



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-05920
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne Strzelczyk, Esq., Department Counsel  
For Applicant: *Pro se*

10/30/2015

**Decision**

CURRY, Marc E., Administrative Judge:

Although Applicant’s delinquencies were caused largely by circumstances beyond his control, he failed to provide enough evidence that he is taking steps to resolve them. Clearance is denied.

**Statement of the Case**

On January 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.

On February 24, 2015, Applicant answered the SOR, admitting all of the allegations except subparagraph 1.e. He requested a decision on the record rather than a hearing. On May 7, 2015, Department Counsel prepared a File of Relevant

Material (FORM) consisting of documents supporting the government's allegations. Applicant received the file on May 20, 2015, and was informed that he had until June 28, 2015, to submit a response. Applicant did not submit a response, and the case was subsequently assigned to me on July 28, 2015.

### **Findings of Fact**

Applicant is a 43-year-old man with two adult children. He and his wife recently divorced. He is a veteran of the U.S. Army, serving from 1996 to 2004. He was honorably discharged. (Item 2 at 16) While in the military, he held a security clearance.

Applicant earned an associate's degree in 2010 and a bachelor's degree in 2011. Since 2011, he has worked for a defense contractor as a systems software manager. (Item 2 at 10)

In 2005, Applicant and his then-wife purchased a home for \$440,000. They financed the home through a mortgage, as listed in subparagraph 1.a. Later, they opened a home equity line of credit, as listed in subparagraph 1.g. In April 2011, Applicant lost his job, and was subsequently unemployed for seven months. (Item 2 at 13) At or about this time, he and his wife initiated divorce proceedings. (Item 1 at 4) By September 2011, Applicant began to fall behind on the mortgage accounts, together with several other debts, totalling \$17,740, as listed in SOR subparagraphs 1.b through 1.f, and 1.h.

Applicant considered selling his home, but discovered that it had depreciated \$200,000 since he purchased it. In January 2012, Applicant retained a law firm to help him explore other options. (Item 3 at 1) With the attorney's help, Applicant executed a voluntary foreclosure in May 2013. (Item 1 at 7-9) The bank resold the home in June 2014 for \$279,900. (Item 1 at 10) A \$160,000 deficiency remains. This amount equals the difference between the loan balance at foreclosure (\$422,750, as alleged in the SOR) and the sale price.

The home equity line of credit account was not included in the foreclosure proceedings. Its delinquent balance totals \$36,688. Applicant negotiated an agreement with the collection company under which he will pay the debt in \$200 monthly increments. As of the date of his answer to the SOR, he had not received a copy of the settlement agreement. (Item 1 at 4) He provided no evidence that he has been making any payments.

Applicant denies subparagraph 1.e and contends that he has made payment arrangements to satisfy the remainder. He provided no evidence substantiating the basis of his dispute of subparagraph 1.e and no evidence corroborating his contention that he paid the remainder of the SOR debts.

## **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) Since 2011, Applicant has incurred approximately \$220,000 of delinquent debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions 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 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 action to resolve the issue.

Applicant's lengthy unemployment, his divorce, and his inability to sell his home contributed to his financial difficulties. Applicant consulted an attorney who helped him negotiate a voluntary foreclosure of his home. He provided no additional documentary evidence supporting his contention that he has been addressing his delinquent debts. Under these circumstances, AG ¶ 20(b) only applies partially, and AG ¶¶ 20(b) and 20(c) are inapplicable.

Applicant disputed subparagraph 1.e, but provided no evidence substantiating the basis of the dispute. AG ¶ 20(e) does not apply.

### **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 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.

Applicant's financial delinquencies did not occur because of profligate spending or irresponsible money management. Instead, they occurred largely because of a divorce that corresponded with a lengthy period of unemployment. Evaluating the cause of the delinquencies is only part of the analysis. Applicant still must demonstrate what he has done to either pay or resolve his indebtedness, and has the burden of proof to establish that his financial problems are not likely to recur. Applicant asserted that this was the case, but his assertions were not supported by adequate documentary evidence. Under these circumstances, Applicant has failed to mitigate the security concerns.

### **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
Subparagraphs 1.a-1.h:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge