



Applicant responded to the SOR on May 9, 2014, and requested a hearing. The case was assigned to me on September 26, 2014, and was scheduled for hearing on December 30, 2014. At hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and one exhibit (AE A). The transcript (Tr.) was received on January 9, 2015.

### **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 documented payment. For good cause shown, Applicant was granted 15 days to supplement the record. The Government was afforded five days to respond.

Within the time permitted, Applicant supplemented the record with a one-page undated letter and payment credits covering the debts addressed in subparagraphs 1.c and 1.d. Applicant's post-hearing submissions were admitted as AEs B-C.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 11 delinquent debts. The debts exceeded \$250,000, and included a \$14,758 past due mortgage debt that has a loan balance of \$234,000.

In his response to the SOR, Applicant admitted each of the alleged debts. He claimed to be working with a debt-consolidation firm to settle his debts.

### **Findings of Fact**

Applicant is a 34-year-old civilian employee of a defense contractor who seeks a security clearance. (GEs 1-2; Tr. 40) 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 his first wife in November 2000 and divorced her in April 2005. (GE 1) He has no children from this marriage. He remarried in March 2013 and has no children from this marriage. (GE 1) Applicant attended college classes between July 2007 and June 2008 and has two adult children from this marriage, ages 35 and 34. (GE 1) He enlisted in the Navy in August 2000 and served eight years of active duty before his honorable discharge in February 2008. (GE 1) He attended business classes at a local community college from September 1997 to May 1998. (GE 1; Tr. 42-43)

### **Applicant's finances**

Applicant accumulated a number of delinquent debts over a period of years. (11 in all). They included several consumer debts: creditor 1.a (\$493), creditor 1.b (\$780),

creditor 1.c (\$1,200), creditor 1.d (\$1,039), and creditor 1.e (\$950). Additional delinquent debts include five student loan accounts: creditor 1.f (\$2,965), creditor 1.g (\$2,139), creditor 1.h (\$752), creditor 1.i (\$1,796 past due on a loan balance of \$14,151), and creditor 1.j (\$1,369 past due on a loan balance of \$11,899). Also listed is a mortgage debt with creditor 1.k (\$14,758 past due on a loan balance of \$234,000). (GEs 3-5) Applicant's last listed debt is covered by a misdemeanor bad check/utter of less than \$100. (GEs 3-5)

Applicant claimed that several of his student loan accounts (creditors 1.h through 1.j) are covered by a rehabilitation agreement that Applicant has with one of his student loan lenders. (Tr. 27-28) His agreement calls for \$350 payroll deductions a month. Details and documentation were not provided. Applicant claimed he has been making these monthly payments for seven months. (Tr. 38). His claims are not controverted and are accepted.

Addressing his delinquent mortgage loan, Applicant is working with his lender on a loan modification or repayment plan. (Tr. 29-30) Nothing to date has been finalized. Once his loan modification is finalized, he expects his monthly payments will increase by about \$90 a month. (Tr. 40) Currently Applicant is not making any mortgage payments, because the lender will not accept any payments without an approved loan modification. (Tr. 42) He and his wife are putting away the money for eventual coverage of his mortgage.

Creditors 1.b-1.d are no longer in creditor plans, and Applicant is currently working on reestablishing payment plans with these creditors. (Tr. 31-32) In a post-hearing submission he documented a payment plan with creditor 1.b that calls for monthly payments of \$69. (AE C) His submission did not include any good-faith payments. Applicant completed a similar payment agreement with another creditor not listed in the SOR. (AE C) This agreement calls for monthly payments of \$72 and was not accompanied by any good-faith payments.

Applicant's last listed financial obligation relates to a misdemeanor bad check charge of less than \$100. (GE 5) Applicant has since made restitution to the creditor. (AE A)

Within the next few weeks Applicant plans to settle and pay his creditor 1.a and creditor 1.e debts. (Tr. 46-47) Both of these debts and Applicant's two remaining student loan debts (creditors 1.f and 1.g) remain outstanding. (GEs 3-4 and AEs B-C; Tr. 32-34) He attributes his consumer, student loan, and mortgage delinquencies to careless neglect. (Tr. 44-46) Applicant did document his payment of restitution to his state's check enforcement program in the amount of \$30. (GE 5 and AE A; Tr. 33-36) He is credited with satisfying the fine levied by the court with respect to creditor 1.l.

