DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 15-01506
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

06/29/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On September 17, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken 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), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 3, 2016. A notice of hearing was issued on April 21, 2016, scheduling the hearing for May 19, 2016. Government Exhibits (GX) 1-5 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-H at the hearing, which were entered into the record without objection. I kept the record open until June 20, 2016, for additional documentation, which was timely received. AX I was entered into the record without objection. The transcript was received on June 1, 2016. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline F, with the exception of 1.a. He provided explanations for each alleged debt.

Applicant is 59 years old. He attended college, but he did not obtain a degree. Applicant is married and has two adult children. He has been with his current employer since about 2009, where he serves as a supervisor for a mail center. He completed a security clearance application in 2012. (GX 1) He has held a security clearance for several years. (GX 1)

The SOR alleges one charged-off account; three collection accounts; and two past-due mortgage loan accounts in the total amount of approximately $210,000.

Applicant had a stellar credit score and no financial problems before the economic downturn in 2007-2008. (AX A) He had an excellent credit score, and he purchased several properties by obtaining home mortgages. He explained that his wife inherited two houses and they lived in her father's house that was deeded to her, which was the primary residence. He also inherited two properties which they chose to keep and rent for investment purposes.[1] In approximately 2002 or 2003, he and his wife started a small business, but he did not incorporate or structure the business as a limited liability corporation (LLC). In the beginning, it was profitable and Applicant earned about $1,800 a month. (Tr. 75) He believes this situation lasted until about 2006. (Tr. 75) He emphasized that a series of unfortunate business-related circumstances led to a business downturn and ultimate failure, which put him in the position of not being able to meet his financial obligations. (Answer to SOR; AX B) He also acknowledged that he had no expertise in the field of real estate. (Tr. 74)

Specifically, Applicant rented the two properties that he inherited, but according to him he had many "toxic" renters. Some of his tenants stayed in the property but did not pay the rent. Others ruined the property and caused so much damage that the property needed to be rehabilitated. Applicant used credit cards to pay for the materials needed to make the repairs. He realizes that it was a critical mistake to not structure the business as an LLC (Tr. 16). Thus, the business income and personal income could not be separated. He wanted to save the business, but he used all his capital to do so and it still failed. Originally, he considered bankruptcy, but he did not want that to affect his personal property. He was advised that he did not qualify for a bankruptcy due to his debt-to-income ratio. (Tr. 34) He wanted to pay his debts. Applicant was also candid that the motivation for the recent attempts to resolve the mortgage accounts was the retention of a security clearance. (Tr. 99)

As to SOR allegation 1.a, in the amount of $4,844, Applicant submitted a 2015 Motion to Vacate to show that the judgment filed was dismissed. (AX H) This was the

[1]Applicant explained that he obtained mortgages on the homes that he inherited and another mortgage on a home that he built for a primary residence. (Tr. 88-89)

result of an account that had become delinquent in 2008 and was dormant until recently. An agreement was made to settle the amount. Applicant believed he paid about $800. (Tr. 53)

As to SOR allegation 1.b, in the amount of $82,233, for a past due home loan, the home went to foreclosure in 2015. (AX C) He tried to get a loan modification much earlier, but he was not successful because it was not his residence. He also tried several times to get a new tenant. However, he gave his broker the authority to list the property as a short sale and he submitted a signed document when a short sale occurs. The broker has advised Applicant that there will be no deficiency balance for him to pay. (AX I)

As to SOR allegation 1.c, in the amount of $3,960 for a collection account, Applicant received a settlement offer of $2,178. The due date was May 31, 2016. (AX G) Applicant stated that he wanted to pay a lump sum and that he intended to do that by May 31, 2016. (Tr. 42) He recently contacted them to see about a settlement. This account is the result of a credit card that he used to rehabilitate the properties. He stated that he would use savings to make the payment. (Tr. 43) He agreed to the settlement, which requires two payments. Applicant claimed he paid $1,089 and the second payment of $1,089 will be made in late June. (AX I) He did not present any documentation of the payments.

