

record. Applicant received the File of Relevant Material (FORM) on July 21, 2010, and provided additional written information within the 30 days permitted. The case was assigned to me on September 3, 2010.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) accrued two outstanding judgments, one in the amount of \$1,078 (covered by subparagraph 1.a), and another in the amount of \$5,123 (covered by subparagraph 1.l and (b) accumulated 13 delinquent debts (either charged off or in collection) between 2006 and 2009, exceeding \$31,000 as follows: creditor 1.b (\$1,445); creditor 1.c (\$457; creditor 1.d (\$5,474); creditor 1.e (\$1,198); creditor 1.f (\$1,130); creditor 1.g (\$1,454); creditor 1.h (\$12,299); creditor 1.i (\$5,631); creditor 1.j (\$1,430); creditor 1.k (\$917); creditor 1.l (\$5,123); creditor 1.m (\$84); and creditor 1.n (\$149). In his response to the SOR, Applicant admitted most of the debts; he denied only the debt covered by subparagraph 1.a. He furnished no explanations.

Findings of Fact

Applicant is a 29-year-old system administrator 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.

Applicant married in December 2003. (Item 6) He has no children from this marriage. He separated from his wife (W1) in 2006. She initiated divorce proceedings against him in December 2006. (Items 7 and 8)

Applicant enlisted in the Navy in September 2000 and received his discharge in September 2005. (Item 6) Between January 2007 and July 2007, applicant was unemployed and had no reported income. Without any income sources, he was unable to pay any of listed credit card accounts, and they became delinquent. Records show that between 2006 and 2009 Applicant accumulated two outstanding judgments, one in the amount of \$1,078 (covered by subparagraph 1.a), and another in the amount of \$5,123 (covered by subparagraph 1.l and (b) accumulated 13 delinquent debts (either charged off or in collection). The largest debt listed in the SOR involved a medical account with a reported outstanding balance of \$12,299. (see Item 7) Applicant's state taxes were garnished to cover the debt, but Applicant does not know whether any of the debt was ever credited.

In March 2007, Applicant purchased a pickup truck for \$33,557. (Item 8) After crediting Applicant with the proceeds from the repossession sale, this creditor claims a deficiency balance in the amount of \$9,719. (Item 13) While this debt is not listed in the SOR, it remains an unpaid balance and is listed as an unsecured priority debt in Appellant's recently filed Chapter 13 bankruptcy petition.

Since returning to full-time employment in July 2007, Applicant has made no tangible efforts to contact any of his creditors to work out repayment arrangements. His debts remain unsatisfied.

Unable to address his delinquent debts individually, Applicant petitioned for Chapter 13 relief in July 2010. (Items 12 and 13) In this petition, Applicant scheduled unsecured, non-priority claims totaling \$44,602. (Item 13) In the same petition, he listed net monthly income of \$2,788 for himself and \$2,932 for his wife (W2). He agreed to legal fees for counseling and filing the petition of \$1,252. (Item 13)

Applicant's post-FORM submissions do not indicate any plan approval from the presiding court. In his undated cover letter (Item 12), he assured he has set up a budget and received debt counseling. However, he provided no documentation to support his claims. Without more documentation of progress in his Chapter 13 plan proposal, no inferences can be drawn about the probability of his completing his proposed plan.

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 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 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 *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). 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 system administrator of a defense contractor who accumulated a number of delinquent debts (to include two adverse judgments) during a six-month period of unemployment. His accumulation of delinquent debts and his past inability and 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 ¶19(c) "a history of not meeting financial obligations."

Applicant's pleading admissions 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 provide ample corroboration of his debts.

Applicant's debts are attributable in part to his extended period of unemployment in 2007. His largest debt is a deficiency resulting from a car repossession. After crediting Applicant with the proceeds of sale, the creditor claims a deficiency of \$12,299. Besides this large debt, Applicant remains obligated on two outstanding judgments and a host of smaller debt delinquencies that were either charged off or are in collection status. Each of these debts remain unresolved and are covered in Applicant's recently filed Chapter 13 petition.

Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay or otherwise resolve his debts. 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."

Moreover, some judgment problems persist, too, over Applicant's accumulated debts and his failure to demonstrate he acted responsibly in addressing his listed debts once he returned to full-time employment in August 2007 and the conditions that contributed to the delinquencies had passed or eased. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are his listed debt delinquencies ongoing, but he failed to address them in any tangible way before petitioning for Chapter 13 relief in July 2010. Mitigation credit is only partially available to Applicant based on the evidence developed in this record.

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 Snapp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts. Since his return to

work in August 2007, he has not shown sufficient 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 unemployment conditions might have played a considerable role in his accumulation of so many debts over a relatively short period, Applicant failed to provide any explanatory reasons why he failed to address his debts before July 2010. 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 payment track record, and his failure to provide proof of any approval of his recent Chapter 13 petition, 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.

Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.n.

In reaching my decision, I have considered the evidence as a whole, including each of the 2(a) factors enumerated in the AGs.

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.n:

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

