

Applicant responded to the SOR on September 8, 2014, and requested a hearing. The case was assigned to me on December 12, 2014, and was scheduled for hearing on January 8, 2015. At hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (herself) and six exhibits (AEs A-F). The transcript (Tr.) was received on January 21, 2015.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with a historical accounting of payments made to her debt consolidation firm and 1099Cs filed with her federal tax returns. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded seven days to respond.

Within the time permitted, Applicant supplemented the record with email correspondence, account records covering a historical accounting of her debt consolidation payments, tax statements covering 1099C forms for two of her creditors, and correspondence from her debt consolidation firm addressing her payments. Applicant's post-hearing submissions were admitted as AEs G-J.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated five delinquent debts. The debts exceeded \$38,000.

In her response to the SOR, Applicant admitted each of the alleged debts. She claimed they were business-related credit card debts, which she attributed to a downturn of business. She claimed she enrolled in a debt consolidation program in April 2011 and has not missed a payment.

Findings of Fact

Applicant is a 58-year-old system administrator leader for 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 in July 1976 and has two adult children from this marriage, ages 35 and 34. (GE 1) She attended business classes at a local community college from September 1997 to May 1998. (GE 1; Tr. 42-43) Applicant claimed no military service.

Applicant's finances

Between March 2003 and January 2012, Applicant worked for a federal agency near her home. When she learned that her agency would be closing, she obtained a

position with her current employer. This employer's site location is a considerable distance from her home and requires long commutes. (GE 1; Tr. 61)

In 1988, Applicant's spouse opened a local gas station and repair shop. (GE 5; Tr. 50-51) Her husband owned and operated the business as a sole proprietorship. (GE 5; Tr. 58-59) By the late 1990s, the station's tanks were deteriorating and needed replacement. (Tr. 51-52) Applicant and her husband replaced the tanks in the late 1990s at a cost of \$50,000. (Tr. 52-53)

Because of the large outlays they invested in the tanks, Applicant and his wife continued to sell gas, hoping to recoup some of their investment. Besides the tank replacements, they expended considerable money on equipment replacements.

When Applicant and her husband replaced the tanks, they did not realize the level of competition they would be facing (Tr. 55-56), and soon found themselves struggling to pay their bills. By 2011, Applicant's husband ceased selling gas and concentrated on the repair side of the business. (Tr. 56-57) The first mortgage on the property has since been paid off; only a small second mortgage remains. (Tr. 57)

Unable to pay all of their personal and business-related bills with their limited resources (Tr. 58-59), Applicant and her husband accumulated delinquent debts over the course of two years spanning 2010 and 2011. Her accrued delinquent debts are identified in her credit reports as follows: creditor 1.a (\$16,775); creditor 1.b (\$9,457); creditor 1.c (\$1,985); creditor 1.d (\$7,443); and creditor 1.e (\$2,677). (GE 3)

In April 2011, Applicant and her husband enrolled in a debt-consolidation program which established monthly payments of \$2,270. (AEs C-D, F, and H; Tr. 58-59, 68, and 75) Since April 2011, Applicant has paid over \$102,000 in fees and expenses to her consolidation firm, and expects to complete her payments to the listed creditors by February 2015. (AEs D, F, and H)

In her personal financial statement, Applicant reported net joint monthly income of \$5,929 and monthly expenses of \$5,706 (inclusive of monthly payments of \$2,270 to her debt consolidation firm), leaving a net monthly remainder of \$222. (AEs D and O; Tr. 68) She has a thrift savings plan (TSP) account valued over \$50,000, a 401(k) retirement account that allocates \$200 a month from her paycheck, and a \$700 savings account. (AE C; Tr. 68-70) She received 1099C forms on two of the debts she settled through her debt consolidation firm. (AEs G and I; Tr. 71-74)

Applicant is current with her federal and state income taxes and received a tax refund from her state's taxing authority on her 2013 return. (Tr. 42, 73-74) Even with her anticipated additional taxes for 2014, she does not anticipate any payment problems. (Tr. 77-78) Applicant and her husband own their home that they purchased in 1996. (Tr. 40) They owe approximately \$87,000 on their mortgage, and estimate the current market value of their home to be approximately \$175,000. (Tr. 40-41)

Endorsements

Applicant is well regarded by her supervisors and colleagues. Her deputy program manager credited her with going beyond normal job requirements. He cited pertinent examples such as her handling of on-site security clearance administrative tasks for the program in coordination with their facility security officer. (AE B) A former colleague and direct manager was equally complementary about Applicant's character and contributions. He praised her as "one of the most trustworthy, motivated, considerate, and passionate people" he ever had the pleasure of working with. (AE B) Her immediate supervisor who has known Applicant for the past three years, described her as an outstanding citizen, proactive member of her community, and always respectful of privacy, sensitive information. He confidently attested to her trustworthiness and reliability. (AE B)

Other colleagues extolled Applicant's high productivity levels and contributions to her agency and characterized her as trustworthy and one possessed of an exceptionally daily work ethic and overall dependability. (AE B) They stressed her honesty and respect she exhibited towards her fellow employees.

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.

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 over a two-year period spanning 2010 and 2011. Her debts were business-related, attributable to increased competition from other gas station suppliers and the economic downturn in the service station and repair business owned and operated by her husband. Applicant’s debt delinquencies 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 struggles with her credit card payments in 2010 and 2011 were the result of increased business competition and less generated revenue from the sale of gas, and not due to any judgment lapses in the management of her finances. Applicant’s financial problems during this period were aberrational and have since been corrected. Applicant’s past financial problems and recent mitigation efforts 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.”

Through her successful use of her engaged debt-consolidation firm, Applicant has settled and paid most of the remaining balances on her listed debts and looks forward to completing her debt-consolidation program by February 2015. Altogether, Applicant and her husband have paid over \$102,000 to their debt-consolidation firm and have not missed a monthly payment to date. She has taken important steps to repaying her creditors and looks forward to restoring her finances to stable levels consistent with holding a security clearance. Applicant has established a promising track record of resolving her debts. MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” fully applies to Applicant’s situation.

Applicant’s documented debt payments and positive steps taken to repair her credit reflect satisfactory progress in accordance with the criteria established by the

Appeal Board for assessing an applicant's efforts to rectify her 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 significant repayment actions enable her 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 a meritorious record of civilian employment with her defense contractor employer. She has impressive support from her managers and immediate supervisor, as well as her colleagues who know her and have worked with her. Addressing her finances, she has developed a solid track record of debt repayment and financial management and is committed to maintaining her finances at respectable levels consistent with holding a security clearance.

Applicant's documented payment initiatives through her debt-consolidation firm are significant and reflect a serious commitment on her part to restore her credit and stabilize her finances. Overall, Applicant's corrective actions to date are sufficient to meet mitigation requirements imposed by the guideline governing her 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-1.e:

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

