

Applicant responded to the SOR on September 13, 2012, and requested a hearing. The case was assigned to me on October 15, 2012, and was scheduled for hearing on November 13, 2012. At hearing, the Government's case consisted of 11 exhibits (GEs 1-11). Applicant relied on one witness (himself) and 13 exhibits (AEs A-M). The transcript (Tr.) was received on November 21, 2012.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with documentation of a final payment agreement with the IRS and monthly payments. There being no objection from Department Counsel, and for good cause shown, I granted Applicant 30 days to supplement the record and the Government seven days to respond. Within the time permitted, Applicant supplemented the record with a cover letter from his tax firm, a completed IRS payment agreement, a December 2012 student loan payment, and a December 2012 IRS payment. I admitted his submissions as AEs N–Q.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated (a) a state tax lien in January 2011 for \$4,599; (b) an IRS tax debt of \$28,188 for tax years 2003, 2005, 2007, 2008, 2009, and 2010; (c) a state tax debt of \$7,880 for tax years 2002, 2005, 2007, 2008, and 2009; (d) 13 medical debts exceeding \$2,000; (e) a consumer debt of \$1,022; and (f) two delinquent federally guaranteed education loans of \$11,684 and \$9,562, respectively.

In his response to the SOR, Applicant admitted the alleged tax debts but disputed the amounts of the debts. He denied all of the alleged medical debts (subparagraphs 1.d-1.p), claiming he paid them all. He denied the debt covered by subparagraph 1.q (\$1,022), which he claimed he paid. He admitted the education debts covered by subparagraphs 1.r and 1.s, while claiming he has entered into good-faith repayment plans with the listed education agency. Applicant provided additional explanations about his background and reasons for the listed debts.

Findings of Fact

Applicant is a 46-year-old senior design engineer of 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 wife in June 1988 and divorced her in June 1995. (GE 1) He has two children from this marriage. Applicant married his second wife in June 1995 and divorced her in May 2002. (GE 1) He has two children from this marriage. (GE 10) He married his third wife in May 2004 and has no children from this marriage. (GE 1)

Applicant earned a bachelor's degree from one of the United States service academies in May 1988 (AE A; Tr. 23, 65-66) and served as an active duty surface warfare Naval officer between July 1984 and November 1995. (GE 1; Tr. 26-27) While in the Navy he held a security clearance. (Tr. 27) Applicant earned an MBA degree in October 2000. (GE 1 and 7 and AE B; Tr. 23) He has held security clearances with his civilian employers for the past 15 years. (Tr. 24-26)

Applicant's finances

Applicant operated his own statistical consulting firm between 2001 and September 2004 while taking college courses. (GE 7) His business did not generate enough revenue to sustain it, and he abandoned it in September 2004.

Applicant did not file federal or state income tax returns for tax years 2002 and 2003 and incurred delinquent federal tax debts for tax years 2003, 2005, and 2007-2010 in excess of \$28,000. (GE 7) He incurred delinquent state taxes as well during this period for tax years 2000, 2002, 2005, 2007, 2008, and 2009 in excess of \$7,800. (GE 7)

Applicant attributed his failures to file income tax returns to his second wife's extended unemployment (beginning in 2007), his own underemployment, and depression and anxiety conditions he experienced over a two-year span (2000-2001) covering his pending divorce with his second wife. (GE 7 and AE M; Tr. 29-33) Applicant and his current wife filed all of their back returns in 2004 after they sold their home. (GE 5; Tr. 44)

Medical records document Applicant's receipt of individual psychotherapy from November 2002 through December 2003 for generalized anxiety disorder and major depression. (AE M) In his furnished medical history, he described the stress he experienced from his graduate studies and work while confronting painful divorce and custody issues with his second wife. (AE M) Applicant completed his treatment (both therapy and medication) regimen in late 2003 and "did very well." (AE M; Tr. 31-32) He had a mild depression episode in 2006 with the passing of his father but has enjoyed emotional stability for many years. He has benefitted from a successful third marriage and rewarding professional career as a senior design engineer. (AE M)

Between 2002 and March 2010, Applicant's wages were garnished by his state's franchise tax board to cover back taxes owed. (GE 7) The amounts garnished are not documented, but Applicant believes the amounts exceeded \$8,000. (GE 7)

In March 2010, the taxing authority of Applicant's state entered a modification order that committed Applicant to \$95 bi-monthly payments on his state tax debt covered by subparagraphs 1.a and 1.c of the SOR. (AE F; Tr. 42-43) Applicant's payment history documents voluntary bi-monthly payments of \$95 between December 2010 and September 2012. (AE G) Together, these payments approximate \$4,775. Applicant continues to make these \$95 a month payments to his state's taxing authority. (Tr. 42-43)

With the help of his tax service, Applicant set up a payment plan with the IRS in February 2012 to discharge his federal tax liability. (AEs H and N; Tr. 40-41) Payment terms with the IRS required his making monthly payments of \$550. (AEs H and I; Tr. 41) Since February 2012, Applicant has made regular monthly payments of \$550 to the IRS as required while his tax attorneys continued to negotiate with the IRS on a final installment agreement. (AEs H, I, N, and O; Tr. 53-55) In December 2012, he completed a revised installment agreement with the IRS that increases his monthly payment to \$575 a month, commencing in January 2013. (AEs N and O) Applicant documented his first monthly payment of \$575 under his revised IRS agreement in a post-hearing submission. (AE Q)

Besides his state and federal tax debts, Applicant accumulated numerous small medical debts between 2009 and 2010. (GEs 2-6) Altogether, he accrued 13 medical debts that exceed \$2,000. They are covered by subparagraphs 1.d through 1.p of the SOR. Applicant documented his pay offs of all but two of the medical creditors with his check of \$1,563 to the creditors' adjustment bureau in September 2012. (AE J) He claims he paid off all of the listed medical debts in the SOR. (Tr. 38) While his payments to creditors 1.o and 1.p are not documented, they no longer appear in his most recent credit report. *Compare* GEs 5, 10, and 12. His payment claims concerning these creditors are credible and are accepted.

