



(Directive); and the Adjudicative Guidelines (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on August 17, 2010, and requested a hearing. The case was assigned to me on December 8, 2010, and was scheduled for hearing on December 13, 2010. The hearing was convened as scheduled. The Government's case consisted of nine exhibits (GEs 1-9). Applicant relied on one witness (himself) and six exhibits (AEs A-F). The transcript (Tr.) was received on December 21, 2010.

### **Procedural Rulings**

Before the close of the hearing, Applicant requested leave to supplement the record with an updated order regarding his pending Chapter 11 reorganization petition. For good cause shown, Applicant was granted 30 days to supplement the record. Within the time permitted, Applicant supplemented the record with documentation of the bankruptcy court's order approving his reorganization plan. Department Counsel interposed no procedural or substantive objections to the submission. Applicant's post-hearing submission is admitted as AE G.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) petitioned for Chapter 13 protection in January 2009 (dismissed in September 2009) and (b) petitioned for Chapter 11 relief in February 2010 with total liabilities exceeding \$375,000. In his response to the SOR, Applicant admitted his bankruptcy petitions and dispositions. He claimed that over 95 per cent of his debts are student loans and has a reorganization plan in place to satisfy his debts.

### **Findings of Fact**

Applicant is a 34-year-old configuration analyst 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 is single and has never been married. He has no children. (GE 1) He enlisted in the Army in 1997 after two years of college training and committed over a year of active duty service (1997-1998) before he received a Chapter 11, inability to adapt to a military environment discharge in March 1997. (GE 1; Tr. 51)

Applicant earned bachelor's degrees from accredited universities between 2001 and 2003 (GE 1; Tr. 48-51) and devoted three years to masters and PhD studies in child development without completing his PhD program. (GEs 2 and 3; Tr. 49-50, 53-54) He

has since earned a Masters in Business Administration (MBA) from an accredited university. (GEs 2 and 3; Tr. 48-49) To defray his college tuition and living expenses, Applicant used college loans. Altogether, he accumulated over \$360,000 in college loans over nine years of college schooling. Throughout his college years he was able to defer his loan payments. (Tr, 44-45) Once he finished attending college, however, he could no longer defer his loan obligations and came under increasing pressure to make his loan payments to the various public and private lenders who financed his education.

Unable to full-time work after completing his college credits, Applicant defaulted on his college loan payments. Without any advance counseling, he petitioned for Chapter 13 protection in January 2009. (GEs 2-4 and 8; Tr. 64-65) In his petition, he listed debts over \$360,000. (GE 8) Between May and August 2009, he made regular monthly payments totaling \$2,500, as required. (AEs A and B; Tr. 65-66) Still, Applicant's petition was dismissed in September 2009 for the stated reason that his debt aggregate exceeded the debt limits for Chapter 13 relief. (GEs 2 and 3; AE B; Tr. 64-65) With the assistance of his retained Chapter 11 counsel, he was able to obtain a return of the \$6,900 he paid his Chapter 13 counsel to process his Chapter 13 petition. (Tr. 70-71, 78-80)

Applicant petitioned for Chapter 11 reorganization relief in December 2010. (GE 9 and AEs B-E) He scheduled creditors holding secured claims totaling \$11,766 and unsecured creditors with non-priority claims in the aggregate amount of \$363,405. (GE 9) He certified to the receipt of online financial counseling and listed gross monthly income of \$5,271 and \$3,435 in net monthly income. (GE 4; Tr. 58) He listed monthly expenses of \$3,266. (GEs 4 and 9) Neither figure has changed much (Tr. 58)

Under his reorganization plan, Applicant agreed to monthly payments of \$525. This culminated a long process for Applicant in fashioning an acceptable Chapter 11 payment system that he could satisfactorily handle over a five-year period. (Tr. 44-47) For so long as his plan is in force, he remains subject to potential payment adjustments to reflect his monthly income. (Tr. 96-97)

Since retaining his Chapter 11 counsel, he has paid almost \$8,000 to his attorney to cover his attorney's fees and expenses and could owe another \$2,000 before his petition is completed. (Tr. 68-69, 83-85) Applicant's Chapter 11 reorganization plan was approved by the bankruptcy court on March 15, 2011. (AE G; Tr. 90-92) With his current job, he is financially able to make his monthly payments established by the bankruptcy court. (Tr. 45) He assures that he will be able to meet his scheduled payments on the strength of his current income and the raises he fully expects to receive in the foreseeable future.

