



## **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) failed to file Federal and state tax returns for tax years 2007, 2008, and 2009, as required; (b) accumulated nine delinquent debts exceeding \$235,000 (including two judgments covered in subparagraphs 1.i and 1.j) that remain unsatisfied; and (c) reported monthly expenses that exceed his monthly income on the personal financial statement he completed in November 2012.

Under Guideline J, Applicant allegedly was arrested in July 2010 and charged with DUI-Impaired to the Slightest Degree, DUI-Drug or Metabolite, and Driving with Drivers License (DL) Susp/Rev for FTP/FTA; he pled guilty in March 2011 to the DUI-Impaired charges (remaining charges dismissed) and was sentenced to 15 days in jail (12 days suspended), ordered to successfully complete screening and assessment services counseling, fined, and had his license suspended for three months, after which time an interlock device was to be placed on his car for approximately a year; and he was ordered to pay approximately \$38,000 in restitution to a local municipality, as set forth in subparagraph 1.i. Allegedly, Applicant used marijuana in July 2010.

In his response to the SOR, Applicant admitted all of the allegations covered by Guidelines F and J. With respect to the Guideline F allegations, he claimed he was working with a tax attorney to correct his Federal and state tax return filing omissions and work out a payment plan with the IRS.

Addressing the Guideline J allegations, he claimed the following: remorse for his poor driving choices; he was not impaired; and that he learned his lesson from the incident. He claimed he has worked in his field for over ten years and is dedicated to his work and country.

## **Findings of Fact**

Applicant is a 32-year-old technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant is adopted as a relevant and material finding. Additional findings follow.

### **Background**

Applicant married in November 2001 and divorced his spouse in September 2009. (Item 4) He has two children (one adopted) from this marriage. (Item 3) He has cohabited with another woman since July 2010. (Item 4) Applicant earned an equivalent high school diploma in March 2000 and claims no college credits or advanced degrees. (Item 4)

Applicant enlisted in the Army in June 2000 and received an honorable discharge from active duty in June 2003. (Item 4) He cited no claimed inactive Army reserve duty in his security clearance application.

## **Applicant's finances**

Following a corporate layoff in November 2009, and ensuing months of unemployment (November 2009 to April 2011), Applicant relied on credit cards to cover his living expenses. (Item 6) By 2010, Applicant's credit card debts had escalated to unmanageable levels, causing him to fall behind on his debts for lack of funds. (Item 6) His credit reports document that he opened most of the listed credit card accounts between March 2010 and January 2011. (Item 7) Other accrued delinquent debts involve medical, utility, and mortgage accounts. (Item 7)

Applicant's listed delinquent debts are comprised of two medical accounts (creditors 1.e and 1.f); five consumer accounts (creditors 1.b-1.d and 1.g-1.h); two judgment holders (creditors 1.i and 1.j); and one mortgage account (creditor 1.k). One of the listed judgments covers an adverse judgment taken against Applicant by creditor 1.i in October 2011 in aid of court-ordered restitution associated with Applicant's alcohol-related charges in July 2010. The other judgment was taken in October 2004 by creditor 1.j in connection with a repossessed motorcycle. (Items 6 and 7)

Of those debts listed in the SOR, Applicant's mortgage debt with creditor 1.j is the largest one. His \$181,000 mortgage debt was originated in February 2009 to finance a home purchase by Applicant. (Items 9 and 10) Credit records document the mortgage-backed loan became delinquent in February 2010 following Applicant's layoff and remains unsatisfied and subject to pending foreclosure proceedings. (Items 9 and 10)

Applicant has not mounted any visible efforts to repay any of his listed debts. He provided no evidence of debt repayments or repayment plans in any of his accounts given to the Office of Personnel Management (OPM) in May 2011 and DOHA in November 2012. (Item 9) Despite assurances given in his OPM interview that he planned to get in touch with his creditors and work with them in repaying his debts, he has taken no documented steps to date to repay his creditors. (Item 9) All of his listed debts remain outstanding and unaddressed.

Because Applicant did not file Federal or state tax returns for tax years 2007, 2008, and 2009, it cannot be determined with any precision how much back taxes he owes to Federal and state taxing authorities. When asked about his tax returns in his 2011 OPM interview, Applicant estimated he could owe the IRS in excess of \$15,000 for these tax years. (Item 9) Applicant has failed to file tax returns for these tax years with the IRS and state taxing authority. Presumably, he still owes Federal and state taxes for these tax years.

Applicant's financial status cannot be readily determined from available documentation. His furnished personal financial statement reports net monthly income of \$4,027, monthly expenses of \$1,500, and monthly debt payments of \$2,550. (Item 9). This leaves him with a net monthly deficit of \$23.

Applicant reports no physical assets and a Veterans Administration disability of \$251 in his financial statement. (Item 9) He lists no savings accounts, retirement, plans, or life insurance policies.

