

Applicant responded to the SOR on December 12, 2012, and requested a hearing. The case was assigned to me on April 5, 2013, and was scheduled for hearing on April 30, 2013, by video teleconference. At hearing, the Government's case consisted of seven exhibits (GEs 1-7). Applicant relied on one witness (herself) and one exhibit (AE A). The transcript (Tr.) was received on May 8, 2013.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to afford her the opportunity to supplement the record with updated documentation of her short sale efforts and efforts to settle her debts with her other creditors. There being no objection from Department Counsel, and for good cause shown, I granted Applicant seven days to supplement the record and the Government three days to respond. Applicant timely supplemented the record with explanations of her disputes with creditors 1.a, 1.j, 1.k, 1.m, and 1.n, and two letters documenting payment of her creditor 1.d and creditor 1.f debts. I admitted her submissions as AEs B-D.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 13 delinquent consumer debts exceeding \$14,000; accrued a delinquent mortgage debt in which foreclosure proceedings have been initiated; and petitioned for Chapter 7 bankruptcy relief in November 2001 (discharged in February 2002). In her answer to the SOR, Applicant admitted several of the allegations, but denied most of them. She claimed she has made payments on two of the accounts (creditors 1.d and 1.f), and disputes several others (creditors 1.a, 1.b, 1.h, 1.i, and 1.k through 1.n).

Findings of Fact

Applicant is a 43-year-old accountant and facility security officer 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 married in April 1995 and has two children from this marriage. (GEs 1 and 2; Tr. 25) She attended college between June 2002 and August 2004 and earned a bachelor's degree in business. (GE 1) She claims no military experience.

Applicant's finances

Between 1998 and 1999, Applicant's husband was imprisoned following his convictions on repeated charges of driving under the influence (DUI). (GE 4) After her husband went to prison in 2001, Applicant encountered financial difficulties with the limited income she earned at the time and fell behind with her creditors. (GE 4; Tr. 23) She petitioned for Chapter 7 relief in November 2001, and scheduled \$71,000 in

unsecured, non-priority claims. (GEs 2 and 3) She received her Chapter 7 discharge in February 2002. (GEs. 2 and 3; Tr. 53)

Following her bankruptcy discharge, Applicant managed her finances efficiently for the first nine years. (Tr. 24, 29) When Applicant's husband returned from prison in 2011, he could not find work and relied on Applicant to sustain him. (GE 2) This increased her monthly bills. Falling behind with her bills, she considered filing for bankruptcy again, but ultimately declined to pursue this course. (GE 2)

Between 2011 and 2012, Applicant accumulated a number of reported delinquent debts, 13 in all exceeding \$14,000. (GEs 5-7) Several of the listed debts reveal possible duplicate accounts: the creditor 1.i debt (\$1,550) and the creditor 1.m debt (\$1,415), and the creditor 1.b debt (\$1,038) and creditor 1.h debt (\$1,056). (Tr. 43, 56) By the date of the scheduled hearing, Applicant had not made contact with either of these creditors to explore settlement arrangements. (GEs 2 and 5-7)

Several other creditor accounts are listed in Applicant's credit reports as delinquent. By the date of the hearing, Applicant had not made any contact with these creditors to explore settlement terms: creditor 1.a (\$271), creditor 1.c (\$2,302), creditor 1.e (\$3,533), creditor 1.g (\$1,068), creditor 1.k (\$68), and creditor 1.n (\$60). (Tr. 50) Since the hearing, Applicant made contact with several of her creditors holding small debts and disputed others.

Besides her consumer debts, Applicant became delinquent in her home mortgage with creditor 1.j). Applicant purchased her home in June 2005 with a first mortgage of \$108,000. (GE 5) In September 2008, she refinanced her first mortgage with a new \$136,000 mortgage and saved approximately \$200 a month in interest payments. (GEs 2 and 5-7; Tr. 25-28) How she used the additional funds released to her through refinancing is not clear. For the ensuing three years she was able to make her mortgage payments in accordance with her mortgage terms.

