

Applicant responded to the SOR on July 27, 2015, and requested a hearing. The case was assigned to me on October 20, 2015. The case was scheduled for hearing on November 19, 2015. At the hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on one witness (herself) and six exhibits (AEs A-F). The transcript (Tr.) was received on December 2, 2015.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement it with documented payments on her real estate mortgage covering her investment property and other documents. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded ten days to December 11, 2015 to respond. Within the extended time permitted, Applicant supplemented the record with performance evaluations from her employer, but no documentation addressing her first mortgage delinquencies on her investment property. Applicant's post-hearing submission was admitted as AE G.

Summary of Pleadings

Under Guideline F, Applicant allegedly accrued a delinquent mortgage obligation on her rental property in the amount of \$54,331 on a first mortgage with a loan balance of \$85,593. Allegedly, this mortgage debt remains outstanding.

In her response to the SOR, Applicant admitted her mortgage delinquency with explanations, but denied the remaining two obligations, claiming they have been paid. She claimed the mortgage covered a rental property owned by her husband and herself, jointly. She claimed her husband lost his job about six years ago and still has not found permanent employment. She claimed the tenant moved out, leaving the house in poor condition. She claimed she hired a realtor to sell the house or find another renter, but has been unsuccessful in finding either a buyer or a renter. Applicant claimed she is current with all of her other financial responsibilities. And she claimed the remaining two amounts (creditors 1.b and 1.c) have since been paid.

Findings of Fact

Applicant is a 39-year-old software engineer 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 September 2005 and has two children (ages 4 and 6) and a step daughter (age 18) from this marriage. (GE 1; Tr. 36, 68-70) She attended college classes between September 1995 and August 1999 and earned a bachelor's degree in August 1999. (GE 1; Tr. 33) Applicant attended additional college classes between September 2003 and November 2004 and earned a certificate in December 2004. She earned a masters degree in July 2010. (GE 1; Tr. 33-34) Applicant claimed no military

service and has been employed by her current firm as a software engineer, with an annual salary of \$101,000, since October 2001. (GE 1; Tr. 35)

Applicant's finances

Applicant and her husband purchased a home in September 2006 and financed their purchase with an \$87,975 first mortgage. (GEs 2 and 5; Tr. 19, 42, 71) When they purchased their second home in November 2006, they financed this purchase with a \$410,000 first mortgage and assumed monthly loan payments of \$3,234. (GEs 2 and 5; Tr. 51-52) To cover their \$714 mortgage payments on the their first home, they leased the premises to a renter who occupied the home for four to five years. (Tr. 42)

For the first four years following their home purchases, Applicant and her husband were able to make their mortgage payments and stay current with their other bills. (GEs 2 and 5) Circumstances changed rapidly for Applicant and her husband in 2010 when her husband lost his job and could not find full-time replacement employment. (GE 2; Tr. 28) As a paralegal, Applicant's husband made about \$55,000 a year. (Tr. 37-38) While out of work for over 12 months, he relied on seasonal work as a paralegal, supplemented by unemployment insurance. In March 2010, their tenant moved out of the home and left the rental property in poor condition. (GE 2; Tr. 28)

With their income limited, Applicant and her husband hired a realtor to sell the rental home or find another renter. (Tr. 37-38) Over the course of the ensuing five years (i.e., between April 2010 and July 2015), they listed the property for sale or rent periodically, but without any success. (AE C; Tr. 18) Her listing records document their listing the rental property for sale on four occasions between April 2010 and July 2015, each time for \$85,000. (AE C; Tr. 20) Frustrated with their inability to find a renter or buyer, Applicant and her husband sought mortgage assistance from their lender in September 2015. Their application sought modification of the loan terms to make the loan more affordable, or in the alternative approval of a deed-in-lieu of foreclosure. (AE D; Tr. 20-21) Applicant confirmed that she and her husband never sought loan refinancing of their mortgage on the rental property. (Tr. 46)

By the time of the convened hearing, Applicant and her husband still had heard nothing back on their loan modification request, and was uncertain whether her husband had received any short-sale approval, or whether her realtor had obtained any short-sale approval from her lender. (Tr. 71-73) In turn, she asked for additional time to inquire of her lender on the status of her loan modification request. (Tr. 71-72) Afforded an opportunity to supplement the record, she has not to date provided any lender response to her loan assistance application, and presumably has not been successful. Currently, Applicant still remains legally responsible for over \$54,000 in past due mortgage payments. Whether the lender foreclosed on the mortgage, accepted a deed in-lieu-of foreclosure, or initiated other debt enforcement measures is unknown.

