

on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on April 29, 2009, admitted all of the allegations except SOR subparagraph 2.a, and requested a hearing. The case was assigned to me on September 16, 2009. On October 1, 2009, a notice of hearing was issued scheduling the case for October 21, 2009. The hearing was conducted as scheduled. I received eight government exhibits, identified as Government Exhibits (GE) 1 through 4 and 6 through 10.¹ Also, I received 14 Applicant exhibits, identified as AE A-N. I left the record open at Applicant's request to allow him to submit additional documentation. Within the time allotted, Applicant submitted another exhibit, which I admitted as AE O. The transcript was received on October 29, 2009.

Findings of Fact

Applicant is a 41-year-old married man with one child, age 16. Applicant served in the U.S. Marine Corps from 1986 to 1992. He was honorably discharged. While in the Marines, he served in Operation Desert Storm (Tr. 40). Applicant earned an associate's degree in electronics technology in 1994 (Tr. 39).

In 2001, Applicant's debts fell behind after he lost his job and was unemployed for six months. Throughout the decade, he continued to struggle to satisfy them, as steady employment remained sporadic. By 2007, Applicant had accrued approximately \$21,000 in delinquent debt, including an \$8,300 federal income tax delinquency (AE E at 2). He spent his retirement savings in an effort to make ends meet (Tr. 73, 93).

Without steady employment, Applicant decided to pursue a job with a contractor in support of the U.S. military in an overseas combat theater. Such jobs were generally more lucrative than the jobs he had worked during his career (Tr. 107).

In June 2007, a defense contractor hired Applicant to work as an x-ray technician responsible for repairing systems that detect improvised explosive devices (Tr. 40). He worked with this employer through approximately August 2008 (AE 1 at 12). He then gained employment with a defense contractor in another combat theater as an automatic data processing systems technician (Tr. 42). His work performance has consistently been exceptional (*see generally*, AE N). He remains on his employer's payroll without pay (Tr. 74).

In the two to three years before Applicant took his first overseas job, his salary averaged approximately \$75,000 annually (Tr. 114). During the past two years, Applicant's salary has averaged approximately \$100,000 annually (Tr. 45). Applicant's wife managed their finances while he was working abroad. Also, he "signed over power of attorney for her" to file their income taxes and to "take care of all of that stuff" (Tr. 88,

¹ I did not admit GE 5.

89). He instructed her to use the extra income, totalling approximately \$3,500 monthly, to pay their bills (Tr. 48, 108).

Applicant's wife did not pay their bills, as instructed, nor did she file their federal income tax returns for tax years 2007 and 2008. Instead, she spent the family income on luxury items such as tanning salons and beauty salons (Tr. 48). Applicant was unaware of the extent of this problem until he received interrogatories from DOHA in March 2009 (GE 6; Tr. 49). Applicant was unable to confront his debts while stationed overseas. Moreover, his ability to manage his debts was complicated by the marital problems that resulted from his discovery of his wife's financial mismanagement (see *generally* Tr. 48; AE A).

When Applicant returned from abroad in August 2009, he discovered that the \$21,000 of delinquent debt, as listed in the SOR remained delinquent, and that several other unlisted bills, totalling approximately \$4,400 had grown delinquent, including among other things, car insurance payments, property taxes, and utilities, (GE G - J).

Using a \$12,000 bonus, Applicant began satisfying his delinquent debt (Tr. 44-46). On September 16, 2009, he satisfied his delinquent car note in the amount of \$1,053 (AE 6 at 2). On September 29, 2009, he paid the delinquent property tax for the vehicle (\$533 - GE D). Also that day, he paid the delinquent water bill (\$160 - AE I). Three days later, he paid a delinquent electric bill (\$655 - GE J).

Applicant chose to satisfy the unlisted debts because, although they were newer, they were more emergent than the SOR delinquencies. Specifically, by paying the unlisted bills first, Applicant avoided any utility shut-offs, or a repossession of his car (Tr. 46, 56).

In October 2009, Applicant began satisfying the SOR debts. Thus far, he has made one \$300 payment toward the satisfaction of an IRS lien entered against his property in 2006 (SOR subparagraph 1.a), by arranging a payment plan under which he will pay the IRS \$150 monthly after the initial payment (AE F at 3; Tr. 97).

Applicant contends that he has made sporadic payments toward the tax delinquency since 2006. He only documented a \$300 payment in May 2009 (GE 8 at 2), and a \$300 payment in October 2009 (AE F at 3). Applicant has not filed his federal income taxes for tax years 2007 or 2008.