By June 2011, Applicant could no longer afford to make her mortgage payments and ceased making payments. Her efforts to obtain a loan modification from her lender were unsuccessful. Whether she will be able to eventually work out a short sale agreement with creditor 1.j and avert a foreclosure is uncertain. (GEs 5-7 and AE B; Tr. 27-28) Applicant's credit reports reflect \$132,675 in loan balance accruals. (GEs 5-7)

By May 2012, Applicant had settled and paid several of her listed delinquent accounts. In April 2013, she settled her debt with creditor 1.a for the agreed amount of \$568. (AE A; Tr. 30-34) She satisfied her debt with creditor 1.f in full in April 2013 with an agreed reduced payment of \$351. (AE C; Tr. 40-41) She settled her debt with creditor 1.h in 2012 and is credited with a zero balance in her 2012 credit report. (GE 6; Tr. 37-38, 42-44) And she settled her delinquent account with creditor 1.d in April 2013 with a partial payment in accordance with her settlement terms with creditor 1.d. (AE D; Tr. 38-39) Working as the only income producer in her family, and doing all that she can to keep

her family together, has made it very difficult for her to cover more than her family's necessities. (Tr. 57)

Applicant's most recent personal financial statement reports net monthly income of \$2,504, monthly expenses of \$1,415, and monthly debt payments of \$3,213. (GE 2; Tr.). This leaves her with a negative monthly remainder of \$709. (GE 20) She shows assets totaling \$15. (GE 2).

Applicant expects to address the listed \$10,500 bank debt on her repossessed vehicle with funds from her 401(k) retirement account. (GE 2; Tr. 55-56) Currently, she has about \$1,500 to \$2,000 in her 401(k) account. (Tr. 55-56) She has pursued no credit counseling to date, but expressed her willingness to seek counseling. She is open to taking new steps to resolving her debt issues. (Tr. 58-60)

Endorsements

Applicant provided no endorsements or performance evaluations on her behalf. Nor did she provide any proof of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA 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."

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 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 revised 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 chances; (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 long history of financial instability, marked by a bankruptcy discharge in 2002 and her accumulation of delinquent debts following her husband’s release from prison in 2011 and inability to find work thereafter. Since accruing these delinquent debts, Applicant has been able to settle four of the debts and successfully dispute two others on duplication. Still, she has not been able to address her remaining debts and faces impending foreclosure as the result of her failure to make mortgage payments since 2011.

Following her husband’s release from prison in 2011, Applicant encountered stronger demands on her family budget. With her husband unable to find work, the financial burdens associated with maintaining a household fell on Applicant. Having accumulated too much debt for her to assume with her limited resources, she fell behind with her credit card and mortgage debts. By 2011, she could no longer pay her monthly mortgage payments and looked to her lender for remediation assistance, and later short sale approval.

By 2012, Applicant had accumulated over \$14,000 in listed delinquent consumer debts while continuing to live in her residence without making mortgage or rent payments. At risk to potential foreclosure without an approved short sale, Applicant is exposed to not only the loss of her house, but deficiency obligations should the property produce insufficient sale proceeds to cover the first mortgage.

Applicant’s accumulation of credit card debt and mortgage delinquencies and her past inability to address her identified consumer and mortgage debts raise potential security concerns about her judgment, reliability, and trustworthiness in managing her finances. Her 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 implicit in financial cases.

While potentially extenuating, Applicant's time spent in maintaining her family unit without the support of her husband reflect periods of trying to do too much financially for her family without the necessary financial resources to reasonably maintain her family's physical and emotional needs. As a result, none of the mitigating conditions covering potential extenuating circumstances have any application to Applicant's situation.

Full mitigation is also lacking in applicant's payment initiatives to date. While an applicant need not have paid every debt alleged in the SOR, the applicant needs to establish that there is a credible and realistic plan to resolve identified financial problems, accompanied by significant actions to implement the plan. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). This, Applicant has failed to do.

While she resolved six of the fourteen debts with documented payments and successful disputes, she has failed to establish a workable and realistic plan to resolve her remaining debts and avert foreclosure of her home mortgage. Minimal mitigation initiatives necessary to meet Appeal Board requirements are not demonstrated in Applicant's case.

From a whole-person standpoint, the evidence shows that unfortunate economic circumstances played a role in the 2000-2012 time period. Less clear is how the periods of spousal underemployment and unemployment over this extended time period prevented Applicant from better addressing her mortgage and consumer debts. While she has made some modest headway in repaying several of her listed consumer debts, and has successfully disputed two others, she still owes over \$9,000 to her remaining consumer creditors and faces foreclosure of her home mortgage absent short sale approval from her lender.

Overall, Applicant demonstrates some progress in stabilizing her finances with her settlement initiatives, successful disputes, and documented payments to four of her listed creditors. Her efforts to date are insufficient, however, to meet mitigation requirements imposed by the AGs governing her finances. At this time, it is premature to make safe predictable judgments about the future course of Applicant's 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): AGAINST APPLICANT

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| Subparas. 1.c, 1.e, 1.g, 1.i, 1.j, 1.k,
1.l, 1.n, and 1.o: | Against Applicant |
| Subparas. 1.a, 1.b, 1.d, 1.f, 1.h, and 1.m: | 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 security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

