

upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have accumulated 25 delinquent debts, exceeding \$17,000, in the following SOR paragraphs: 1.a (\$542); 1.b (\$120); 1.c (\$316); 1.d (\$99); 1.e (\$729); 1.f (\$40); 1.g (\$943); 1.h (\$57); 1.i (\$197); 1.j (\$652); 1.k (\$2,223); 1.l (\$7,898); 1.m (\$800); 1.n (\$127); 1.o (\$19); 1.p (\$656); 1.q (\$121); 1.r (\$1,155); 1.s (\$276); 1.t (\$89); 1.u (\$656); 1.v (\$45); 1.w (\$43); 1.x (\$73); and 1.y (\$82).

In her response to the SOR, Applicant admitted most of the alleged debts. She denied responsibility only for the debts listed in subparagraphs creditors 1.l and 1.v. She claimed she paid these debts in full.

Findings of Fact

Applicant is a 26-year-old entry-level financial manager 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 was born on a foreign military installation to an active-duty Air Force service member and a foreign national (see Items 3 and 11). She was raised in a populous state and attended local schools (ex. 11). In May 2002 (at the age of 19), she went to work to support herself and her family. Records show that between May 2002 and September 2002 she was employed by a private company as a production worker. For the ensuing two years (between September 2002 and May 2004), she was employed in a management position for a local food service company (see ex. 3).

In April 2006, Applicant was employed by a temporary service as a supervising financial specialist, and then leading accounting technician for a DoD financial accounting services agency. She was unemployed again for about six months between July 2007 and January 2008, and survived on basic subsistence. Since August 2008, she has been employed as an entry-level financial manager for a DoD contractor (see Item 3).

Applicant married in July 2003 at the age of 20 and has three children from this marriage, ages 1, 8, and 10 (see Items 4 and 5). She divorced her husband in July 2007 (see Item 1), and has shared joint custody with her ex-husband since their separation in 2005. As a result of their joint custody arrangements, Applicant has never received child support from her ex-husband. Applicant's eldest child currently resides with her aunt and uncle for part of the year (Item 5).

During her marriage, Applicant provided most of the financial support for her family. Her husband had a difficult time holding a job and never contributed much to the family's financial needs. By most accounts, Applicant was the only regular working member of her household and incurred most of the family's debts in her name.

Applicant separated from her husband in June 2005, after she learned of his affair with another woman (see Items 5 and 11 and response to FORM). The affair hurt her considerably, and the divorce process that followed caused her a good deal of stress.

Providing most of the financial support for her ex-husband and their three children since they established a joint household together in 2000, Applicant became very upset over her ex-husband's disposition for accumulating credit card debts before their marriage, and not paying them. Applicant assumed these debts as well as her own debts, and by the time they married in July 2003, she had paid off her ex-husband's pre-marriage credit card debts (ex. 11). Once married, Applicant opened all of their accounts in her name exclusively, including their apartment, utilities, and all of their other household expense items. Her ex-husband declined to share any of their household debts, or medical expenses associated with the treatment of their young son.

While still married to her ex-husband, Applicant enrolled in a local community college. She attended this community college from July 2005 through September 2005. She financed her semester's expenses with a student loan (see Item 11). Due to injuries she incurred from an auto accident during the semester, she could not attend classes for an extended period. Her class absences created academic difficulties for her, and she was forced to withdraw from school (Item 11). Records show she attended classes at another college between March 2007 and May 2007, and returned to the same community college for two months between April 2008 and May 2008 (Item 11).

As a part of their November 2007 divorce agreement, Applicant agreed to be responsible for her student loan, her Visa account in her name (approximately \$1,200), and her overdraft fees on her own bank account (Item 11). In turn, her ex-husband assumed sole responsibility for the accumulated medical bills associated with the birth of their youngest child (around \$2,000).

Applicant's ex-husband never paid his agreed share of their accrued marriage debts. As a signatory on the accounts, Applicant has had to bear the responsibility for paying these debts that her ex-husband defaulted on. Because of her unemployment experiences, she has struggled to keep up with all of her accrued delinquencies. Credit reports list accumulated delinquent debts exceeding \$17,000.