Additionally, Applicant became delinquent with a lender (creditor 1.q) in the amount of \$1,022. He provided written proof of his paying off this creditor in full in September 2012. (AE K)

During periods of his underemployment by his current wife (2007-2011), Applicant fell behind on his student loans. Both federally guaranteed loans were originated in September 2004 to finance his graduate studies: one for \$10,150 and the other for \$8,627. (GEs 2-6 and AE L) Both loans were defaulted in September 2006 following grace periods and reinstated in May 2012 with established repayment plans. (AE L) Applicant is current with his student loans with monthly payments of \$220 a month. (AEs L and P; Tr. 45-47)

Applicant and his wife established a family budget in 2012 to help them manage their finances more effectively. (AE A; Tr. 35-37) Besides the counseling services he has received from his tax service, he has benefitted from financial counseling from his church. (Tr. 51) Currently, Applicant nets around \$9,000 a month and retains a monthly remainder after allowing for expenses. (GE 3 and AE E; Tr. 45-46) His budgeted monthly expenses cover his rent, household necessities, a car payment, and college payments for his children. (AE E; Tr. 37-38)

Endorsements

Applicant is highly respected by his supervisors and former members of his Navy command. (AE C) His current supervisor and a retired Navy commander who served with Applicant in the Navy described Applicant as a widely respect technical subject matter

expert who is a “tremendous asset” to his company’s space program. He characterized Applicant as a well-respected professional who has a proven track record of trustworthiness, integrity, and honesty. (AE C)

Applicant is commended by his work colleagues for not just his demonstrated reliability and professionalism in his work habits, but for his civic contributions to local youth organizations. (AE C; Tr. 28-29) Research scientists who have worked with Applicant praise his exceptional ability to visualize large, complex systems, and break them into interacting subsystems and parts. (AE C) One scientist who has worked with Applicant credits him with a positive and stabilizing influence for every team in which he participated. (AE C)

Applicant is credited with outstanding performance evaluations from his employer in all phases of his work responsibilities between 2005 and 2012. (AE D) In his most recent evaluation, his supervisor characterized Applicant as a tremendous asset to his employer and a team member who has proven himself to be indispensable to key company programs. (AE D) In 2005,

Applicant received an employee of the month award from his civilian employer. (Tr. 24). While in the Navy, he earned two Navy Achievement Medals and a Navy Commendation Medal. (Tr. 27)

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 AGs. AG ¶ 2(a) is 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. . ."

Adjudicative Guidelines, ¶ 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). And because all security clearances must be clearly consistent with the national interest, the burden of persuasion must remain with the Applicant.

Analysis

Applicant is a highly regarded senior design engineer for a defense contractor. He accumulated state and federal tax delinquencies and other delinquent debts between 2000 and 2010, attributable to income losses, divorce and child custody issues with his second wife, and health problems.

Applicant’s accumulation of state and federal tax debts, medical and consumer debts, and delinquent student loan accounts over a 10-year period raises potential security concerns about his judgment, reliability, and trustworthiness in managing his finances. His 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 implicit in financial cases.

Unexpected business losses and long pending divorce, custody, and health issues caused considerable difficulties for Applicant as he struggled to pay his taxes, medical and consumer debts, and student loan obligations. These extenuating circumstances and his continuing efforts to work with his taxing agencies and other creditors merit application of four 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(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 under the circumstances”; MC ¶ 20(c), “the person

has received 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.”

In circumstances similar to the present case, the Appeal Board has said that an applicant need not have paid or resolved every one of his proven debts or addressed all of his debts simultaneously. What is required of the applicant is a credible plan to resolve his financial problems, accompanied by significant implementing actions. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008)

By the proofs presented, Applicant has made considerable progress to date with his tax, medical and consumer, and education debts. All of his medical and consumer debts have been paid in full, and he has active repayment plans in place with his state and federal taxing authorities and student loan agencies.

Both Applicant and his wife have good-paying professional positions. And they have a detailed budget to help them manage their finances. With their increased income, Applicant and his wife are well-positioned to satisfy all of their remaining obligations covered by their repayment agreements and keep up with their current expenses and obligations.

Consideration of Applicant’s military and educational background, the extenuating circumstances associated with his tax, medical, and student loan debts, his current income from his defense employer, and the documented affirmative steps he has taken to resolve his accrued debts permit a favorable assessment of his overall good judgment, reliability, and trustworthiness. Applicant’s proofs provide sufficient credible indicators of his ability to be trusted in times of financial stress and enable him to satisfy his evidentiary burden of mitigating the covered debts.

From a whole-person standpoint, the evidence is substantial that Applicant has performed well during his military and civilian service and is entitled to considerable credit for his military and civilian contributions. Unfortunate economic circumstances played a pivotal role in his inability to keep up with his tax, medical, and student loan payments. His earnest repayment efforts to date and overall stabilization of his finances over the past two years are sufficient to meet mitigation requirements imposed by the AGs governing his finances.

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 through 1.s:	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