



Applicant responded to the SOR on July 25, 2018, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on October 14, 2018, interposed no objections to the materials in the FORM, and did not supplement the FORM. The case was assigned to me on February 8, 2019.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) had a tax lien entered against him in January 2012 for \$2,636; (b) is indebted to a lender on a home equity loan for \$27,083; (c) is indebted on a mortgage account that went to foreclosure in 2013; and (d) is indebted on a mortgage account that went to foreclosure in 2016. Allegedly, the debts owing have not been resolved and remain outstanding.

In his response to the SOR, Applicant admitted each of the allegations with explanations. He claimed the tax lien covered by SOR ¶ 1.a is resolved. He claimed that the home equity loan covered by SOR ¶ 1.b is in the process of being resolved. He further claimed that the foreclosure covered by SOR ¶ 1.c, for which he was a co-signor on a loan made to his mother; he claimed the property was sold due to family circumstances involving his mother and her husband. And he claimed that the foreclosure covered by SOR ¶ 1.d went to foreclosure because of his loss of employment. Applicant attached a copy of the state tax lien released in July 2018, along with a copy of the charged-off home equity account covered by SOR ¶ 1.b.

### **Findings of Fact**

Applicant is a 44-year-old mechanic for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant married his first wife in January 1998 and divorced her in February 1999. (Item 3) He has one child from this marriage. He remarried in February 2002 and has no children from this marriage. Applicant earned an associate's degree in August 1996 and reported no military service. (Item 3)

Since August 2016, Applicant has worked for his current employer. (Item 3) Between July 2002 and August 2016, he was employed by various employers in mechanic positions, interspersed with brief periods of unemployment. (Item 3)

#### **Applicant's finances**

Between 2012 and 2015, Applicant accumulated two delinquent debts totaling approximately \$29,719. (Items 5-6) One of the debts (SOR debt ¶ 1.a) was a state tax lien that has since been resolved. (Items 2 and 4) Another listed debt (SOR debt ¶ 1.b)

was a delinquent home equity loan that was charged off in the approximate amount of \$27,083. (Items 5-6) This loan has not been addressed to date and remains outstanding.

Besides accruing the two referenced delinquent debts, Applicant incurred two foreclosures: one in 2013 (SOR ¶ 1.c) and another in 2016 (SOR ¶ 1.d) The first of the two foreclosures involved a mortgage on which he co-signed a note for \$206,450 in January 2004 to finance a home for his mother. (Items 5-6) This mortgage was foreclosed in 2013 following family differences between Applicant's mother and her husband. Applicant could not reconcile with his mother, and she moved out of the house, leaving the husband, who defaulted on the loan, still residing in the residence. (Items 2-6) The second foreclosure covered a rental property that Applicant financed in 2011 for \$74,503 that he could no longer afford due to unemployment. (Items 2-6) Whether either of the foreclosures resulted in deficiency balances is unclear.

To date, Applicant has failed to document any progress in addressing his delinquent SOR ¶ 1.b debt. Absent proof of payment, or payment plan, of the home equity loan covered by SOR ¶ 1.b, no favorable inferences can be drawn regarding Applicant's addressing of this debt.

### **Policies**

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A, AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse of dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### Analysis

Security concerns are raised over Applicant’s accumulation of two delinquent debts (one a state tax lien for \$2,636 and another a delinquent home equity loan) totaling more than \$29,000, and his incurring of two foreclosures on loans he assumed responsibility for in 2004 and 2011, respectively. Applicant’s debt delinquencies and twin foreclosures warrant the application of four of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; 19 b), “unwillingness to satisfy debts regardless of the ability to do so”; 19(c), “a history of not meeting financial obligations.”; and 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.”

Applicant’s admitted delinquent debts and foreclosures negate the need for any independent proof. See Directive 5220.6 at E3.1.14; *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant’s admitted state tax lien, home equity loan deficiency, and two foreclosures are fully documented and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving tax filing lapses and debt delinquencies.

Historically, the timing of addressing and resolving federal and state tax delinquencies and other debt delinquencies are critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant’s cited extenuating circumstances (i.e., unemployment) provide some mitigation credit for his failure to timely file address his state tax obligations and other debts when they came due. The cited circumstances he attributes to his debt delinquencies are enough to entitle him to some extenuating benefits from MC ¶ 20(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.” But his failure to address his other debts after he returned to full time employment status precludes him from taking advantage of the “acted responsibly” prong of MC ¶ 20(b)

Similarly, satisfaction of Applicant’s evidentiary burden of providing probative evidence of his addressing his home equity delinquency and two mortgage foreclosures requires more documentation of his payment efforts and mortgage history than he has provided in his submissions. While his tax lien satisfaction is encouraging, it is not enough by itself to mitigate his financial delinquencies without more evidence of a seasoned payment history.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of actual debt reduction through voluntary payment of debts, and implicitly where applicable the timely resolution of federal and state tax debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant’s case, his failures or inability to establish payment histories with three of his covered creditors (excepting his resolution of the state tax lien covered by SOR ¶ 1.a) after the initiation of the security clearance process prelude favorable findings and conclusions with respect to raised security concerns over the state of his finances.

### **Whole-Person Assessment**

Whole-person assessment is unfavorable to Applicant. He has shown insufficient progress to date in addressing his home equity loan delinquency and the payment histories behind his two listed foreclosures to merit enough positive overall credit to mitigate financial concerns.

Overall, Applicant’s actions to date in addressing his finances reflect too little evidence of restored financial responsibility and judgment to overcome reasonable doubts about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Conclusions are warranted that his finances are not sufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent with the national interest.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparagraph 1.a:  
Subparagraph 1.b-1.d:

For Applicant  
Against Applicant

## **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