Applicant has worked with credit counseling firms to arrange workable payment plans with her limited income sources, but has not been able to meet the established payment schedules set for her. Still, she has been able to document the payment of

two of her listed creditors (creditors 1.l and 1.v), and has established contact with most of her remaining creditors. Based on her personal research of the debts listed in her creditor reports, she claims two of them are duplicates (creditors 1.p and 1.u). Her claims appear to be well founded and are accepted.

Asked to identify all of her listed debts in her credit reports, Applicant could identify some, but not all of her listed debts. With her current job (if she can retain it), she expects to be able to repay the remaining \$9,000 in delinquent accounts within two years (see response to FORM). Most of these remaining listed debts involve medical charges associated with her son's treatment, which her insurance carriers failed to pay (see Item 11 and response to FORM). Without any assistance from her ex-husband, Applicant assures she will pay these bills as well, once she returns to work.

Applicant is well regarded by her supervisors and (see response to FORM). One former manager described Applicant as an outstanding accounting technician, and an employee who displays excellent team-building skills and professional relationships. He credits her with maintaining high ethics and standards

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 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.

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. 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 meritorious entry-level financial manager of current and prior defense contractors who accumulated a number of delinquent debts during a difficult marriage between 2003 and 2007. Forced to support her entire family while balancing schooling pursuits, she fell behind with not only her own debts, but her ex-husband’s debts as well. Her accumulation of delinquent debts and her past inability to satisfy 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 debts are attributable primarily to her shouldering all of her family’s financial responsibilities out of necessity during her marriage, while caring for her children, attending college. She managed to stay abreast of her bills, even her ex-husband’s, but fell behind in her payments during recurrent periods of unemployment. She has been able to resolve several of her largest accrued bills (including the \$7,898 debt owed to creditor 1.I), and is committed to paying the balance of her bills once she returns to work. While most of the remaining listed debts remain unsatisfied, they are small enough to resolve once she returns to full time employment with her prospective defense employer.

Based on the documented materials in the FORM, extenuating circumstances associated with Applicant’s inability to pay or otherwise resolve her debts are amply shown. 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.”

Holding a security clearance does involve 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 *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

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. Failure of any applicant to make concerted efforts to pay or resolve his debts when able to do so raises security-significant concerns about whether the applicant has demonstrated the trust and judgment necessary to safeguard classified information.

In Applicant's case, she recognizes her fiducial responsibilities and her need to maintain responsible control over her finances. She commits to resolving her debts as soon as she is financially able to do so.

Whole-person assessment enables Applicant to surmount the judgment questions raised by her accumulation of delinquent debts. Since her finalized divorce from her ex-husband, she has shown considerable effort in addressing her debts and has managed to eliminate two of her listed debts this past year: one for \$7,898 and the other for \$45. She has provided exemplary service to her employers (past and present), and has continued to address her debts in the face of experienced adversity. She acknowledges that resolution of her remaining delinquent accounts is a critical prerequisite to her regaining control of her finances, and she is determined to pay all of them (save for the claimed duplicate debt covered by subparagraph 1.u) once she returns to work.

When evaluating an applicant's promise to pay off debts in the future, the Appeal Board has placed a good deal of emphasis on the applicant's ability to establish a "meaningful track record." See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). This established track record does not mean, though, that an applicant is required, as a matter of law, to establish that he or she has paid off each and every debt listed in the SOR. Under this requirement, an applicant need only demonstrate that he or she has "established a plan to resolve [her] financial problems and taken significant actions to implement the plan." See *id.*

Under the facts presented, Applicant has not only established a reasonable plan to resolve her listed debts, but she has paid some of them and committed herself to paying the others seasonably once she returns to work. Her good-faith efforts meet the action plan requirements developed by the Appeal Board.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, her concerted efforts to resolve them with her limited resources, and her documented payment of two of her largest debts, Applicant is able to carry her evidentiary burden and mitigate the Government's financial concerns. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.y.

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): FOR APPLICANT

Subparas. 1.a through 1.y: 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