Besides her reported mortgage delinquency on her rental property, Applicant accumulated two delinquent student loan debts with listed creditors 1.b (\$264 on a total

loan balance of \$7,639) and creditor 1.c (\$471 on a total loan balance of \$13,620) (GEs 5 and 6 and AE A; Tr. 14-15) These student loan debts were accumulated in March 2001 and were in forbearance until the loans were sold to creditors 1.b and 1.c in 2013. (GEs 4-5 and AEs A-B and H; Tr. 29-30) Applicant claimed that both of these past due debts have been paid, and the accounts brought into current status. (Tr. 31-32) The payment schedule she provided documented regular monthly payments between April 2013 and October 2015 and a current total loan balance of \$21,409. (AEs A and B). Applicant is credited with resolving these two reported past due student loan debts and bringing them into current status.

Endorsements

Applicant is well regarded by supervisors and colleagues who know her and have worked with her. Her performance evaluations for 2013, 2014, and 2015 document ratings ranging from meets expectations in some areas to exceeds expectations in most areas (inclusive of management of processes, technical lead, meeting business goals, problem solving, communication, technical skills, quality and productivity, customer satisfaction, leadership, development goals, and most importantly, integrity. (AEs E and H) In recognition of her exceptional performance and company contributions, she received a cash award in June 2015 from her employer. (AE F; Tr. 24)

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 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 Executive Order 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

Applicant comes to these proceedings as a highly regarded software engineer, who after her husband’s layoff in 2010 and ensuing period of unemployment and underemployment, encountered severe income shortages that ultimately caused her to default on the first mortgage on her rental property. Security concerns are raised over Applicant’s continuing past-due mortgage on her rental property, in excess of \$54,000 and her reported delinquent student loans.

Applicant’s accrual of a past-due mortgage debt on her rental house and delinquent balances owing on her student loan accounts warrant the application of two of the disqualifying conditions (DC) of the AGs for financial considerations: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶ 19(c), “a history of not meeting financial obligations,” apply to Applicant’s situation. Applicant’s credit reports corroborate these listed debts.

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.

Extenuating circumstances are present in connection with Applicant’s accrual of a past-due mortgage debt on her rental property. Applicant’s circumstances merit 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 her husband’s 2010 layoff and ensuing unemployment and underemployment in seasonal jobs contributed to Applicant’s problems with her mortgage on her rental property.

Before her husband’s 2010 layoff, Applicant enjoyed good credit and was able to meet her financial responsibilities with both of her mortgages. With her reduced family income while her husband was unemployed and working low paying seasonal jobs,

Applicant struggled to stay current with her two mortgages and ultimately defaulted on the mortgage supporting the loan on her rental property.

Records document that Applicant did try for several years to sell the property through multiple listings over a four-year period (2010-2015), albeit without success. More recently (in 2015), she sought mortgage assistance from her mortgage lender, but to no apparent avail. Since the November 2015 hearing, she has provided no updates on her mortgage assistance efforts with creditor 1.a , and the \$54,000 mortgage debt remains outstanding by all documented accounts.

To her credit, Applicant has made substantial gains with her student loan lender (creditors 1.b and 1.c) and has succeeded in bringing her student loan accounts current. Applicant's payment efforts entitle her to partial mitigation credit under MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." With the satisfaction of two of her listed debts in the SOR, and her likely improved credit standing, Applicant is able to demonstrate some level of financial progress.

Applicant's exhibited good-faith efforts are not enough, however, to meet the criteria established by the Appeal Board for assessing an applicant's efforts to rectify her financial condition with responsible efforts considering her circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Her past-due real estate mortgage on her rental property, left unaddressed, remains an impediment to demonstrating the financial progress she needs to meet the Appeal Board's minimal criteria for establishing financial stability.

While Applicant has mounted considerable effort to cure her past-due mortgage balance, too much uncertainty exists over the status of the \$54,000 past-due balance on the mortgage covering her rental property to meet her evidentiary burden of demonstrating necessary progress on the account to merit credit for resolving the debt at this time. Overall, Applicant's actions in addressing her creditor 1.a mortgage debt, while encouraging, are not enough to mitigate financial concerns covering the creditor 1.a debt.

From a whole-person perspective, Applicant's demonstrated repayment efforts reflect considerable good-faith effort on her part, but are still not enough to overcome security concerns associated with her past-due mortgage debt with creditor 1.a. Her contributions to her employer and the national defense that are demonstrated with her excellent performance evaluations are commendable and worthy of considerable weight when assessing her trustworthiness and reliability.

Considering all of the circumstances surrounding Applicant's accrual of a substantial past-due mortgage account with the mortgage lender financing her rental property purchase and her two resolved student loan debts, Applicant's actions in resolving her debts, while encouraging, are insufficient to meet mitigation requirements imposed by the guideline governing her finances. Unfavorable conclusions are

warranted with respect to the allegations covered by subparagraph 1.a. of Guideline F. Favorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.b and 1.c.

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

Subpara. 1.a:	Against Applicant
Subparas. 1.b-1.c:	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

