

witness (himself) and four exhibits. (AEs A-D) The transcript (tr.) was received on April 24, 2013.

Procedural Issues

At the hearing, the Government confirmed its withdrawal of the allegations covered by subparagraph 1.c of the SOR. (Tr. 35) Applicant interposed no objections to the withdrawal.

Before the close of the hearing, Applicant requested leave to keep the record open to permit him to supplement the record with documentation of satisfaction of an IRS tax lien, payments to creditor 1.b, and character references. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded seven days to respond. Within the time permitted, Applicant documented the release of IRS tax lien, a bank statement listing payments to creditor 1.b, and a list of character references and civic contributions. I admitted Applicant's submissions as AEs E-G.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated three delinquent debts exceeding \$38,000. Under Guideline E, Applicant allegedly falsified his answers to the security clearance application (e-QIP) he completed in March 2012 by omitting the IRS lien covered by subparagraph 1.a and the charged-off creditor 1.b consumer debt.

In his response to the SOR, Applicant admitted two of the allegations (subparagraphs 1.a and 1.b) in part. He denied the IRS lien (subparagraph 1.a) was filed against him personally and claimed it was a corporate debt caused by the wrongful withholding of payments by another federal agency. He claimed that payment arrangements were made with the creditor covered in subparagraph 1.b. Applicant denied the allegations covered by subparagraph 1.c. He claimed the \$3,000 debt alleged in subparagraph 1.c has been resolved. Applicant also denied falsifying his e-QIP. He claimed he answered the question inquiring about his finances with the best information available to him at the time.

Findings of Fact

Applicant is a 54-year-old consultant for a defense contractor who seeks a security clearance. While Applicant is not currently employed, his contractor continues to sponsor him for a security clearance. (Tr. 60) Jurisdiction is retained. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in July 1979 and divorced his spouse in April 2003. (GE 1) He has no children from this marriage.

Applicant earned an associate's degree from a local community college in March 1978. (GE 1) He enlisted in the Marine Corps in August 1979. (GE 1) He served 13 years of active duty and received an honorable discharge in August 1992. (GE 1)

Applicant's finances

Applicant founded a small consulting company in 2001 (Company A) that provided consulting services in voice and electronic communications to businesses and government agencies. (GE 2; Tr. 104) Applicant incorporated his business in Subchapter S form. A Subchapter S corporation is a corporation formed for tax purposes. S corporations do not pay federal income taxes but pass income and losses through to the shareholders, much like partnerships do with their individual partners. Asked for his understanding of personal liability distinctions between Subchapter S corporations and conventional corporate forms, Applicant expressed uncertainty. (Tr. 102-103) He established his company in Subchapter S format based on professional advice. (Tr. 103-105)

Applicant's company last employed employees in June 2011 and last earned a profit in 2006. (GE 2; Tr. 106-107) He always filed individual tax returns for himself and separate returns for his company. (GE 10; Tr. 89-90)

Between April 2001 and February 2011, Applicant worked on a full-time basis for Company A. (GE 2; Tr. 63-64) He earned little income from the company (primarily draws for personal expenses), however, and took positions with other employers to sustain himself. (GE 2; Tr. 63-65) In 2007, Company A (a service-disabled veteran-owned business) entered into a contractual arrangement with another federal agency to manage the agency's voice and electronic communications in his local region. (GEs 2, 11, and 12) His company contract called for a \$500,000 fee for the first year, with a four-year option at the Government's election. (GEs 11 and 12) During the first year of the contract, Company A billed the contracting agency a total of \$14,444 for completed work orders. (GE 11)

When the federal agency failed to compensate Applicant's consulting firm after the first year as agreed, Company A did not have enough funds available to pay its employees and also remit owed payroll taxes to the IRS. (GE 2 and AE E; Tr. 107-108) It faced some difficult choices. Working with the IRS, Applicant was afforded the option by the IRS of paying the company's owed payroll taxes to the IRS, or paying the company's employees. Applicant and Company A elected to pay the company's employees, and, as a result, became personally liable for withheld payroll taxes for tax years 2006 and 2007. (AE E; Tr. 108-109) Accrued payroll taxes for tax years 2006 and 2007 approximated \$25,630. When Applicant and Company A did not pay their owed payroll taxes, the IRS filed a federal tax lien in June 2009 to cover the owed taxes for the 2006 and 2007 tax years. The lien was filed against Applicant personally and was reported in Applicant's credit reports as a personal federal tax lien. (GEs 4, 13, and 14 and AE F)

In July 2012, Applicant entered into an installment agreement with the IRS. (GE 4; Tr. 45-46) Under the terms of his agreement, he committed to making \$100 monthly payments. (GE 4) Earlier, he made a number of installment payments through his company of approximately \$400 a month. (Tr. 50-52) Applicant assures he maintained his

payments in accordance with the terms of his installment agreement. (Tr. 66-67) His assurances are not controverted, are credible, and are accepted.

Applicant has since satisfied the federal tax lien with funds received from Company A's alternative dispute resolution settlement with the federal agency holding Company A's consulting contract. (AEs D and E; Tr. 69-73) He and his firm have no further taxes owing to the IRS, or other debts. (Tr. 92)

Besides the federal tax lien, Applicant personally accrued a delinquent credit card debt with creditor 1.b in the amount of \$10,764. Applicant opened a joint account with his ex-spouse in December 1985. (GE 3) As a part of their divorce settlement, Applicant and his ex-wife allocated their debts between themselves. Without a documented divorce decree, precise allocations cannot be made. (Tr. 47)

Applicant's wife never satisfied the creditor 1.b debt, and Applicant has accepted responsibility for its payment. In 2012, he completed a settlement arrangement with creditor 1.b that called for monthly payments of \$100. (GE 5 and AE F; Tr. 48-49, 90) With his post-hearing submission, he documented ten months worth of \$100 monthly payments since February 2012. (AE F)

For the three months Applicant was employed by his sponsoring defense contractor (March 2012 to June 2012) Applicant earned income based on his set annual salary of \$81,000. (GE 9; Tr. 59-61) During this three-month period of employment, he netted \$4,336 a month from his defense employer and earned nothing from his part-time work with Company A. (GEs 8 and 9; Tr. 62-63)

Applicant reported monthly expenses of \$752 and debt payments of \$2,378 for the three-month period ending June 2012, leaving him a net monthly remainder of \$1,205. (GE 8) Although he no longer worked for his defense contractor after June 2012, he continued to receive paychecks from the firm through September 2012. (Tr. 84-85) Applicant's credit reports reveal he has no other delinquent accounts. (GEs 13 and 14)

Applicant's e-QIP omissions

Asked to complete an e-QIP in March 2012, Applicant omitted (a) the IRS tax lien filed against him personally in June 2009 and (b) a credit card debt. Applicant assured he believed the IRS lien belonged to the Subchapter S firm he founded and operated and not to him personally. While he was manifestly mistaken in treating the tax lien as a business lien with no personal liability, his mistake is credible, and did not entail a deliberate omission.

So, too, Applicant's explanations for omitting his credit card debt (creditor 1.b) was based on his credible belief that the debt was allocated to his ex-spouse under their divorce settlement. (Tr. 91) Whether his assumption is correct or not cannot be corroborated without documentation of his divorce agreement. Based on his testimony and his showing of some language-related confusion, his explanations are plausible and credible enough to avert inferences of intentional omission.

Endorsements

Applicant furnished a list of character references. (AE G) His list includes high-level federal and state office holders and community leaders. Their assessments of Applicant cannot be gauged, however, without their written or oral accounts. His post-hearing submission also included a lengthy list of his civic and community associations. (AE G)

Without more details of his community activities, it is difficult to gauge the depth and breadth of his listed activities. His activities are entitled to consideration, though, when making an overall whole-person evaluation of Applicant's judgment, reliability and trustworthiness.

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.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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 in connection with Applicant's accumulation of a federal tax lien linked to unpaid payroll taxes and a delinquent credit card debt. His accumulated debts and past failure to discharge them raise some potential security

concerns about his judgment, reliability, and trustworthiness in managing his 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 implicit in financial cases.

Applicant’s default in his payments of his company’s payroll taxes for tax years 2006 and 2007 resulted in the IRS’s filing of a federal tax lien in 2009 to cover the taxes pending Applicant’s resolution of his contractual dispute with another federal agency. With the withheld payroll taxes, Applicant used the funds to pay his employees while he pressed for a favorable resolution with the agency holding up his firm’s due payments. Once the agency settled with Applicant and his firm, Applicant promptly discharged the tax liability to the IRS. The IRS, in turn, released its tax lien. The only other delinquent debt alleged to be unresolved is Applicant’s credit card debt owed to creditor 1.b. Applicant entered a payment agreement with this creditor in 2012 and documented ten monthly payments to this creditor in accordance with the terms of his payment arrangement. Applicant’s circumstances and repayment efforts merit application of two of the mitigating conditions for financial considerations: MC ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;” and MC ¶ 20(b), “the conditions that resulted in the behavior 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.”

From a whole-person standpoint, the evidence is substantial that an unfortunate dispute between Applicant’s firm and the federal agency responsible for fulfilling its contractual commitments to his firm prevented him from meeting his payroll tax obligations with the IRS and still meet his payroll responsibilities with his employees. Applicant has since satisfied his federal tax liabilities for his consulting firm and shows good progress in meeting his monthly payment responsibilities with creditor 1.b. Applicant’s finances are now stabilized with no other tax debts due the IRS or outstanding consumer debts in need of addressing. Overall, Applicant’s stabilization of his finances is sufficient to meet mitigation requirements imposed by the AGs governing his finances.

Personal conduct concerns

Applicant is credited with mistaken omissions of his IRS tax lien and his credit card debt with creditor 1.b. He omitted his IRS lien in the mistaken belief the debt was his company’s debt, and not his own. Similarly, he omitted his delinquent credit card debt out of the mistaken belief the debt belonged to his ex-wife by virtue of their divorce agreement. In both instances, Applicant’s omissions are attributable to credible, although mistaken, understandings, and were not due to any intentional omissions. The allegation covered by

Guideline E is, accordingly, unsubstantiated. Favorable conclusions are warranted with respect to subparagraph 2.a.

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 and 1.b: For Applicant
Subpara. 1.c: Withdrawn

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subpara. 2.a: 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

