



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



In the matter of:)
)
) ISCR Case No. 15-01995
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

11/30/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns caused by his delinquent debt. Clearance is granted.

Statement of the Case

On September 29, 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.

The case was assigned to me on June 6, 2016. DOHA issued a notice of hearing on June 27, 2016, scheduling the hearing for August 17, 2016. The hearing was held as scheduled. Department Counsel submitted six exhibits that I identified and received as

Government Exhibits (GE) 1 through 6, and Applicant testified. DOHA received the transcript (Tr.) on August 25, 2016.

Findings of Fact

Applicant is a 39-year-old married man with one child, age nine. He has been married to his current wife since 2013. He has been married twice previously. His first marriage was from 1998 to 1999, and his second marriage lasted from 2003 to 2012. Both prior marriages ended in divorce. Applicant's child is from his second marriage. He and his ex-wife share joint custody.

Applicant is a U.S. Army veteran who served honorably from 1996 to 2001. While enlisted, he received the Army Achievement Medal. (Tr. 14) Applicant earned an associate's degree in 2006. Since 2003, Applicant has worked as a security officer at a laboratory. He has held a security clearance for the entire duration of his employment. (Tr. 16)

Between 2011 and 2014, Applicant incurred approximately \$75,000 of delinquent debt, including debt owed to multiple unsecured creditors (subparagraphs 1.b, 1.d-1.f, and 1.h-1.k), a delinquent mortgage loan (subparagraph 1.c), and the deficiency from a repossessed automobile (subparagraph 1.g). Applicant's delinquencies stem from the deterioration of his second marriage. When they separated, his wife refused to help pay for the debts that they had jointly incurred. (Tr. 17) When Applicant remarried in 2012, his current wife agreed to help him pay the delinquent debts. Shortly after they married, however, she experienced medical problems that prevented her from working, and ultimately resulted in the loss of her job. (Tr. 18) She was subsequently unemployed for the next two-and-a-half years. (Tr. 18) This presented Applicant with the dual challenge of satisfying the debts from his previous marriage and attempting to manage the finances from his current marriage on one income. This challenge proved to be insurmountable.

In 2015, Applicant filed for Chapter 13 bankruptcy protection. (GE 6) After struggling to make payments through the bankruptcy plan, Applicant concluded, with the help of his attorney, that the plan was not feasible. (Tr. 19) Consequently, in February 2016, Applicant converted his case to a Chapter 7 discharge petition, and in May 2016, all of his debt, except the mortgage, was discharged. (Answer; GE 5)

As of the SOR date, the mortgage was delinquent in the amount of \$24,422. (Answer at 1) Currently, the total delinquency including the principal totals \$160,000. (Tr. 33) Applicant has not made any mortgage payments since 2013 (Tr. 27) In that time, he tried to obtain a loan modification, but his efforts were thwarted by his ex-wife who refused to either authorize the loan modification or relinquish her property ownership through a quitclaim deed. (Tr. 38) Shortly after the Chapter 7 discharge, the bank moved to foreclose on Applicant's mortgage. (Tr. 27) The foreclosure was scheduled for August 20, 2016, three days after the hearing. The current fair market value of the home is \$120,000. (Tr. 33)

Applicant has “a couple hundred dollars” of monthly discretionary income. (Tr. 29) He has approximately \$50,000 to \$60,000 invested in a retirement account. (Tr. 29)

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

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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt.

Applicant's financial problems were not caused by irresponsible or profligate spending. Instead, they began at or about the time he and his wife divorced, and were exacerbated when his current wife experienced disabling medical problems that caused her to lose her job. Applicant responded by organizing a payment plan through a Chapter 13 bankruptcy. After struggling to make payments and consulting with an attorney, he concluded that the Chapter 13 payment route was not feasible, and he opted to file for a Chapter 7 bankruptcy debt discharge. Since May 2016, all of his debts have been discharged except his home mortgage loan. AG ¶¶ 20(b) and 20(d) apply.

Now that the Chapter 7 bankruptcy process is complete, Applicant's mortgagor is moving forward with the foreclosure process. Applicant made efforts to resolve the delinquent mortgage loan, but was unsuccessful, in part, because of the refusal of his ex-wife, the joint owner of the home, to cooperate in the resolution of the delinquent mortgage loan. Given the uncertain status of the mortgage loan, I cannot conclude that AG ¶ 20(c) 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 occurred when his first marriage failed, and were exacerbated when his second wife, upon whose income he was jointly dependent, was unemployed for more than two years. He obtained a Chapter 7 discharge of his debts only after he tried to satisfy them through the Chapter 13 bankruptcy process. The status of Applicant's home mortgage loan remains uncertain, as foreclosure proceedings are in motion now that the discharge process is finished. Ultimately, the security clearance adjudication process is not about Applicant's financial stability or credit worthiness. Rather, it is an analysis of whether any financial instability either indicates bad character, whether it may deleteriously affect his judgment vis-a-vis safeguarding classified information, or whether it generates a vulnerability to coercion. Given the length of time Applicant has held a security clearance, the cause of his financial problems, the steps that he took to allay them, and his reserve income, I conclude that the uncertainty regarding Applicant's unresolved delinquent mortgage loan neither demonstrates bad character nor generates any vulnerability to coercion. Applicant 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.k:

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