DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 15-00545
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

06/29/2016

Decision

WHITE, David M., Administrative Judge:

Applicant incurred a number of delinquent debts after losing his well-paying position as a mortgage loan officer when the market crashed. He has taken positive steps to address the delinquencies, and has substantially resolved them. Resulting security concerns were mitigated. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on June 8, 2012. On July 11, 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on September 14, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 3, 2015. The case was assigned to another administrative judge, who scheduled a hearing for December 16, 2015. Applicant informed DOHA that he was temporarily working in another part of the country, so the case was reassigned to me on November 12, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 19, 2015, setting the hearing date for December 10, 2015, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection; and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A through C, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until January 8, 2016, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on December 18, 2015. Applicant timely submitted AE D, which was admitted without objection, and the record closed as scheduled.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor, where he has worked since March 2009. He is a high school graduate, with no military service. He has only held a security clearance in connection with his current employment.[1] He is married and has three adult children, two of whom recently moved out of the family home. (GE 1; Tr. 6-8, 43-45.)

Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a and 1.r, with explanations. He denied the remaining allegations in the SOR, also with explanations. (AR.) Applicant's admissions are incorporated in the following findings.

Applicant was earning a six-figure income as a mortgage company loan officer from about 1997 until late 2006. His wife also worked with him as a loan processor until 2006, when the housing market collapse cost both of them their jobs. Applicant then worked in a series of relatively low-wage jobs for a little more than two years until obtaining his current employment as an engineering technician. His wife was diagnosed with a serious chronic neurological disease in 2010, and has been unable to work since then. (GE 1; Tr. 40-43.)

Due to Applicant's, and his wife's, unexpected loss of employment in 2006 and the sharply reduced family income that followed for several years, the 18 debts[2] alleged in the SOR became delinquent. Having regained reasonable employment and desiring to pay what he could to his creditors in a fair and lawful manner, Applicant filed a Chapter 13 bankruptcy proceeding in June 2010. His Chapter 13 plan was confirmed in February 2012, and completed on September 19, 2014. Having fully complied with all

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[1] *See* Tr. 7-8, 19-24.

[2] It was determined, and agreed by Department Counsel, that SOR ¶¶ 1.e and 1.o are duplicate allegations concerning the same delinquent debt that was reduced to a judgment.

bankruptcy obligations, Applicant and his wife (with whom he filed the action) were granted a Chapter 13 discharge on December 16, 2014. All of the debts alleged in the SOR, except those described in SOR ¶¶ 1.a, 1.l, 1.m, and 1.r, were included and resolved in this bankruptcy. (AR; AE B; AE C; AE D; Tr. 24-25, 45-49, 56-71, 73-75.)

The debt alleged in SOR ¶ 1.a is the first mortgage on Applicant's home. It had become delinquent and went into foreclosure in 2010, but Applicant was able to negotiate a loan modification agreement with the lender in late 2012, which halted the foreclosure proceedings. He has made every payment under this agreement since December 2012, and the loan is currently in good standing with no late charges or payments past due. (AR; AE A; Tr. 34-35, 51-55.) The two note loan debts alleged in SOR ¶¶ 1.l and 1.m were not included in Applicant's bankruptcy, but had been fully repaid in 2007. (GE 6 at 6; AE D.)

The $1,403 collection account alleged in SOR ¶ 1.r involves a medical account that arose when Applicant's wife was hospitalized in 2010 for an operation. They had medical insurance that covered most of the cost, and asked their bankruptcy lawyer to include this cost share amount in their Chapter 13 bankruptcy. Applicant admitted that the debt was apparently not successfully included in that proceeding due to his attorney's failure to properly amend the plan. He said that, although the creditor has not made any attempt to collect this minor debt, he would make contact and arrange to resolve it.[3] (AR; AE B; AE D; Tr. 46-47, 71-73.)

Applicant's testimony was credible and knowledgeable concerning his financial circumstances. He has successfully completed financial counseling, and demonstrated his determination and ability to remain within his budget and avoid any future delinquencies. (Tr. 75-78.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept.

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[3]Applicant had fully paid another medical debt to this creditor in May 2010, before filing bankruptcy. It does not appear, from record credit reports, that this is the same as the debt alleged in SOR ¶ 1.r. (*See* GE 3 at 21; GE 4 at 16.)

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 the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

> 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant incurred a number of significant delinquencies after losing his lucrative job as a mortgage loan officer in late 2006. He also fell significantly behind on his mortgage loan payments. These facts provide substantial evidence under the foregoing DCs, thereby shifting the burden to Applicant to mitigate resulting security concerns. The SOR allegations and evidence do not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (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 debts; 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 arose due to the unexpected crash of the housing market and general economy starting in 2006. He obtained several low paying jobs to make ends meet until he obtained his current position. Acknowledging that he could not repay all of his outstanding debt, he filed for Chapter 13 bankruptcy relief in order to repay as much as the court determined to be appropriate while resolving those debts. He negotiated a first mortgage loan modification in late 2012 to resolve pending foreclosure proceedings, and has timely made all payments toward that debt. He resolved all of the other SOR-listed debts through his bankruptcy, except for one minor

medical collection account for his wife's hospitalization that he erroneously thought had been discharged, and the two note loans that he repaid in 2007. He has undergone financial counseling, established a workable budget, and lives well within his means. The debts alleged in SOR ¶¶ 1.e and 1.o are duplicate listings concerning a debt that was also resolved through his bankruptcy. Applicant accordingly established substantial mitigation under each of the foregoing provisions for security concerns arising from his former delinquencies.

"An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'" ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Applicant has successfully established a meaningful track record of debt resolution that continues to date, and has reestablished a solvent and responsible financial situation under a manageable budget plan.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a sincere and mature individual, who has accepted accountability for his debts and resolved all but one of them. His positive actions to address both the sources and results of his indebtedness have substantially eliminated the potential for pressure, coercion, or duress, and make continuation or recurrence of significant financial problems unlikely. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.s: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge