

Applicant responded to the SOR on May 19, 2014, and requested a hearing. The case was assigned to me on June 26, 2014, and was scheduled for hearing on July 23, 2014. At hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one witness (himself) and nine exhibits (AEs A-I). The transcript (Tr.) was received on July 30, 2014.

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 payment documentation, inquiries into debt duplications covered in subparagraphs 1.g and 1.r, and updated information on a claimed debt duplication covered by subparagraph 1.i. For good cause shown, Applicant was granted 14 days to supplement the record. The Government was afforded two days to respond.

Within the time requested, Applicant provided updated payment information and a rehabilitation agreement covering an unidentified student loan indebtedness. Applicant's submissions were admitted as AEs J-K. In response to an inquiry of the identification of the student-loan creditor referenced in AE K, Applicant identified the creditor as the one covered in subparagraphs 1.m-1.p1. Applicant's furnished explanation is admitted as AE L.

Summary of Pleadings

Under Guideline F, Applicant allegedly incurred 21 delinquent debts exceeding \$120,000. His listed debts covered consumer, utility, and education accounts.

In his response to the SOR, Applicant denied all of the listed debts and furnished explanations for his denials. He claimed the listed debts were either paid through garnishment, covered by monthly payment arrangements, or were duplicates of other listed debts.

Findings of Fact

Applicant is a 27-year-old nuclear mechanical insulator for a defense contractor who seeks a security clearance. (GE 1; Tr. 61) The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant has never been married and has no children. (GE 1; Tr. 82) He earned a bachelor's degree (provisionally) in music from an accredited local university in April 2010. (GE 1; Tr. 54-57) He needs to complete two additional courses to entitle him to his official diploma. (Tr. 56)

Applicant has never served in any of the military services. (GE 1) Before accepting employment with his current employer in March 2013, he held various full-time and part-time positions. (GE 1)

Applicant's finances

Between 2005 and 2010, Applicant applied for and obtained numerous student loans to finance his college education. (GEs 1 and 4 and AEs C and H; Tr. 54) During this time, he accumulated listed delinquent student loan debts with creditor 1.c (\$3,537); creditor 1.d (\$3,210); creditor 1.j (\$18,136); creditor 1.k (\$8,968); creditor 1.l (\$8,741); creditor 1.m (\$2,464); creditor 1.n (\$9,824); creditor 1.o (\$5,090); creditor 1.p1 (\$6,095); creditor 1.p2 (\$1,209); creditor 1.q (\$8,741); creditor 1.r (\$3,537); creditor 1.s (\$18,056); and creditor 1.t (\$9,017). Several of Applicant's student loans represent duplicate accounts. Creditor reports document the following listed debts to be duplicate student loan accounts: creditor 1.c-1.d/1.r and creditor 1.j-1.k/1.s-1.t. (GE 4; Tr. 72-79) Accordingly, Applicant is credited with duplications on these respective accounts. (GE 4 and AEs G and H)

Applicant believes that the student loan debt covered by subparagraph 1.l is a duplication of the student loan debt alleged in subparagraph 1.q. (GE 4; Tr. 77) Both debts reflect private loans with the same lender, are identical in their amounts, and represent charged-off student loans. (GE 4) When considered together, these two debts reveal one and the same debt and are credited to Applicant as duplicated accounts. Whether the student debt owed to creditor 1.l/1.q has been paid or favorably resolved is unclear.

Besides becoming indebted on his multiple student loans, Applicant incurred debt delinquencies with two creditors who later obtained adverse judgments. Credit reports reflect an adverse judgment taken against Applicant in 2011 in the amount of \$3,349. (GEs 2 and 4) The judgment covers delinquent financing of furniture that Applicant purchased for himself. An additional judgment was taken against Applicant by creditor 1.b. This judgment was issued in August 2009 for \$784. (GE 3) Applicant has since satisfied both judgments. (GE 4 and AEs A and B; Tr. 62-63)

Consumer debt delinquencies reflected in Applicant's credit report consist of the following: creditor 1.e (\$2,386); creditor 1.f (\$3,027); creditor 1.g (\$500); creditor 1.h (\$1,978); creditor 1.i (\$902); and creditor 1.p2 (\$1,208). (GE 4) Applicant admits the debts covered by creditors 1.e, 1.f, 1.h, and 1.p. (Tr. 68-69) However, he could not identify either of the debts covered by subparagraphs 1.g or 1.i and disputes both of these debts. (Tr. 69, 71-72)

Applicant attributes his debt delinquencies to difficulties in finding work following his graduation from college in 2010. (Tr. 58-60) With only low-wage full-time and part-time jobs to sustain him after completing most of his college requirements, he moved in with his family, initially with his father, and later with his sister. (Tr. 58-60) Before joining his current employer in March 2013, Applicant obtained only periodic employment, some

part-time and some low-paying full-time employment. (Tr. 57-60) During this difficult stretch of mixed employment opportunities, he came to realize the poor shape of his finances.

