

Applicant responded to the SOR on August 11, 2014, and requested a hearing. The case was assigned to me on September 26, 2014, and was scheduled for hearing on November 13, 2014. At hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and 13 exhibits (AEs A-D). The transcript (Tr.) was received on November 24, 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 documented payment initiatives and character references. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded two days to respond.

Within the time permitted, Applicant supplemented the record with email correspondence, documented open accounts and debts paid or otherwise resolved. Applicant's post-hearing submissions were admitted as AEs E-P.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated three adverse judgments exceeding \$15,000 and eight delinquent debts exceeding \$44,000. Allegedly, none of the listed debts have been paid.

In his response to the SOR, Applicant admitted each of the debts while claiming he paid off one of the judgment debts (creditor 1.b) and is paying off another judgment creditor (creditor 1.a). Applicant claimed he was out of work for several years during the recession and encountered difficulty keeping up with all of his own bills.

Applicant further claimed that two of the listed debts (creditors 1.j and 1.k) were covered by write-offs by the same creditor, who issued IRS 1099 forms reflecting imputed income. He claimed he has since paid income taxes on the imputed income from these two debts. And he claimed he contacted other creditors with the intention of working out payment arrangements, now that he is gainfully employed.

Findings of Fact

Applicant is a 63-year-old sales vice president for a defense contractor who seeks a security clearance. 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 spouse in September 1973 and divorced her in March 1981. (GE 1) He remarried in March 1981 and divorced his second wife in April 1990. He has one adult child from this marriage. Applicant married his third and current spouse in May 1994 and has no children from this marriage. He earned an associate's degree in June 1971 and claimed no military service. (GE 1; Tr. 41-42)

Applicant's finances

Applicant was self-employed between June 1975 and January 2013. (GE 1; Tr. 42) He owned a customer computer business and at one time employed 35 employees. (GE 5; Tr. 42) His business suffered considerably during the recession, and by 2013, he was down to just one employee when he closed the business. (GE 5; Tr. 36-39, 42-44) At the time he closed his business, he estimates he earned between \$70,000 and \$80,000. (Tr. 45)

Between 2008 and 2013 (while his business struggled for survival), Applicant accrued a number of delinquent credit card debts. (GEs 1-5; Tr. 39-40) He attributed his debt delinquencies to the difficult economic conditions he experienced during the lengthy recession. (GE 5; Tr. 36-42) Applicant characterized his over-reliance on credit cards to keep his business afloat as "going into credit card hell." (Tr. 39)

Credit reports reveal three judgments taken against Applicant between 2011 and 2013. (GEs 2-4) In November 2011, creditor 1.c obtained an adverse judgment against Applicant in the amount of \$7,135. (GEs 2-4; Tr. 45-46) Applicant has not documented his satisfaction of this judgment. (GEs 2 and 4; Tr. 51)

In May 2012, creditor 1.b obtained an adverse judgment against Applicant in the amount of \$4,410. (GEs 2-4) The debt covered by subparagraph 1.d (also \$4,411) of the SOR is a manifest duplicate of the judgment debt listed in subparagraph 1.b and is credited to Applicant as a duplicate. (GEs 2-4; Tr. 50-51) Applicant documented his satisfaction of the creditor 1.b judgment in February 2014. (AE O)

A third judgment was taken against Applicant by creditor 1.a in December 2013 in the amount of \$3,418. (GEs 2-4; Tr. 45-46) This judgment debt is an apparent duplicate of the debt covered in subparagraph 1.h of the SOR. Accordingly, the creditor 1.h debt is credited to Applicant as a duplicate. (GEs 2-4 and AEs E and L; Tr. 51-52) Applicant satisfied the creditor 1.a judgment with a \$3,900 cashiers check in October 2014. (AEs E and J)

Besides the listed judgment debts, Applicant accumulated other debt delinquencies between 2009 and 2012 when he lacked sufficient funds to address all of his bills. Credit reports reveal the following debts owned by Applicant that are not covered by the three judgments taken against him: creditor 1.e (\$3,284); creditor 1.f (\$4,544); creditor 1.g (\$7,777); creditor 1.i (\$8,311); creditor 1.j (\$2,828); and creditor 1.k (\$9,672). (GEs 2-4 and AE E)

Two of Applicant's listed delinquent debts (creditors 1.j and 1.k) are quite old. Records reveal that Applicant opened his (a) creditor 1.j account in July 2005 (GEs 2-4); and (b) creditor 1.k account in August 1995. Both debts were charged off without any proof of Applicant payments. (AEs F-G; Tr. 54-55) Without payment proof, no inferences of payment or settlement are available to Applicant.

Applicant's remaining debts have not been paid or otherwise resolved. While the creditor 1.g debt cannot be identified (AE E), Applicant has initiated no documented negotiations with creditors 1.c, 1.f, or 1.i. (GEs 2-5 and AEs D-H; Tr. 45, 49-53) Any payments made to any of these creditors cannot be verified. (Tr. 54-55)

Applicant currently earns about \$140,000 from his current employment and was recently promoted to the position of senior vice president. (Tr. 43) He keeps approximately \$6,000 in his checking account and about \$20,000 in his 401(k) retirement account. (Tr. 63-64) Applicant received a \$7,198 tax refund in connection with his timely filed 2013 tax return (AE A) and used the proceeds on a vacation trip with a timeshare. (Tr. 54-55) His security clearance application (e-QIP) reflects other vacation trips taken over the past eight and one-half years, financed in part with his tax refunds. (GE 1; Tr. 55-56)

Since September 2014, Applicant has worked with a credit repair group whose assigned mission is to challenge credit card information in Applicant's credit reports. (Tr. 47-48) The repair group told him they will need two to three months to clean up his bills and credit report. (AE ; Tr. 47-48) Applicant has paid the group \$200 to date and received a credit report progress statement from this group in November 2014. (AE D; Tr. 70-71) He received a D grade on his credit history. While Applicant still retains credit cards, he no longer incurs any credit card debt. (Tr. 41, 67-70) To date, though, his repair group has not negotiated any settlements with any of his unpaid creditors. (Tr. 49)

Endorsements

Applicant is well-regarded by an old friend who considers Applicant a member of his family. In the past, he has had numerous business dealings with Applicant and brokered the sale of his business and home. (AE P) This friend holds the mortgage on Applicant's current residence, and he considers Applicant trustworthy. (AE P)

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 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 in part to his diminished earnings during a difficult period in 2009-2013 when his business struggled with lowered revenues. Over-reliant on credit cards to operate his business, he encountered difficulties keeping up with his monthly credit card bills when confronted with challenging economic conditions. Applicant's 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 payment problems in the 2009-2013 time-frame were mostly due to diminished income attributable to depressed economic conditions that adversely his business. Extenuating circumstances affected 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.” Since his return to gainful employment in 2013, Applicant has made modest efforts in addressing his delinquent credit card debts and documented the payoff of his creditor 1.a and creditor 1.b judgments. Still, most of his debts (over 80 per cent) remain outstanding

and are not covered by any payment plans. Applicant's efforts to date, which reflect positive initial steps, merit no more than partial application of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

Applicant's documented debt payments and modest steps taken to repair his credit reflect encouraging, but insufficient payment progress to satisfy the minimum 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 significant repayment actions to date do not 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 has considerable support from an old friend in his efforts to establish his good judgment credentials. His payment initiatives to date, though, have been modest and not enough to demonstrate a good track record for paying his debts and stabilizing his finances. While encouraging, his 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.

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.c, 1.e-1.g; and 1.i-1.k:	Against Applicant
Subparas. 1.a-1.b, 1.d, and 1.h:	For 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