Applicant participated in credit counseling. (Tr. 47) He received some help in managing his finances better but nothing specific that he could detail. (Tr. 47) He and his wife have improved their budgeting of their income by limiting Applicant to \$200 a paycheck to address his personal expenses. (Tr. 60)

Applicant's wife maintains a handwritten budget that she controls. (Tr. 61) Applicant and his wife do not have a savings account at this time and set aside their monthly residual funds in a checking account controlled by Applicant's wife for use in any established payment plans. (Tr. 62-63) Once payment plans are established, they will be funded through his wife's checking account. (Tr. 65)

### **Criminal charges**

In June 2013, Applicant was charged with misdemeanor bad check/utter less than \$100. (GE 5). Asked about the circumstances of his issuance of the bad check, he admitted to mistakenly writing the check for school pictures for his daughter without checking the status of his checking account. (Tr. 47-48) The charge was dropped upon Applicant's payment of a fine and completion of restitution. (AE A; Tr. 48)

More recently, in February 2014, Applicant was charged with assault-second degree. (GE 5; Tr. 51) The charge arose out of a domestic incident between Applicant and his wife. Addressing the circumstances, Applicant admitted to losing his temper and striking his wife, something he has never again repeated. (Ex. 5; Tr. 51) Applicant's wife declined to testify, and Applicant was acquitted of the charge. (GE 5; Tr. 49-51) Applicant and his wife pursued some anger-management counseling and have since reconciled their domestic issues. (Tr. 50) His wife assured that there have not been anymore domestic incidents since the charged February 2014 assault. (Tr. 64) Her assurances are credible, are corroborated by Applicant's assurances, and are accepted.

### **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 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.

### **Criminal Conduct**

*The Concern:* criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

### **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 and criminal charges. His listed debts entail delinquent consumer debts, student loan defaults, a delinquent mortgage account, and a misdemeanor bad check charge. Applicant's actions invite the application of both the financial considerations and criminal conduct guidelines.

#### **Financial concerns**

Applicant's accrued debts are attributable to mistaken judgment in the management of his financial affairs. His debt delinquencies warrant the application of two 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(d), “deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.”

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 mistakes of judgment in administering his finances were not accompanied by any manifest extenuating circumstances. His failure to keep his debts

in current status do not entitle him to any benefit 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.”

Although Applicant has made some progress in (a) making satisfactory restitution to the recipient of his bad check (creditor 1.l) and (b) contacting his creditors and setting up a payment plan with one of the listed delinquent debts (creditor 1.b), he has not reached repayment agreements with any of his other creditors. While he has received some counseling, and has since developed a joint budgeting program with his wife, he did not provide any counseling documentation or details about the structure of the counseling program he participated in. His counseling efforts entitle him to no more than partial application of MC ¶ 20(c), “the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.” Likewise his modest repayment efforts to date entitle him to no more than partial of MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

Applicant’s limited repayment efforts do not 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). Applicant’s modest repayment actions are not enough to enable him to meet 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 documents some prepayment progress but not enough to facilitate safe predictions about his ability to manage his finances in the future. He has not completed any repayment plans with any of his creditors (except for his making restitution on a bad check with creditor 1.l), and has failed to demonstrate any payment track record that meets minimum Appeal Board criteria. He provided no evidence of civic or community contributions and only limited evidence of repayment plans to address his remaining creditors. Overall, Applicant’s corrective actions to date are insufficient to meet mitigation requirements imposed by the guideline governing his finances. Unfavorable conclusions are warranted with respect to the allegations covered by Guideline F.

### **Criminal conduct concerns**

Over a two-year period (2013 and 2014), Applicant was charged with (a) misdemeanor bad check/utter less \$100 and (b) assault-second degree. In both cases, Applicant admitted to the underlying conduct. While the bad check charge was dropped after Applicant paid a fine and completed restitution to the recipient of the check, it reflects poor judgment and financial neglect on his part. Two of the disqualifying

conditions apply to Applicant's actions: DC ¶ 31(a), "a single serious crime or multiple lesser offenses," and DC ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

Both charges involve misdemeanor offenses that have since resulted in favorable dispositions. MC ¶ 32(d), "there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement," applies to Applicant's situation.

From both a whole-person and rehabilitation perspective, Applicant has made sufficient restitution and demonstrated remorse for his conduct to facilitate conclusions that his actions were aberrational and unlikely to recur. Applicant's actions are mitigated and warrant favorable conclusions under the criminal conduct guideline.

### **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-1.k:	Against Applicant
Subpara. 1.l:	For Applicant

**GUIDELINE J (CRIMINAL CONDUCT): AGAINST APPLICANT**

Subparas. 2.a-2.b:	For Applicant
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### **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.

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Roger C. Wesley  
Administrative Judge





