



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



In the matter of:)
)
) ISCR Case No. 15-01431
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Jeffrey Billett, Esq.

02/06/2017

Decision

CURRY, Marc E., Administrative Judge:

Applicant's financial problems stemmed from the national housing market downturn in 2008 rather than to any exorbitant spending. Of the two SOR debts, he has successfully disputed one, and he is in the process of negotiating the resolution of the other one. Clearance is granted.

Statement of the Case

On September 22, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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, denying the allegations and requesting a hearing. The hearing was held as scheduled. I received four government exhibits (GE 1 - 4), eight Applicant exhibits (AE A - AE H), and I considered Applicant's testimony. At the close of the hearing, I left the record open, at Applicant's request, to allow him the opportunity to submit additional exhibits. Within the time allotted, he submitted one additional exhibit that I admitted and incorporated into the record as AE I. The Defense Office of Hearings and Appeals received the transcript (Tr.) on October 25, 2016.

Findings of Fact

Applicant is a 48-year-old married man with two children, ages 23 and 16. He is a high school graduate and has earned several years of college credits. He works two full-time jobs in the information technology field. (Tr. 54) He provides support to defense contractors in both jobs, providing systems administration on his night job, and service administration during his day job. Per a longtime friend, he is a "man of character" with a "high moral and ethical makeup." (AE H) Applicant has held a security clearance for six years. (Answer at 2)

Applicant has been a homeowner since 2002. A part-time realtor, he purchased two rental properties between 2005 and 2007. (Answer at 2) The property purchased in 2005 was secured by two mortgages. The amount alleged to be delinquent in SOR subparagraph 1.a is the owed to the primary mortgagor. The property purchased in 2007 is not the subject of either of the SOR allegations.

Initially, Applicant's real estate investments were successful, as his tenants steadily paid their rents and the property values increased. By 2008, however, his good tenants moved, and he was unable to replace them with quality, rent-paying tenants. Unable to find good tenants, Applicant attempted to sell his properties. In an effort to enhance the value of the property referenced in subparagraph 1.a, he refinanced the primary mortgage,¹ cashing out approximately \$30,000 to remodel it. (Tr. 36) The balance of the primary mortgage increased from \$157,000 to \$188,000, as alleged in SOR subparagraph 1.a. (Tr. 37-38)

At or about the time Applicant was attempting to sell his rental properties, the national housing market collapsed, impeding his efforts to sell them. Balancing the mortgage payments on the rental properties without any incoming rent became increasingly difficult, and Applicant started to become financially overextended. (Tr. 33) In 2009, Applicant managed to sell the property that is not the subject of either of the SOR allegations, making a \$20,000 profit. (Tr. 75) The property alleged in subparagraph 1.a remained vacant, however. Applicant later applied for a loan modification, but the creditor rejected it.

¹This property had a second mortgage that totaled \$32,000.

In 2010, the junior mortgagor of the property, that is the subject of subparagraph 1.a, foreclosed the mortgage. (AE D at 8) The subsequent resale covered the balance of the second mortgage, releasing Applicant from any further obligation to this mortgagor. (AE D at 4; Tr. 32, 67) The primary mortgagor was not a party to the foreclosure. Some time after 2010, the primary mortgagor assigned the mortgage to the creditor alleged in SOR subparagraph 1.a. In July 2015, the creditor referenced in SOR subparagraph 1.a filed a notice of intent to foreclose. In response, Applicant retained an attorney. In October 2015, Applicant's attorney contacted the creditor, disputing the foreclosure effort, and threatening to countersue for fraudulent foreclosure, as the property had already been foreclosed and resold. (AE F at 1) Approximately one year later, in September 2016, the creditor contacted Applicant, informing him that it was releasing the lien, forgiving the mortgage debt, and ceasing any collection activity. (AE G)

The debt alleged in SOR subparagraph 1.b is the second mortgage on Applicant's primary residence, stemming from a 2009 refinance. (Tr. 57) It totals \$36,000. Some time after Applicant began having financial difficulties, he successfully applied for a loan modification. As part of the modification, the creditor who held both mortgages, charged off the second mortgage and reduced the interest rate on the first mortgage from nine percent to five percent, reducing Applicant's monthly payment by approximately \$900. (Tr. 58) As part of the modification, the creditor charged off the second mortgage and assigned it to a collection agency. (Tr. 46) Currently, Applicant is negotiating with the assigned creditor to settle it. (Tr. 50-51)

Applicant keeps a budget. He has \$6,000 in savings and \$75,000 invested in his retirement account. (AE I) Since starting a full-time second job two and a half years ago, his disposable income has increased significantly. More recently, his monthly expenses have decreased, as his oldest child finished college and is supporting herself independently. (Tr. 51, 54) Currently, his monthly, discretionary income totals \$4,143. (AE I)

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 conscientious 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) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant’s financial problems were not caused by extravagant spending. Instead, they were incurred when a downturn in his rental property business coincided with the national housing market collapse. Applicant dealt with these financial difficulties responsibly, cutting back living expenses, obtaining a second full-time job, and obtaining the reduction of his home mortgage payments through a loan modification. As for the delinquent mortgage alleged in subparagraph 1.a, the most significant of the two SOR debts, Applicant successfully disputed it, as the creditor released its claim after

Applicant retained an attorney, challenged the basis of the creditor's claim, and threatened litigation.

The debt owed to the creditor alleged in subparagraph 1.b remains unresolved. Applicant is negotiating the resolution of this debt. Given Applicant's significant monthly discretionary income, his savings, and the responsible manner that he addressed the financial crisis generated by the downturn in his rental property investments, I am confident that he will resolve the remaining SOR debt, as promised. In sum, I conclude that all of the aforementioned 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.

I considered Applicant's good character reference in the resolution of this case. In tandem with the circumstances surrounding the incurrence of the delinquencies, and the steps Applicant has taken to resolve them, I conclude that 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:

FOR APPLICANT

Subparagraphs 1.a-1.b:

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