



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



In the matter of:)
)
) ISCR Case No. 11-07000
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin Howry, Esq., Department Counsel
For Applicant: *Pro se*

November 29, 2012

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 41-year-old employee of a defense contractor. He is alleged to be indebted to 3 creditors in the approximate amount of \$234,703. Applicant mitigated the Financial Considerations security concerns because the debts were caused by unforeseen circumstances beyond his control and he acted responsibly by resolving the outstanding debts. Eligibility for access to classified information is granted.

Statement of the Case

On July 12, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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) effective for cases after September 1, 2006.

Applicant answered the SOR on August 15, 2012, and requested a hearing before an administrative judge. The case was assigned to me on September 12, 2012. DOHA issued a notice of hearing on October 3, 2012, scheduling the hearing for October 24, 2012. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 9, which were admitted without objection. The Government also offered a copy of Bank of America v. Graves¹, marked GE 10, for administrative notice. Applicant offered Exhibits (AE) A through J, which were admitted without objection. Applicant called two witnesses, and testified on his own behalf. The record was left open for Applicant to submit additional exhibits. On November 12, and November 16, 2012, Applicant presented AE K through AE P. Department Counsel had no objections to AE K through AE P and they were admitted. DOHA received the transcript of the hearing (Tr.) on November 1, 2012.

Findings of Fact

Applicant admitted the SOR allegations 1.a and 1.c. He denied allegation 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 41-year-old employee of a defense contractor. He has worked in his current position with the defense contractor for 12 years. He served in the Marine Corps from 1989 to 1996 and achieved the rank of sergeant. He is married and possesses a bachelor's of science degree. (AE A; Tr. 34, 45-48.)

In 2006, Applicant and his wife purchased a home (Property A). They purchased the property for \$258,000. They financed the purchase with a 30-year fixed-interest rate mortgage for \$206,400, and a second, 10-year ballooning-interest-rate loan, for \$51,600. They put nothing down toward the purchase price, but did pay the closing costs themselves. At the time of the purchase, Applicant was not savvy in financial investments, having grown up in an economically challenged environment. (AE C; Tr. 48-51.)

In 2008, Applicant found that the value of his property had declined sharply due to the economic downturn and real estate market crash in his area. At the same time, Applicant's wife's business suffered significant losses. They decided they could no longer afford to keep their property, from which Applicant had a long commute to his place of work. They purchased another residence (Property B), closer to Applicant's work, and moved into it. They put Property A up for sale. They are current on their mortgage for Property B. (AE P; Tr. 51-57.)

Applicant and his wife contacted a realtor to place Property A on the real estate market. Property A was listed with a realtor from May 27, 2008, through its sale on April 1, 2011. During that period, Applicant lowered the price of Property A several times, but

¹ Bank of America v. Graves, 59 Cal.Rptr.2d 288 (California 1996). Notice of Graves was taken. However, because Applicant resolved his debts to the satisfaction of the lenders, I did not need to reach the applicability of this case law or California Rules of Civil Procedure introduced by the parties in the instant case.

it did not sell. Applicant continued making payments on Property A until October 2010. In October 2010, his realtor advised him to attempt a short-sale of Property A. He was advised by the realtor to stop making his mortgage payments on Property A to help him obtain the short-sale. Applicant followed his realtor's advice and the lenders agreed to accept a short-sale on Property A. He notified his facility security officer of his delinquency and intended short-sale of Property A when he stopped making the mortgage payments. (AE C; Tr. 58-60.)

Property A was sold on April 1, 2011, for \$130,000. The money that Applicant and his wife would have used for the mortgage payments on Property A from October 2010 to April 2011 went to repay credit card debt incurred when a retaining wall on Property A caved in and required repairs costing approximately \$25,000. (Tr. 58-60, 72.)

