

Applicant responded to the SOR (undated) and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on March 5, 2015, and responded to the FORM in April 2015. The case was assigned to me on April 22, 2015. In his response, he provided an updated explanation of how he is addressing his debts. He provided no attachments to his response. Applicant's post-FORM submission was admitted as Item 10.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accrued unpaid federal taxes from tax year 2009 in the approximate amount of \$929.84; (b) failed to file his federal income tax return for tax year 2010, as required; (c) accumulated four medical debts exceeding \$4,000; (d) accumulated three delinquent student loan debts exceeding \$19,000; and (e) defaulted on his home mortgage of \$120,000, which resulted in foreclosure in 2014.

In his response to the SOR, Applicant admitted most of the alleged debts. He denied the debt covered by subparagraph 1.d, claiming the debt was previously paid. He claimed he is currently filing his 2010 federal tax return and will be applying funds to the unpaid balance. He claimed his delinquent student loans will be paid and he will resolve his medical debts the following month. He also claimed he tried to resolve his home mortgage debt with a 25 per cent reduction in earnings. And he claimed he and his family have dedicated \$1,000 a month to resolving his debts. He provided no documentation, however, of the circumstances surrounding his admitted debts, or when he expects to take his committed steps to resolve the raised financial issues.

Findings of Fact

Applicant is a 41-year-old senior systems administrator for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant is married in July 1994 and has two children from this marriage. (Item 3) Applicant claims college credits between August 2006 and August 2012 and no diploma. (Item 4) He enlisted in the Army in September 1993 and served six years of active duty. (Item 4) He was honorably discharged from the Army in November 1999. In September 2002, he enlisted in the Air National Guard's Active Reserve and has served for at least 12 years. (Item 4)

Finances

Between 2009 and 2013, Applicant accumulated a number of delinquent debts. (Items 5-9) Records show that he is indebted to the IRS for \$929 for the tax year 2009 and failed to file his federal tax return for tax year 2010. (Items 5 and 6) He claimed that he filed his 2010 federal tax return and is in the process of filing his income taxes for 2013, and will apply any refund to the taxes owed for 2009. (Item 3) He claimed in his

updated response to the FORM that he filed his 2010 federal tax return and has paid all of his outstanding IRS debts. (Item 10) He provided no documentation, though, of his filing his tax return for 2010 or paying his owed back taxes for 2009.

Besides his tax obligations, Applicant has three student loans exceeding \$19,000 that are reported to be over 120 days past-due. (Items 5-9) Applicant claimed he is addressing these loans, but provided no documentation of payments or payment plans with the lender. (Item 10) Other accumulated debts include a home mortgage that went into foreclosure in 2011 with a \$120,00 past due balance. Applicant confirmed that this mortgage has since been foreclosed with an unknown deficiency balance. (Item 10) Applicant also accrued two medical debts and a federal agency debt. Together, these delinquent debts medical and federal agency debts exceed \$950. (Items 5-9)

Applicant attributed his debt delinquencies to a 25 per cent pay reduction he incurred in 2011. (Item 6) He assured he is working to address his student loan and medical debts and has already significantly reduced his delinquent debt. (item 10) His most recent credit reports reveal no material progress with these debts, and his claimed payment efforts cannot be independently verified. (Items 7-9)

Endorsements

Applicant provided no endorsements or performance evaluations on his behalf. Nor did he 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.

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

Applicant is a senior systems administrator for a defense contractor who accumulated a number of delinquent debts between 2009 and 2013. His debts include a federal tax debt for the 2009 tax year, three student loan debts, two medical debts, a federal agency debt, and a mortgage debt on a mortgage that since been foreclosed with no reports of whether the public sale of the property produced enough proceeds to satisfy the mortgage balance. Besides his accrued debts, records reveal that Applicant failed to file a federal tax return for tax year 2010.

Applicant’s accumulation of delinquent debts and failure to file a 2010 federal tax return as required by law, and his past inability and unwillingness to address these debts and federal tax return warrant the application of three of the disqualifying conditions (DC) of the Guidelines: 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.”

Applicant’s pleading admissions of his tax filing omission and most of the debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s listed debts and tax filing omission are fully documented in his latest credit reports and summary of interview and provide ample corroboration of his debts.

Some judgment problems persist, too, over Applicant’s unexplained delinquencies and his failure to demonstrate he acted responsibly in addressing his listed debts once the pay reduction conditions that contributed to the delinquencies had passed or eased, and his finances had improved. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are his listed debt delinquencies ongoing, but he has failed to address them in any tangible way. Mitigation credit is not available to Applicant based on the evidence developed in this record.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder’s

duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

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. Failure of the applicant to make concerted efforts to pay or resolve his debts when able to do so raises security-significant concerns about whether the applicant has demonstrated the trust and judgment necessary to safeguard classified information.

In Applicant's case, his debts are attributable in part to a significant pay reduction he experienced in 2011. Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay or otherwise resolve his debts. Partially available to Applicant is 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." What is not clear is the extent to which his pay reduction prevented him from addressing his federal taxes, home mortgage, and other delinquent debts since 2011, or what tangible steps he has taken to address his finances. Whether he acted responsibly is directly contingent upon his providing documented evidence of how he is addressing his finances.

As a result, some judgment problems persist over Applicant's unexplained delinquencies and his failure to demonstrate he acted responsibly in addressing his listed debts and tax filing responsibilities once the pay reduction conditions that contributed to the delinquencies had passed or eased, and his finances had improved. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are Applicant's listed debt delinquencies and tax filing delinquency ongoing, but he has failed to address them in any tangible way. Mitigation credit is not available to Applicant based on the evidence developed in this record.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts. Since 2011, he has not shown any manifest effort in addressing any of his covered debts to mitigate his still delinquent accounts. Resolution of his delinquent accounts is a critical prerequisite to his regaining control of his finances.

While pay reduction conditions might have played a considerable role in his accumulation of so many debts and tax filing omission over a relatively short period, Applicant failed to provide any explanatory material for consideration. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of his overall clearance eligibility, but were not provided. Overall,