Before receiving the SOR, Applicant satisfied the judgment debt owed to creditor 1.a with a \$2,313 payment in October 2013. (AE A; Tr. 62-63). So, too, he satisfied the judgment debt held by creditor 1.b sometime in 2013. (AE B; Tr. 63) This judgment debt resulted from a suit initiated by the landlord against Applicant and his father. (AE E; Tr. 65-66) The judgment was satisfied by Applicant's father through wage-garnishment. (Tr. 65-66) Applicant's proofs also document his full payment of his creditor 1.e debt (AE E; Tr. 65-66) and creditor 1.f debt on a deficiency owing from a vehicle repossession. (AE D; Tr. 66-68) Since October 2013, Applicant has made monthly payments of \$55 to creditor 1.p2 under a payment arrangement with the creditor. (AEs H and J; Tr. 75-76) Addressing creditor 1.h, he completed a payment arrangement that provides for monthly payments of \$50, beginning in March 2014. (AE F; Tr. 70, 75)

Applicant's remaining debts relate to the student loans he obtained to finance his college education. (GEs 1 and 4 and AEs C and H) His student loan debts covered by subparagraphs 1.m-1.p1 are currently in forbearance status and are no longer delinquent. (AEs C, K, and L) Since March 2014, Applicant has made monthly payments of \$50 and \$100, respectively, to the creditors holding student loans from creditors 1.c-1.d/1.r and 1.j-1.k/1.s-1.t. (AEs G and H) Applicant's rehabilitation agreement (AEs K and L) confirms that his creditor 1.m-/1.p1 student loan accounts are in forbearance status and are no longer in default. The forbearance status of these student loans are reflected in Applicant's most current credit report of April 2014. (AE I) Only the private student loan covered by subparagraphs 1.l/1.q remains unclear as to its current status. (GE 4; Tr. 73) These two debts represent duplicate accounts that may or may not be resolved or covered by a forbearance agreement.

Applicant has not received any formal financial counseling. (Tr. 81) While he has received limited informal counseling from his grandmother, who has a tax background, he received nothing from his grandmother's advice can that can be characterized as structured financial counseling. (Tr. 81)

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." They 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. 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 delinquent debts, attributable to his recurrent underemployment and unemployment problems following his provisional college graduation in 2010. Since obtaining full-time employment in July 2013, he has satisfied his two judgment debts, addressed his consumer debts, and rehabilitated most of his delinquent education loans with payment and forbearance agreements.

Applicant's debt accruals raise potential security concerns about his judgment, reliability, and trustworthiness in managing his personal 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 also explicit in financial cases.

Applicant's extended income losses associated with his lengthy periods of unemployment and underemployment following his provisional college graduation in

2010 reflect extenuating circumstances. Considered together, they entitle him to the 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,” to his case-specific situation.

Applicant received no financial counseling that would entitle him to any additional mitigation credit. His good-faith disputes of his listed student loan accounts on duplication grounds (i.e., creditors 1.c-1.d/1.q-1.r, creditors 1.j-1.k/1.s-1.t, and creditors 1.l/1.q) are persuasive and are accepted. Disputed, too, are Applicant’s listed debts with creditors 1.g and 1.i, which he does not recognize. Accordingly, Applicant is credited with duplications on these respective accounts and is entitled to application of MC ¶ 20(e), “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

By paying or resolving most of his listed creditors, individually or through approved payment plans (i.e., creditors 1.c-1.d/1.r, 1.e-1.f, 1.h, 1.j-1.k/1.s-1.t, and 1.p2), or through forbearance plans with student loan creditors (i.e., 1.m-1.p1), Applicant has established a promising track record for resolving his debts. MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies to Applicant’s situation.

Applicant’s documented payoffs, payment plans, and forbearance arrangements with his student loans reflect satisfactory progress in accordance with 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). That Applicant cannot reconcile the listed private student loan charge-off covered by subparagraphs 1.l/1.q with any of the listed government-funded student loans is not enough to deprive Applicant of the mitigation benefits achieved from his forbearance arrangements with his student loan creditors.

While Applicant’s debt repayment plans with creditors 1.h and 1.p2, and forbearance initiatives with his student loan creditors are still relatively recent, following the completion of most of his college curriculum, they provide adequate cover for his good-faith payment efforts. So long as he is able to establish a credible and realistic plan, or plans, to resolve his financial problems, accompanied by significant actions to implement his plan, he meets the Appeal’s Board requirements for stabilizing his finances. 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 made good progress with his schooling between 2005 and 2010 and earned a degree from a recognized university. Only after he was unable to find work following his provisional college graduation did he

fall behind in the repayment of his school loans and other debts. Applicant's repayment initiatives reflect good-faith measures to address his debts with the limited resources currently available to him. Applicant is well-educated with demonstrated trustworthiness in his personal and business affairs, and knows what he needs to do to fulfill and maintain his financial responsibilities. If his creditor 1./1.q debt is not a duplication of another student loan and is not covered by a forbearance agreement, he will need to address it.¹

Overall, Applicant's corrective actions to date are sufficient to meet mitigation requirements imposed by the guideline governing his finances. Favorable conclusions are warranted with respect to the allegations covered by Guideline F.

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 through 1.t: 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

¹

Approval of a clearance does not prevent the Government from revisiting and re-validating an applicant's financial condition at any future time through credit reports, investigation, and additional interrogatories. Violation of promises made (explicitly or implicitly) to pay legitimate debts and maintain valid accounts in current status raises judgment concerns under both Guideline F and Guideline E and may support a future security clearance revocation. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012)(citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 8, 2011). And no such suggestion is made herein that Applicant's clearance is a conditional one.