### **Applicant's arrest history**

In July 2010, Applicant was arrested and charged with DUI-Impaired to the Slightest Degree; DUI-Drug or Metabolite; and Driving with DL Susp/Rev for FTP/FTA. Applicant pled guilty in March 2011 to the DUI-Impaired charges (remaining charges dismissed) and was sentenced to 15 days in jail (12 days suspended). The court imposed additional conditions: It ordered him to successfully complete screening and assessment services counseling; it fined him, and it suspended his driving privileges for three months, after which time an interlock device was to be placed on his car for approximately a year. The court ordered him to pay approximately \$38,000 in restitution to a local municipality, as set forth in subparagraph 1.i.

A judgment was taken against Applicant by a local municipality in October 2011 in the amount of \$38,082, with post-judgment interest to accrue at the rate of 4.2 per cent annually. (Item 8) Applicant has not satisfied this adverse judgment or taken steps to address the outstanding balance. Whether he completed all of the court's other imposed conditions is not clear. He served three days in jail as ordered; completed a 12-hour alcohol-awareness program; and entered into a payment plan with the court to pay his ordered fine. (Item 9)

### **Endorsements**

Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any proof of community and civic contributions.

### **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 chances; (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)

### **Criminal Conduct**

*The Concern:* Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. AG, ¶ 30.

### **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.

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**

Security concerns are raised over Applicant’s listed delinquent debts, his failure to file Federal and state tax returns for successive years, and the absence of any documented payment initiatives with respect to the listed debts. Security concerns are also raised in connection with a 2010 drug-related and alcohol-related arrest and charges.

#### **Financial concerns**

Following his 2009 layoff, Applicant encountered months of unemployment (November 2009 to April 2011) and escalating credit card debts that reached unmanageable levels, causing him to fall behind on his debts for lack of funds. Applicant’s accumulation of credit card debt delinquencies and potential tax liabilities associated with his failure to file Federal and state tax returns raise potential security concerns about his judgment, reliability, and trustworthiness in managing his finances. His actions warrant the application of three of the disqualifying conditions (DC) of the Guidelines DC ¶ 19(a), “inability or unwillingness to satisfy debts;” DC ¶ 19(c) “a history of not meeting financial obligations;” and DC ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.”

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.

While potentially extenuating, Applicant's periods of unemployment between 2009 and 2011 are too dated to have any material bearing on his current financial difficulties with his debts. As a result, none of the mitigating conditions covering potential extenuating circumstances have any application to Applicant's situation.

From a whole-person standpoint, the evidence shows that unfortunate economic circumstances in the 2009-2011 time frame played some initial role in Applicant's inability to keep up with his tax filing responsibilities and consumer bills. Less clear is how these periods of unemployment contributed to his failure to file tax returns and delinquent debt accumulations after his return to work in 2011. Still unresolved are his Federal and state tax filing omissions and his failure to address his listed delinquent debts. Overall, Applicant's efforts to date are insufficient to meet mitigation requirements imposed by the AGs governing his finances.

### **Criminal conduct concerns**

Applicant's 2010 arrest and conviction is drug and alcohol-related and resulted in a conviction on the DUI-Impaired to the Slightest Degree charge and driving on a suspended license. To what extent Applicant complied with all of the conditions imposed by the court is not clear. Records document only that before his arrest in July 2010, Applicant drove his vehicle while legally intoxicated. (Items 7 and 9) Court logs from May 2011 confirm Applicant's imposed sentence, fine, screening assessment, and ordered restitution to a local municipality (covered in subparagraph 1.I) in the amount of \$38,000. (Items 7-9)

Applicable disqualifying conditions under the criminal conduct guideline include DC ¶ 31(a), "a single serious crime or multiple lesser offenses," and DC ¶ 31(c) "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted." Applicant cited offense involves both drug-related and alcohol-related charges and reflect multiple lesser offenses combined under one set of charges, As such, both DC ¶ 31(a) and DC ¶ 31(c) apply to Applicant's situation.

Based on his own rehabilitative efforts to date that include satisfying most of the court's imposed conditions and the isolated nature of the offense, Applicant may take some advantage of MC ¶ 32(d) of the criminal conduct guideline, "there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement." More time is needed, though, to accord Applicant the full mitigation benefits of this mitigating condition. Absent evidence of his addressing the court's ordered restitution and satisfying the court's probation conditions, it is still too soon to make safe predictions that he is at no risk to recurrent behavior in the foreseeable future.

Both from a consideration of the applicable guidelines, and from a whole-person perspective, Applicant demonstrates rehabilitative progress, but not enough at this time to facilitate safe predictions of recurrence avoidance. More is needed in demonstrated rehabilitation without recurrence. While Applicant merits considerable praise for his