As to SOR allegation 1.d, in the amount of $109,654 for a home mortgage loan that is past due, Applicant expects a short sale and has a signed agreement. The agent advises the property value has increased. But, the actual short sale is still in process and has not been completed. (AX I) The realtor advised there would not be a deficiency balance.

As to SOR allegation 1.e, in the amount of $1,102, for a collection account to a company. Applicant obtained a "Certification of True Copy" from the district court showing, that the debt was settled in 2013. (AX I) Initially, Applicant believed this was a duplicate of another account. (Tr. 61)

As to SOR 1.f, in the amount of $8,299 for a charged-off account, as a result of a credit account used to buy materials for rehabilitating the properties. (Tr. 65) He provided a 1099-C to support his claim that the debt was discharged in tax year 2014. (AX I)

Applicant earns about $60,000 a year and his wife earns about $57,000 a year. (AX F) He receives a monthly check from his daughter and her husband who live in their house, which amounts to $19,500. (AX F) He has no new delinquent accounts. He has a monthly net remainder, which was not exactly clear from the record. He has a financial planner and advisor. (Tr. 71) He now adheres to a firm budget. (Tr. 48) He submitted documentation that he is current on his own home mortgage account. (AX D) He also earns some money as a musician. He emphasized that he has no plans in the future to invest in any properties. (Tr. 76)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, 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 in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."[2] The burden of proof is something less than a preponderance of evidence.[3] The ultimate burden of persuasion is on the applicant.[4]

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[5] "The clearly consistent standard indicates that security clearance

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[2] *See also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

[3] *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

[4] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

[5] *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials."[6] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.[7] The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

> Failure or an 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. It also states that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The Government produced credible evidence that Applicant incurred delinquent debt from collection accounts and mortgage accounts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant's financial difficulties occurred in the past nine years. He obtained about five mortgages on homes that he inherited. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) partially applies.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant inherited houses and decided to rent them. He did not incorporate as a business so he was personally liable. At first it was profitable, but with the economic downturn, he could not keep tenants. He

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[6] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

[7] *Id*.

was not able to pay the mortgages for years. He had taken out the mortgages to rehabilitate the houses, and he also to put a down payment on a house that he wanted for his primary residence. However, he did not want to sell them while they were "under water." There were circumstances beyond his control, but he was not proactive on the mortgages until the issue of his security clearance arose.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant as noted above made efforts to resolve the issue when he could no longer make the minimum payments on his bills. He has settled some accounts, but the home mortgage loans are unresolved. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem) but there are not clear indications that the problem is being resolved, or is under control) until the short sales are complete.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 59 years old. He has been with his current employer since 2009. He is married and has two adult children. He is a mature and educated man. He has held a security clearance without incident for two years.

Applicant admits that he ventured into the real estate market with several homes that he inherited. At first his individual business was profitable. However, due to an economic downturn things changed. He obtained mortgages to keep the houses rehabilitated and to put a down payment on a new primary residence for himself. But for that he had stellar credit and had no delinquent debts. He acknowledged that he had no expertise in the field of real estate and that the motivation to become proactive on the

two home mortgage loans was the retention of his security clearance. To his credit, he tried to get a modification on the properties, but could not as they were not his primary residence. Other actions he has just recently taken, such as a settlement agreement. He has not presented sufficient evidence to mitigate security concerns in this case. He hopes that the short sales will resolve the problems but that has not happened yet. He stated that he had a settlement agreement and paid over $2,000, but he did not provide evidence of payment.

Applicant has not presented sufficient information to carry his burden of proof in this case. He has not mitigated the financial considerations security concern. Any doubts must be resolved in favor of the Government.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant

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 a security clearance. Clearance is denied.

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NOREEN A. LYNCH.
Administrative Judge