



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



In the matter of:)
)
) ISCR Case No. 15-05669
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2017

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant's mortgage delinquencies were caused by circumstances beyond his control, he provided no evidence of any steps that he has taken to address them. Clearance is denied.

Statement of the Case

On February 4, 2016, 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. On March 11, 2016, Applicant answered the SOR, admitting the allegations and requesting a hearing. The case was assigned to me on August 11, 2016. DOHA issued a notice of hearing on September 14, 2016, scheduling the hearing for October 26, 2016. The hearing was held as scheduled. At the hearing, I considered

Applicant's testimony, and I received three Government exhibits (GE 1 - GE 3), and six Applicant exhibits (AE A - AE F). DOHA received the transcript (Tr.) on October 31, 2016.

Findings of Fact

Applicant is a 47-year-old married man with one child, age 15. He is a high school graduate and has earned some college credits. Since January 2014, Applicant has worked for a defense contractor as a system administrator and an integration engineer. (Tr. 14)

Applicant is highly respected on the job. According to his supervisor, he is a superb technician who "has a knack for getting ground control systems to work where others have failed." (AE B) His reputation extends beyond his employer, as other defense contractors have specifically requested his involvement in collaborative partnerships. (AE B)

In 2006, Applicant and his wife purchased a home for \$400,000. (Tr. 18) Several years later, Applicant's wife was informed that her job was being transferred to another state. Applicant and his wife did not want to relocate because they were \$60,000 underwater on their mortgage, and anticipated problems selling their home. (Tr. 25) Consequently, Applicant's wife decided to look for another job in the area where they were living.

Applicant's wife's efforts to find another job with a comparable salary were unsuccessful. Subsequently, she decided to stay with her job and relocate.¹ In March 2014, Applicant and his wife, in an effort to facilitate the sale of their home before the relocation, pursued an option to short sell the home. (GE 3 at 2) They stopped paying the mortgage payments, shortly after initiating the short sale process after being advised that one of the criteria for short selling a home is to be behind on the mortgage payments. (Tr. 20) Before then, they had been current on the mortgage payments. Their efforts to short sell the home were unsuccessful, as a buyer offered to purchase the home, and the bank rejected the deal. (Tr. 16)

Unable to sell their home, Applicant and his wife moved in June 2014, as planned. They could not balance the rental payment on their new home with the mortgage payment on their previous home. Consequently, by May 2015, the primary mortgage delinquency increased to \$40,000 (SOR subparagraph 1.a), and a home equity credit line was delinquent in the amount of \$28,000 (SOR subparagraph 1.b).

Applicant has not made any payments towards the satisfaction of these mortgages since relocating because he does not earn enough income to pay both

¹Applicant and his wife's decision to relocate was influenced by the fact that Applicant's job was increasingly becoming unstable, as his employer had implemented several layoffs, and appeared headed for bankruptcy. (Tr. 15-16)

mortgages. (Tr. 21) The bank has initiated foreclosure proceedings. (GE 3 at 2) Applicant does not know whether the home has been foreclosed.

Applicant and his wife earn approximately \$130,000 annually. (Tr. 22) They have approximately three to four thousand dollars in savings. (Tr. 22) Other than the outstanding mortgages, Applicant and his wife have no other delinquent debt. They are able to meet their current expenses, but not able to save much money. (Tr. 23)

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 delinquent debt 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 did not incur his delinquent debt as a result of profligate spending or foolish real estate investing. Instead, he experienced financial difficulties when he relocated and was unable to sell his home, which at the time of the move, was approximately \$60,000 underwater. These circumstances were beyond his control, triggering the first prong of AG ¶ 20(b).

Applicant contends that he does not know the status of the foreclosure and that he does not have enough disposable income to begin paying the mortgage delinquency. He provided no evidence, however, of any efforts to contact the mortgagor, either to inquire into the status of the foreclosure, or to negotiate a payment plan. Ultimately, it is the Applicant's burden of proof to establish mitigation. Under these circumstances, I cannot conclude that he has carried this burden. I conclude that AG ¶ 20(b) partially applies, but that none of the other 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 strong employment references, together with the whole-person factors, as listed above. Ultimately, the mitigating information such as the strong character references and the surrounding circumstances of Applicant's financial problems, were not sufficient to overcome the negative security ramifications of his unresolved mortgage delinquencies.

The awarding of a security clearance is not a once in a life time occurrence, but is based on current disqualifying and mitigating conditions. Under the Applicant's current

circumstances, a clearance is not recommended, but should he be afforded an opportunity to reapply for a security clearance in the future, he may well demonstrate persuasive evidence of his security worthiness.

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:	AGAINST APPLICANT
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Subparagraphs 1.a-1.b:	Against Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge