

Applicant responded to the SOR on April 14, 2014 and requested a hearing. The case was assigned to me on June 26, 2014, and was scheduled for hearing on July 24, 2014. At hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one witness (himself) and 12 exhibits (AEs A-L). The transcript (Tr.) was received on August 5, 2014.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to pay federal and state income taxes for 2008; (b) is indebted for delinquent state income taxes in the amount of \$23,372; and (c) accumulated four delinquent debts exceeding \$5,000.

In his response to the SOR, Applicant admitted each of the allegations with explanations. He claimed he has filed amended state tax liability forms. And he claimed his medical debts represent billed services that exceeded his insurance coverage limits.

Findings of Fact

Applicant is a 45-year-old technician of 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 has never been married and has no children. (GE 1; Tr.) He attended a vocation/technical trade school in October 2007, but claims no certificate or diploma. (GE 1) applicant enlisted in the Navy in 1988 and served six years of active duty. (GE 4; Tr. 38-39) He was honorably discharged in 1994.

Applicant's finances

Following his Navy discharge in 1994, Applicant worked for a few years before starting his own restaurant business in December 2011. (Tr. 39-40, 64-65) For the first few years, his restaurant business prospered in a healthy local economy. (Tr. 61-62) After the collapse of the World Trade Center in 2001, Applicant did not suffer any immediate adverse effects from the economic fallout associated with the Center's destruction. (Tr. 42-43) However, with the sale of the building that housed his restaurant and the lagging sales that ensued, Applicant and his partner struggled to keep their business viable. (Tr. 62-65)

Applicant closed his business in December 2006 after several years of disappointing sales and reduced building occupancy in the building that housed his restaurant. (Tr. 42-43, 69-72) In 2007, he sold his business for a gain. (AE K; Tr. 45-46) Having no other business losses to offset his capital gains from the sale (Tr. 45), he signed over a power of attorney to his tax attorney to wind up the restaurant's business affairs. (Tr. 46-48)

Applicant did not file his 2008 federal tax return until June 2012 and received an inquiry from the IRS in March 2010. (GE 4 and AE A) Following a State A audit of Applicant's business sales receipts in 2008, the State advised Applicant that his business had understated its owed sales taxes. (GE 4) As a result of the audit, Applicant earmarked all of the profits from the sale of his business (reportedly around \$120,000) to the payment of federal and state income taxes associated with his business's understating of its owed sales taxes. (GE 4) Without enough sales proceeds to cover the sales tax shortfall, Applicant and his business faced supplemental tax assessments exceeding \$5,000 from the IRS and \$23,372 from State A's tax authority. (GE 4 and AEs A and C) Applicant's IRS transcript of taxes assessed for 2008 reflects an assessed tax liability of \$5,850 and withholding of \$6,453. (GE 4 and AE A) Applicant documented his satisfaction of federal taxes owed for 2008 (AE A; Tr. 49-51) and State A taxes owed for the same year. (AEs A and C; Tr. 38-39, 51) Also, he is current with his State B taxes. (AE B; Tr. 51)

Applicant attributed his accrued federal and State A tax liabilities to his understating his income taxes due following the sale of his restaurant business in 2007. (GE 4) In his 2007 K-1 schedule, he listed beginning partnership losses in his capital account of \$260,798, year-in capital contributions of \$28,833, and capital losses for 2007 of \$231,965 (sic). The K-1 reflects debt forgiveness. (AE J; Tr. 37) Applicant's silent partner in their restaurant venture credited Applicant with flawless management of their business while taking no salary from the enterprise. (AE I; Tr. 65-69)

Applicant and his business partner both attribute their business losses to their building landlord's (who sold them the business) failure to properly maintain the building facility. Applicant and his partner prevailed in their arbitration cases with the landlord and were successful in obtaining debt forgiveness for the last year of their lease. (AE I) This debt forgiveness is reflected in Applicant's 2007 K-1 schedule. (AE J)

Besides his tax debts, Applicant accrued four medical debts consisting of the following: creditor 1.c (\$1,064); creditor 1.d (\$200); creditor 1.e (\$4,893); and creditor 1.f (\$200). (GEs 2-4; Tr. 37) These debts represent billed costs for medical services that exceeded Applicant's insurance coverage limits. (GE 4; Tr. 52-58) Applicant has since satisfied all of these medical debts. (AEs D-G)

In Applicant's 2014 personal financial statement, he reported net monthly income of \$4,523 and personal monthly expenses of \$2,250. (AE H; Tr. 59) He reported service debts of \$1,500 and a net positive monthly remainder of \$773.22. His local landlord notes Applicant's current rent status. (AE K) And recently, Applicant was successful in obtaining a \$30,000 line of credit from a well-known lending institution. (AE L)

Endorsements

Applicant did not provide any endorsements or performance evaluations. Nor did he provide any evidence of civic and community contributions.

Policies

The AGs list 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 "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They 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 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 AG ¶ 2(a) 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 AG ¶ 2(a) 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known

sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. 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 history of delinquent debts, attributable to an underperforming restaurant business (mostly business-related tax debts). After enjoying many years of solid credit ratings and a prosperous restaurant business, he encountered financial strains associated with falling profits from his restaurant and the eventual sale of the business in 2007.

Applicant's delinquent tax debts following the sale of his restaurant and ensuing medical debts uncovered by his insurance policy raise potential security concerns about his judgment, reliability, and trustworthiness in managing his business and personal finances. His actions warrant the application of two of the disqualifying conditions (DC)

of the Guidelines: DC ¶ 19(a), “inability or unwillingness to satisfy debts;” and DC ¶ 19(c) “a history of not meeting financial obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Applicant’s restaurant-related business losses reflect extenuating circumstances and entitle him to some application of 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.” Applicant’s early successes with the restaurant after surviving the economic shocks associated with the September 2001 attacks on the World Trade Center reflect positively on his overall judgment and trustworthiness. Sale of the building that housed his restaurant and the revenue losses that ensued reflect temporary conditions not indicative of Applicant’s strong business and decision-making skills.

In determining whether Applicant acted reasonably when dealing with his financial difficulties caused in part by the sale of his underperforming restaurant business, consideration is given to Applicant’s repayment efforts with both his tax and medical creditors. By seeking financial guidance from his tax attorney on winding up his restaurant’s business affairs and addressing his tax and medical debts, Applicant acquitted himself responsibly. His efforts entitle him to the mitigation benefits of MC ¶ 20(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.” Further, Applicant’s payments of his listed delinquent debts document a promising track record for resolving his debts. In these circumstances, MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” also applies to Applicant’s situation.

Applicant’s satisfaction of his tax and medical debts have eliminated all of his listed debts and reflect satisfactory progress in accordance with the criteria established by the Appeal Board for assessing an applicant’s efforts to rectify his poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009); ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan., 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999). Mitigation efforts necessary to meet Appeal Board requirements are met.

From a whole-person standpoint, the evidence reflects some unfortunate economic circumstances associated with Applicant’s accumulation of delinquent debts.

He is credited with many years of successful operation of his restaurant business before poor working conditions with his landlord forced the premature sale of the business in 2007.

Applicant has since made steady inroads in stabilizing his finances and shows good prospects for avoiding any recurrent financial problems in the foreseeable future. Overall, Applicant's efforts to date are sufficient to meet mitigation requirements imposed by the guideline governing his finances.

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): FOR APPLICANT

Subparas. 1.a through 1.f: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