Of the \$234,703 debt listed on the SOR, \$194,837 was identified as owing for Applicant's first mortgage (allegation 1.c), and \$39,800 was owing for the second mortgage (allegation 1.b). The settlement statement from the April 1, 2011 sale shows both loans listed. Property A was resold on that date for \$130,000. The first mortgage was paid-off for \$119,033.97, and the second mortgage pay-off was for \$6,000.03. Applicant's credit reports of March 2011 and September 2012 reflected that the first mortgage was "closed or paid account/zero balance," after the sale, but that the second mortgage was listed as a "charged off account." On November 8, 2012, Applicant contested that entry with the credit reporting agency. The dispute was investigated by the credit reporting agency and the entry was updated on November 12, 2012. Applicant's credit report of November 12, 2012, reflects that both of these loans were "paid in settlement," per the closing settlement. There is no indication that Applicant still owes a deficiency on either of these mortgages. Applicant has satisfied the debts alleged in SOR paragraphs 1.b and 1.c. (GE 4; GE 7; AE H; AE N; AE O; AE P; Tr. 51-53, 60-64.)

Applicant also was indebted on a third debt in the amount of \$66 (allegation 1.a). Applicant satisfied this debt on August 6, 2012. He provided a copy of the canceled check as proof this debt was satisfied. The credit report of September 7, 2012, also reflects this debt as paid. (GE 7; AE F.)

Applicant's personal financial statement shows that he currently has a net remainder of \$1,706.87 per month. He is current on all of his credit card accounts and other expenses. (AE C; AE P; Tr. 72-80.)

Applicant is well respected by his supervisors and colleagues. Two managers who testified on Applicant's behalf said that he is an outstanding and trustworthy employee who excels in his job. Others, who wrote letters of support on Applicant's behalf, indicated that he is reliable, trustworthy, hardworking, and honest. His performance appraisals for 2005 through 2011 state that Applicant either met expectations, exceeded expectations, or far exceeded expectations in each of the areas of evaluation. From 2009 through 2011, Applicant ranked as a "highly effective" employee. He has received a number of professional awards through his company

including an August 2012 Employee of the Month and nine Certificates of Recognition. (AE B; AE D; AE E; AE G; Tr. 85-120.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters 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.

Section 7 of EO 10865 provides that adverse 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

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

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 guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

From October 2010 through March 2011, Applicant and his wife were not financially solvent. They were delinquent on two home mortgages incurred for the purchase of Property A. In addition, Applicant had one other small debt that was delinquent. The evidence is sufficient to raise the above disqualifying conditions.

Three Financial Considerations 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;
- (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 were directly attributable to the unforeseen economic decline in the housing market and the significant losses his wife's business incurred due to the nationwide economic downturn. Applicant has acted responsibly with respect to his creditors despite his financial difficulties. When he found he could no

longer afford to pay his mortgage, he attempted to sell the home. He managed to pay the mortgage on Property A for two additional years, while trying to sell it. When it did not sell, he worked with his real estate agent to obtain an agreement to allow him to sell the property for less than what he owed on the two mortgages. This arrangement was approved and the home was sold. Applicant no longer owes any debts on either the first or second mortgage loans for Property A, and his credit report was updated to reflect the debts were settled for less than full payment.

Applicant made a good-faith effort to repay his overdue creditors. His most recent credit report shows that his consumer debt listed in 1.a. has been paid. Applicant has demonstrated he made a reasonable plan for resolving each of his delinquent accounts. He acted responsibly, given his resources, by enlisting the help of the real estate agent and by obtaining a short-sale agreement with the mortgage holders. When his credit report reflected he still was indebted to the second mortgage holder after the sale of Property A, he investigated the claim, contested it, and the credit reporting agency's records were updated to show he no longer owes this debt. AG ¶¶ 20(b), 20(d), and 20(e) 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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is well respected by his supervisor and colleagues. He honorably served in the Marine Corps. Those who know him best report that he has a high degree of integrity. His standards are reflected in the awards, honors, and certificates he received during his employment with the government contractor. His integrity, as

attested to by his management and colleagues, shows that his commitment to continue to satisfy his creditors is credible. His financial problems, largely caused by factors beyond his control, are unlikely to recur.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated the Financial Considerations 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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.

Jennifer I. Goldstein
Administrative Judge