### **Endorsements**

Applicant is well regarded by friends who have known and worked with him. (AE F) A friend who knows Applicant from his work for her mother praised his work ethic,

honesty, and passion for the students he has taught. She credited him with intelligence, curiosity, and loyalty to his company. (AE F)

## **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." They must be considered before deciding whether or not a security clearance should be granted, continued, revoked, 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 adjudication policy factors are pertinent herein:

## **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."

Adjudication Guidelines, ¶ 18.

## **Burden of Proof**

By virtue of the precepts 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 common sense 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. As with all adversary 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 any controverted facts alleged in the Statement of Reasons 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 showing of material bearing, 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, consideration must take account of 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 burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

## **Analysis**

Applicant is a well regarded configuration analyst for a defense contractor who encountered financial problems associated with his accumulated student loans over a nine-year period. Unable to find work after completing his college credits, he could not

avoid defaulting on his student loans exceeding \$360,000. The debt burdens imposed on him by state and federal laws prompted him to petition for Chapter 13 relief in 2009, and then for Chapter 11 protections in 2010 following dismissal of his Chapter 13 petition on jurisdictional grounds. Applicant documented court approval of his Chapter 11 petition in March 2011.

By defaulting on his student loans, Applicant exposed himself to state and federal enforcement actions on his outstanding debt. Without resolution, the approximate \$360,000 aggregate student loan obligations create substantial debt enforcement exposure for Applicant.

Security concerns are raised under the financial considerations guideline of the AGs where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness, and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of significant delinquent debts and his past inability to pay 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."

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 implicit in financial cases.

Based on his evidentiary showing, extenuating circumstances certainly contributed to Applicant's financial difficulties that necessitated his seeking first Chapter 13 relief in 2009 and then Chapter 11 protections in 2010, respectively. Available to Applicant is ¶ MC 20(b) of the financial considerations guideline, "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 under the circumstances." While some judgment problems persist over Applicant's taking on so much student loan debt preceding his bankruptcy filings, his actions are considerably extenuated by unforeseen economic conditions following the completion of his academic curricula and his inability to find steady work and cure the defaults in a timely way with the resources available to him.

In recognition of the good-faith efforts Applicant has made to resolve his student debts through court-supervised Chapter 11 plan with the modest resources currently available to him from his work, Applicant's efforts merit the application of three of the mitigating conditions for financial considerations: MC ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," MC ¶ 20 (c) "the person has received or is receiving counseling for the problem and/or

there are clear indications that the problem is being resolved or is under control;” and MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

From a whole-person standpoint, there is ample evidence presented that Applicant has mounted good-faith efforts to resolve his student loan debts through the legal means afforded him by Chapter 11 bankruptcy protections. He currently lives responsibly and is able to maintain a small surplus every month. In his favor are the vigilant efforts he has taken to date to identify and resolve his outstanding obligations with creditors holding outstanding balances against him. Friends who have known and worked with him hold him in high esteem and characterize him as reliable and trustworthy. With these qualities to his credit, he can be expected to meet the monthly obligations set by the bankruptcy court for paying his student loan and other listed debts.

Taking into account all of the extenuating facts and circumstances surrounding Applicant’s student loan history, his good-faith efforts to discharge his obligations through a manageable Chapter 11 bankruptcy plan, and the trust and reliability he has demonstrated with his friends who have worked with him, Applicant successfully mitigates judgment, reliability and trustworthiness concerns related to his debts. Favorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

### **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**

Subparagraphs 1.a and 1.b: 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

