

Applicant responded to the SOR on January 7, 2019, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on February 12, 2019, and interposed no objections to the materials in the FORM. Applicant timely supplemented the FORM with a February 2019 Chapter 7 bankruptcy discharge. Applicant's post-FORM submission was received without objections and admitted as Item 7. The case was assigned to me on April 24, 2019.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to pay his federal income taxes for tax years 2000-2004 and 2007; (b) failed to file and pay his federal income taxes as required 2014-2015; (c) Is indebted to the Federal Government for delinquent taxes in the approximate amount of \$28,000; (d) is indebted to the Federal Government for a tax lien entered against him in May 2015 for \$4,728; and (e) accumulated ten delinquent debts exceeding \$17,000. Allegedly, these federal taxes owed and delinquent debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted all of the alleged debts with explanations. He claimed that for several years he was financially unstable. Further, he claimed that he filed for Chapter 7 bankruptcy protection in December 2018 and included all of the listed SOR debts in his bankruptcy petition.

Findings of Fact

Applicant is a 58-year-old electronics technician 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 spouse in September 1979, and divorced in June 1993. (Item 2) He remarried in April 1997 and divorced her in June 1998. He has no children from either marriage. Applicant attended college classes between January 1985 and September 1997 and earned an associate's degree. (Item 2) He reported no military service.

Since April 2016, Applicant has worked for his current employer. (Items 2-3) Previously, he worked for other employers in various types of positions. (Items 2-3) He reported unemployment between January 2014 and August 2015. (Items 2-3)

Applicant's finances

Records confirm that Applicant failed to file his Federal income tax returns for tax years 2000-2004, 2007, and 2014. (Items 3-6) Reportedly, he accrued aggregate delinquent taxes exceeding \$44,000 for these years. To date, he has not provided any documentation of filing his federal returns or making payments on his owed federal taxes

for these years. In March 2013, the Internal Revenue Service (IRS) filed a federal tax lien against Applicant in the amount of \$12,630. The lien does not specify what years the lien covers. (Item 4) Asked about this 2013 tax lien in his personal subject interview (PSI) with an agent of the Office of Personnel Management (OPM) in January 2018, Applicant expressed his belief that the total amount of taxes he owed for tax years 2000-2004 and 2007 approximated \$28,000, but could not be sure. (Item 3) His estimate bears some approximation to the sum covered by the 2013 federal tax lien and may possibly represent an over-estimate of taxes owed for these tax years. Without more information from Applicant, though, no firm inferences can be drawn. Taxes covered by the 2013 tax lien and any additional taxes owed for these years that make up Applicant's \$28,000 estimate have neither been paid nor otherwise resolved or reconciled to date.

In May 2015, the IRS entered a second tax lien to cover calculated taxes owed for tax years 2014 and 2015. (Items 3-4) This lien has not been satisfied and remains unresolved. Besides his federal tax debts, Applicant is indebted to medical and consumer creditors holding delinquent accounts exceeding \$17,000. (Items 4 and 6-7) Before petitioning for Chapter 7 protection in 2015, these debts had not been addressed by Applicant.

In December 2018, Applicant petitioned for Chapter 7 bankruptcy protection. (Item 7) What asset and claims schedules Applicant included in his Chapter 7 petition are not documented. Without any special exceptions noted in his discharge order, his bankruptcy discharge is presumed to cover and discharge his SOR-listed medical and consumer debts. Absent special circumstances not developed in his Chapter 7 petition, none of his tax debts with the IRS were discharged in bankruptcy.

Applicant attributed some of his debt delinquencies to unemployment conditions. (Item 3) In his PSI with an OPM investigator in January 2018, Applicant described his financial situation "as terrible" and assured that he would begin making monthly payments on all of his listed debts. (Item 3) To date, however, he has provided no evidence of payments or payment plans with any of his listed creditors.

Further, Applicant has not provided any evidence of financial counseling, performance evaluations, or civic contributions relevant and material to making a whole-person assessment of his trustworthiness and reliability. Without this additional information, whole-person assessments are limited to his finances

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 or 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 failure to file federal income tax returns for tax years 2000-2004, 2007, and 2014-2015; his accrual of delinquent tax debts exceeding \$44,000, and his accumulation of delinquent medical and consumer debts exceeding \$17,000. Applicant's tax filing failures and debt delinquencies 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 tax return filing lapses and accumulated delinquent debts 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 debts 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 circumstances (i.e., unemployment) are somewhat extenuating and entitle Applicant to partial mitigation credit for his inability to address his debt delinquencies. 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," has partial application to Applicant's situation, but is very limited to his medical and consumer debts which are legally imputed to be covered in his February 2019 bankruptcy discharge. Of no extenuating benefit are his multiple failures to file his federal tax returns for the tax years in issue, as required by law, and his listed federal taxes covered by federal tax liens.

Because bankruptcy discharges are presumed to cover non-scheduled, non-priority unsecured debts, Applicant's SOR-listed medical and consumer debts are covered by Applicant's bankruptcy discharge, irrespective of their inclusion in his bankruptcy schedules. This is because that in the absence of fraud in a no-asset case (as Applicant's appears to be) all unsecured, nonpriority debts are considered discharged when the bankruptcy court grants a discharge, even when they are not listed in a bankruptcy schedule. See *Judd v. Wolfe*, 78 f.3d 110, 114 (3rd Cir. 1996); *Francis v. Nat'l revenue Service, Inc.* 426 B.R. 398 (Bankr. SD FI 2010)

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. 12-05053 at 4 (App. Bd. Oct. 30, 2014); ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008); ISCR Case No. 98-0761 (App. Bd. Dec. 27, 1999). In Applicant's case, his multiple failures to timely file his federal income tax returns for the years in issue, as required by law, and his inability to establish documented payment initiatives with the IRS to address his unresolved federal tax liens and other delinquent taxes owed for tax years 2000-2004 and 2007, both before and after the initiation of the security clearance process, preclude favorable findings and conclusions with respect to raised security concerns over the state of his finances. Credited to Applicant are his discharged medical and consumer debts covered by SOR ¶¶ 1.f-1.o.

Whole-Person Assessment

Whole-person assessment is unfavorable to Applicant. He has shown insufficient progress to date in addressing his delinquent debts to merit enough positive credit to mitigate financial concerns. Overall, Applicant's actions to date in fulfilling his tax-filing responsibilities and 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

Subparagraphs 1.a-1.e:	Against Applicant
Subparagraphs 1.f-1.o:	For 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.

Roger C. Wesley
Administrative Judge

