

Applicant responded to the SOR on October 17, 2014, and requested a hearing. The case was assigned to me on April 23, 2015, and was scheduled for hearing on April 30, 2015. At the hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and seven exhibits (AEs A-G). The transcript (Tr.) was received on May 11, 2015.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with updates from the Internal Revenue Service (IRS) regarding his claimed refunds for tax years 2006 through 2011. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. Applicant did not supplement the record.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file his federal income tax returns for tax years 1999 through 2011; (b) accrued a federal tax lien in January 1996 for \$9,658 (unsatisfied); (c) incurred two adverse judgments: one in July 2006 for \$15,379 and another in May 2011 for \$212; and (c) accumulated seven delinquent debts exceeding \$800.

In his response to the SOR, Applicant admitted some of the allegations. He admitted his failure to file federal returns for tax years 1999 through 2009. He denied failing to file federal tax returns for tax years 2010-2011 and attached copies of his 2010 and 2011 returns. Applicant admitted the allegations pertaining to his accumulated debts with creditors 1.b-1.f. He denied the allegations pertaining to the two listed judgments, claiming he satisfied both judgments.

Findings of Fact

Applicant is a 59-year-old senior logistician 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 in July 1978 and has five adult children from this marriage, ages 22 to 36. (GE 1; Tr. 22) He claimed no post-high school educational credits. He enlisted in the Navy in May 1974 and served five years of active duty before his honorable discharge in August 1978. (GE 1; Tr. 21)

Applicant's finances

Applicant failed to file federal and state income tax returns for tax years 1999 through 2011 as required by law. Previously, in January 1996, he incurred a federal tax

lien in the amount of \$9,658, presumably to cover taxes owed for prior years. (GEs 3-4; Tr. 41) He attributed his failure to file his returns to his lack of money to pay the taxes due. (GE 2; Tr. 29,37-38) Following his layoff in 1997 from a company he had worked for many years, he experienced unemployment for 18 months. (GE 2; Tr. 22-23) Before his layoff, he grossed about \$50,000 a year from this employer

In October 2014, Applicant applied for a security clearance with his present employer and was denied in October 2014 over tax-filing issues. (Tr. Tr. 24) Since his clearance application denial, Applicant has worked on a part-time basis only and earns very little. (Tr. 24) When his firm advised him of clearance issues over his failure to file his tax returns, he contacted an attorney. (GE 2; Tr. 36-37, 41)

Applicant documented filing his federal tax returns for tax years 2005 through 2013 in April 2014. (AEs D-E; Tr. 31-32) Since filing his returns, and claiming refunds totaling \$4,996 for tax years 2005 through 2009 (AE D), he contacted the IRS about the status of his refunds. (Tr. 33-34)

In February 2012, Applicant was interviewed by an agent from the Office of Personnel Management (OPM), who inquired about his failure to file federal income tax returns for tax years 1999-2010. (GE 2) In his interview, Applicant acknowledged his failure to file federal income tax returns for those years. (GE 2; Tr. 28-29)

In April 2015, Applicant received a letter of refund denial from the IRS and timely filed his 2014 federal tax return. (AEs E-G) To date, he has still not filed his tax returns for tax years 1999-2004 or provided evidence of his satisfying the 1996 tax lien still of record. (GE 2; 36-38, 41) In his last contact with the IRS, he was assured that the lien would likely balance out once his other tax returns were taken care. (Tr. 41) To date, he has received no further information from the IRS concerning the status of his tax lien.

Applicant received a \$5,000 tax refund on his 2014 return and expects the refund to be applied by the IRS to any back taxes owed. (Tr. 36) He has no independent payment plans, however, for taxes owed for tax years 1999-2011, and continues to await a response from the IRS as to what taxes are owed for these years.

Besides his outstanding federal taxes owed for the back tax years, Applicant incurred two adverse judgments against him between July 2006 and May 2011; one in July 2006 for \$15,379 and another in May 2011 for \$212. (GEs 1-2) He satisfied the first judgment in October 2012 (AE B; Tr. 53) and the second judgment in May 2011 (AE C; Tr. 54) He also accumulated a number of delinquent consumer debts.

Between 2009 and 2011, he accrued delinquent debts exceeding \$1,000. (GEs 3-4; Tr. 42-43) They are comprised of the following: creditor 1.a (\$398); creditor 1.d (\$106); creditor 1.e (\$100); and creditor 1i (\$212). (GEs 3-5) These debts remain outstanding.

Before his denial of a security clearance in 2014, Applicant grossed \$77,000 in 2013 (Tr. 25-28) Because of his lack of a clearance, he currently works on a part-time

basis and earns very little. (Tr. 20) His wife does not work and has applied for disability benefits. (Tr. 25-26) To date, Applicant has not received any information from the IRS covering the status of his tax refund claims for tax years 2006-2011. (Tr. 39-40)

Endorsements

Applicant did not provide any character references. Nor did he furnish any evidence of community and civic 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."

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 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 failing to file federal tax returns for tax years 1999 through 2011, his incurring two adverse judgments against him, and his accumulation of other delinquent debts. While some of Applicant's overdue federal tax returns have since been filed, several have not. Further, his incurred tax lien and accumulated delinquent debts have not been resolved to date.

Applicant's tax-filing lapses and accumulated tax lien, judgments, and other debt delinquencies warrant the application of three of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), "inability or unwillingness to satisfy debts," DC ¶ 19(c) "a history of not meeting financial obligations," and DC ¶ 19(g), "failure to file Federal, state, or local income tax returns as required or the fraudulent filing of the same."

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 tax filing problems and accumulation of delinquent debts, inclusive of two judgments, a federal tax lien, and several other debts, merit only partial 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." Financial hardships associated with his loss of income are extenuating with respect to the debts he incurred during an extended period of unemployment but are not enough to explain his failure to file timely federal tax returns, resolve an old 1996 tax lien, or take more concerted actions in addressing his other debts.

To date, Applicant has filed his back federal tax returns for tax years 2009 through 2013 and satisfied the two judgments covered in subparagraphs 1.g and 1.h. Because he has not developed any verifiable evidence of his addressing his other back tax returns and debts covered in the SOR, further application of MC ¶ 20(b) is not available to him. Absent any documented evidence of his addressing his remaining federal filing and debt obligations, application of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is limited. Prospects for his obtaining the necessary filing and payment documentation in the foreseeable future are uncertain and difficult to gauge.

Without more tangible resources and initiatives to work with, Applicant cannot demonstrate the level of financial progress required to meet 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). Applicant's insufficient tax filing and repayment actions of his own with the resources available to him prevent him from meeting the Appeal Board's requirements for demonstrating financial stability. ISCR Case No. 07-06482 (App. Bd. May 21 2008); see 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).

From a whole-person standpoint, Applicant's demonstrated efforts to date, while encouraging with his documented filing of many of his back federal tax returns and satisfaction of the two judgments covered by the SOR, are not enough to overcome security concerns associated with his history of financial instability. Whole-person assessment is not helped by the lack of any endorsements or evidence of community and civic contributions.

Considering all of the circumstances surrounding Applicant's tax filing and payment delinquencies, his actions to date in addressing his finances are insufficient to meet mitigation requirements imposed by the guideline governing his finances. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.f and 1.l of Guideline F. Favorable conclusions are warranted with respect to subparagraphs 1.g and 1.h

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

Subparas. 1.a-1.f and 1.i:	Against Applicant
Subparas. 1.g-1.h:	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