Applicant satisfied the debt listed in SOR subparagraph 1.c (a credit card account his wife opened) for \$425 (AE B), and arranged a payment plan to satisfy SOR subparagraph 1.d, a bill stemming from an automobile accident Applicant experienced in 2007 that totalled his car (Tr. 54). Because the car was fairly new, the balance of the amount Applicant owed to the automobile financing company exceeded the amount his insurance company reimbursed him for the loss (Tr. 55; GE C at 3). Although he had GAP insurance, the insurer did not completely reimburse him for the difference (Tr. 55). When Applicant returned from abroad, the delinquent account balance totalled

approximately \$9,400 (Answer). In September 2009, Applicant contacted the insurance company's attorney and organized a payment plan (Tr. 54, 98). Under the plan, Applicant is to pay the creditor \$325 monthly until the delinquency is satisfied (*Id.*). Applicant made the first payment in October 2009. (GE F at 3).

Applicant has not yet addressed the other SOR debts. They total approximately \$2,200. He plans to satisfy them once his employer returns him to active status.

Applicant and his wife have been legally separated since September 8, 2009 (AE A). They are planning to get a divorce (Tr. 87). Applicant has physical custody of their child. Under the terms of the separation agreement, Applicant's wife will pay him \$300 monthly for child support (AE A at 3).

As of the hearing date, Applicant had approximately \$3,400 remaining from his employment bonus (Tr. 87). While on inactive status, he receives approximately \$1,600 monthly in unemployment benefits (Tr. 88).

Applicant answered "no" to Section 27 of a security clearance application asking whether he had ever had a property lien for taxes or debt (GE 1 at 30). Applicant testified that he thought his answer was correct because, although he knew he owed the IRS for delinquent taxes, he "didn't have any property to lien on, except for [his] vehicle" (Tr. 102). Applicant answered "yes" to Section 27a, requiring him to disclose whether he had been more than 180 days delinquent on any debt in the past seven years (GE 1 at 31).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant’s allegiance, loyalty, or patriotism.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant’s history of financial problems triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s debt grew delinquent after he lost his job in 2001. Over the next few years, his efforts at satisfying his delinquencies were hindered by difficulty retaining steady employment. When Applicant gained a steady job with a salary that enabled him to satisfy his delinquencies, his wife, the family’s finance manager, failed to apply his income to the delinquencies.

Applicant was not fully aware of the extent of his wife’s financial mismanagement until he returned from abroad in the summer of 2009. Since then, he has satisfied approximately \$4,400 of his delinquencies. This amount mostly consists of delinquencies that are not listed on the SOR. Moreover, Applicant has only satisfied or developed plans to satisfy three of the 14 SOR debts. These three debts, however, constitute approximately 80 percent of his delinquent debt. AG ¶¶ 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,” 20(c), “there are clear indications that the problem is being resolved or is under control,” and 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

Guideline E, Personal Conduct

Under this guideline, “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified

information” (AG ¶ 15). Of particular concern is “any failure to provide truthful or candid answers during the security clearance process” (*Id.*).

Applicant’s omission of the 2006 tax lien from his 2008 security clearance application raises the issue of whether AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies. Applicant’s contends, in essence, that he was unaware a tax lien could be placed on personal property. His misunderstanding is credible in light of his disclosure elsewhere on the security clearance application that he had been more than 180 days delinquent on debt within the seven years before completing the security clearance application. I conclude AG ¶ 16(a) does not apply, and that there is no Personal Conduct security concern.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

Although Applicant’s financial problems were initially caused by a period of unemployment in 2001, his progress at debt satisfaction has been slow given that he has earned a lucrative salary since 2007. However, major factors beyond his control have hindered his progress. Specifically, because Applicant worked abroad in a combat zone, he had limited access to his financial information, and was compelled to rely upon his wife to manage his finances. She mismanaged his income, spending it on luxury items, rather than debt reduction.

In the first six weeks after Applicant returned from abroad, he satisfied \$4,400 of delinquent debt and initiated payment plans for his two most significant SOR debts. He accomplished this while simultaneously negotiating a detailed separation agreement with his estranged spouse that, among other things, transferred physical custody of their teenage son to Applicant. Under these circumstances, Applicant’s progress toward debt satisfaction has been commendable.

I was concerned that Applicant never verified whether his wife filed their 2007 and 2008 federal income tax returns. Applicant has been actively satisfying the tax lien since October 2009. His wife had power of attorney over his finances as recently as the summer of 2009. Gauging from Applicant's testimony, their separation has not been amicable. Under these circumstances, communication breakdowns and problems with information sharing are axiomatic. I conclude that his failure to confirm his income tax filings relates more to the deterioration of his troubled marriage than to any intent to avoid paying his income tax debts. I am confident that Applicant, having resolved the custody issues regarding his son, will resolve the outstanding issues regarding his federal income taxes. Upon considering the relevant disqualifying and mitigating conditions in light of the whole person concept, I conclude the likelihood of continuation or recurrence of Applicant's financial problems is minimal. Applicant has mitigated the security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a - 1.n:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge