chronology demonstrates its improbability. Applicant's 2012 salary was \$170,000-175,000 plus bonus. That salary, plus his wife's business plan, was enough to qualify for a second mortgage, although there is no evidence in the record to show any such loan was obtained. Even so, by Applicant's testimony, this business was closed in 2013, and in mid-to-late 2013 Applicant's wife obtained a salaried job. In September 2013, when he reported being \$35,000 delinquent on his mortgage, he had to have been in the neighborhood of \$67,000 delinquent and the account was reported in foreclosure.²¹ Nearly-simultaneously Applicant reported the annual family income was \$245,000 as of his October 2013 modification application. The loan modification would certainly have made it easier but his stated income makes it clear he could have resumed regular payments, at a minimum to forestall greater delinquencies. In June 2014, the annual family income had risen to \$280,000. And he reported a \$78,000 bonus for that year.

Consequently, the mitigating factors for financial considerations give Applicant little aid. His financial difficulties are recent, but not multiple, yet the circumstances that caused them cannot be considered unlikely to recur because Applicant and his wife essentially made a deliberate choice to walk away from the mortgage.²² The Appeal Board has described this conduct as a strategic default [ISCR Case No. 11-07747 (App. Bd., 27 February 2013.)].

Further, while his financial problems started as a circumstance beyond his control and his initial response to apply for a loan modification could be considered responsible, his decision to stop paying the mortgage—even on the advice of a county housing assistance office—was not, particularly where a plan was potentially available to address the mortgage delinquencies by mid-to-late 2013. Instead, Applicant reapplied

²¹Applicant's last mortgage payment was April 2012 (GE 2-4). Applicant's late September 2013 credit report (GE 2) records a balance date of August 2013—some 16 months of missed payments. Applicant states that he never received any notice of foreclosure and subsequent credit reports appear to corroborate that, each reporting increasing past-due balances but no foreclosure (GE 3, 4).

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

for a loan modification again in October 2013, at a time when he clearly had the income to pursue another course of action. He had even more income in June 2014 when he filed a third loan modification application. Under these circumstances, I do not consider him to have been responsible in pursuing resolution of his delinquent mortgage.²³ There is no evidence that Applicant has had any financial or credit counseling, although frankly this is not an issue in this case; however, he has not clearly acted to get his finances under control.²⁴ Moreover, continuing to pursue loan modification to the exclusion of other remedies that he could afford does not constitute a good-faith effort to resolve his delinquent mortgage.²⁵

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.²⁶ Applicant's efforts to date do not constitute such a plan. His actions to relieve himself of financial responsibility have been belated and not significant. Although Applicant's character evidence is quite impressive I find it insufficient to mitigate the security concerns raised by his lengthy period of atrocious judgment demonstrated by his failure to pay his mortgage for over three years. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph a:	For Applicant
Subparagraph b:	Against Applicant

²³¶ 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;

²⁴¶ 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;

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

²⁶ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

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