



Applicant responded to the SOR on August 12, 2014, 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 17, 2015, and did not respond to the FORM. The case was assigned to me on May 25, 2015.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 10 delinquent debts exceeding \$36,000. Allegedly, these listed debts remain unpaid.

In his response to the SOR, Applicant admitted most of the alleged debts. He denied the debt covered by subparagraph 1.j, claiming he did not know the source of the debt and believed the dollar amount was too high. He provided no specifics on his claims.

### **Findings of Fact**

Applicant is a 42-year-old welder 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 married in July 2006 and separated from his wife in February 2013. (Item 3) He has four children from this marriage. Applicant attended four years of college and earned a Bachelor's Degree in English in December 2009. (Item 6) Applicant claimed no military service. (Item 3)

#### **Finances**

Between December 2002 and the present, Applicant worked at different jobs with a host of employers. His employment included brief assignments in customer service, routing, technical support, telephone sales, sanitation duties, night stocking, narrative designing, freelance writing (current), and welding (current). (Item 3)

Applicant accumulated a number of delinquent debts between 2010 and 2013. (Items 4-7) Three of these listed debts represent charged-off or delinquent student loan debts. (Creditors 1.a-1.c) Together, these three student loan debts approximate \$27,500 and do not appear to be eligible for forbearance or deferment. (Items 4-7) Most of Applicant's remaining debts (creditors 1.d-1.j) encompass an array of consumer debts that exceed \$9,000. (Items 4-7) None of Applicant's listed debts have been addressed to date and remain in charged-off, collection, or delinquent status. And while he disputed the debt covered by sub-paragraph 1.j, he offered no documentation to substantiate his duplication claims pertaining to the allegations covered by subparagraph 1.d. Applicant provided no documentation of payment or payment arrangements made with any of the named creditors.

Applicant attributed his delinquent debts to loss of income, and unemployment in 2011. (Item 6) In his interview with an agent from the Office of Personnel Management (OPM) in October 2013, Applicant assured that he was in the process of seeking forbearance of his student loans and contacting his other creditors.

To date, Applicant has not furnished any documentation of forbearance with respect to any of his student loan creditors covered by subparagraphs 1.a through 1.c, or taken any documented action to address his delinquent consumer debts. Since June 2013, he has been fully employed and ostensibly capable of making payment arrangements with his creditors. (Item 6)

Despite previous promises to address his delinquent debts, Applicant's listed debts remain unresolved. Applicant provided no evidence of counseling or other plans to resolve his delinquent debts covered in the SOR.

### **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 guideline is 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 fully-employed welder for a defense contractor who accumulated a number of delinquent debts between 2010 and 2013. Three of the largest debts represent defaulted student approximating \$27,500. The remaining debts encompass consumer debts exceeding \$9,000. None of the listed debts reveal any forbearance or repayment initiatives.

Applicant’s accumulation of delinquent debts and his past inability or unwillingness to address these debts 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 obligation,” apply to Applicant’s situation.

Applicant’s pleading admissions with respect to 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 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.

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 income losses and unemployment. 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 under the circumstances."

What is not clear from this developed record is the extent to which Applicant's income losses and unemployment affected his inability to obtain forbearance relief on his student loans, or address his other delinquent debts after he became fully employed in June 2013. Whether he acted responsibly is directly contingent upon his providing documented evidence of how he is addressing his finances. Without documentation of financial counseling and steps he has taken to address his student loans and other debts, mitigation credit is not available to Applicant based on the evidence developed in the record.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts. Since June 2013, 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 income losses and unemployment conditions might have played a considerable role in his accumulation of so many debts over a relatively short four-year 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, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, his lack of any exhibited explanations for his debt accruals, and the absence of any demonstrated forbearance and payment progress following his return to full-time employment, it is still soon to make safe predictive judgments about Applicant's ability to repay his debts and restore his finances to stable levels commensurate with the minimum requirements for holding a security clearance.

More time is needed to facilitate's Applicant's making the necessary progress with his finances to facilitate conclusions that his finances are sufficiently stabilized to

permit him access to classified information. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.j.

### **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 through 1.j:	Against 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

