

Applicant responded to the SOR on March 22, 2013, and requested a hearing. The case was assigned to me on July 17, 2013, and was scheduled for hearing on August 21, 2013, by video teleconference. The hearing was convened on that date. At hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one witness (himself) and seven exhibits. (AEs A-G) The transcript (Tr.) was received on August 24, 2013.

Procedural Issues

Before the close of the hearing, Applicant requested leave to keep the record open to afford him the opportunity to supplement the record with documented financial counseling. For good cause shown, Applicant was granted 14 days to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant supplemented the record with documented financial counseling. I admitted Applicant's post-hearing submission as AE H.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated five delinquent debts exceeding more than \$45,000. Each of these alleged debts is reported as a charge-off.

In his response to the SOR, Applicant admitted all of the allegations. He claimed the listed debts in the SOR represent debts he co-signed for his wife while they were married, with three of the debts reflecting student loans for his wife's benefit. He claimed his debts were divided and evenly apportioned in their divorce agreement. He explained his ex-wife did not uphold their settlement agreement and failed to pay the debts she accepted responsibility for (including the vehicle loan he co-signed for in subparagraph 1.a. Applicant further claimed he prioritized the debts he accepted responsibility for under his divorce agreement and paid each of these prioritized debts. And he claimed he will address his wife's listed debts once he sells his home and is able to free up funds currently reserved to pay his mortgage and rent.

Findings of Fact

Applicant is a 30-year-old embedded soft-ware engineer for a defense contractor who seeks a security clearance. The SOR allegations admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant earned a bachelor of arts degree in engineering in May 2005. (GE 1; Tr. 32) He married in July 2005 and helped to finance his wife's advanced education during their marriage. (Tr. 34) Applicant divorced his wife in June 2007 and has no children from this marriage. (GE 1; Tr. 35-36) Applicant claims no military service in his security clearance application.

Finances

In 2006, Applicant and his wife purchased a home for \$127,000, and financed their purchase with an 80-20 loan. (GEs 3 and 4; Tr. 38-41) Under the loan terms, the first mortgage (\$102,000) covered 80 percent of their loan financing and the remaining 20 percent was covered by a second mortgage (\$25,000). Applicant and his wife paid nothing down on their purchase.

The separation agreement Applicant and his wife completed in May 2007 does not address the real estate deed and mortgages covering their residence. (AE A; Tr. 40) Acting on the advice of his counsel, Applicant enlisted his wife and her new husband to remove their names from the deed. (Tr. 40) After exploring short sale options, Applicant and his wife completed a market-based sale of their home in 2012. (Tr. 43-46) Because the sale only produced \$109,000 in sale proceeds, Applicant was required to bring \$15,725 of his own funds to the closing. (Tr. 45-46) He funded the \$15,725 cash infusion with a loan from his 401(k) retirement plan. (Tr. 45-46)

During their marriage, Applicant and his wife accumulated a number of joint credit card and student loan debts. (GEs 3 and 4; Tr. 63-64) In 2007, Applicant co-signed for his wife's purchase of an automobile for \$15,867. (GE 3) At the time, Applicant and his spouse were making \$70,000 between them and had ample income sources to meet their credit obligations. (Tr. 39-40) Following their divorce, his wife defaulted on her monthly car payments. In September 2011, the seller repossessed the vehicle and charged off the remaining deficiency balance of \$11,740. (GEs 2 and 4) Credit reports reveal the seller assigned its deficiency rights to the creditor listed in subparagraph 1.a, who charged off the debt. (GE 3) The debt remains unpaid.

Applicant claims the debt covered by subparagraph 1.a belonged to his ex-wife under their separation agreement. (AE A; Tr. 36-37, 49-50) Because the parties' settlement agreement does not identify specific apportioned debts, the debts Applicant claims were assumed by his ex-spouse must be inferred from the documentary evidence and Applicant's verbal understandings with his ex-spouse. Applicant's claims are credible and accepted under all of the circumstances considered. To date, neither Applicant nor his ex-spouse have made any concerted efforts to pay off the deficiency owed to creditor 1.a. (Tr. 41, 51,57, 69-70)

While married, Applicant co-signed for his wife on three student loans. In June 2005, he co-signed for his wife to obtain a student loan with creditor 1.c for \$5,783. After paying on the loan for several years, his wife ceased making payments, and the loan was charged off in April 2009 with a delinquent balance of \$786. (GE 3) In the following year (August 2006), Applicant co-signed for his wife on another student loan with the same lender (creditor 1.b) for \$15,603. (GE 4) When his wife quit paying on this loan in accordance with the loan's terms, creditor 1.b charged off the loan in April 2009 with a delinquent loan balance of \$21,378. (GEs 3 and 4) Both of these student loans remain outstanding with no repayment history and the legal responsibility of Applicant. (GEs 3 and 4; Tr. 57) Efforts to enlist his ex-spouse's assistance in paying the debts

have been unsuccessful. (Tr. 87) And Applicant has not taken any direct actions himself to address the debts since he was apprised of their outstanding status by the investigator from the Office of Personnel Management (OPM) who interviewed him in 2011. (GE 2)

Applicant co-signed with his wife in October 2006 on another student loan with creditor 1.e for \$10,600. This loan was intended to benefit Applicant directly with creditor 1.e and is implicitly covered in his separation agreement as his sole responsibility. (GE 3) Applicant's credit reports reveal that the loan was deferred for several years and defaulted in 2012 with a balance over 180 days past due in the amount of \$8,331. (GEs 3 and 4) This debt has been charged off by the creditor and has never been paid. (GEs 2 and 4; Tr. 50-51, 57) As a joint and several obligor, Applicant bears responsibility for this loan as well.

In the personal financial statement he completed in January 2013, Applicant reported gross monthly income of \$8,242 and net monthly income of \$4,938. (GE 2) He reported net monthly expenses of \$2,256, monthly debt payments of \$2,241, and a net monthly remainder of \$441. (GE 2) For comparison purposes, in the monthly budget he produced at the hearing, he listed gross monthly income of \$8,433 and net monthly income of \$3,528. (AE G) In his prepared budget, he reported monthly expenses of \$2,214, monthly debt payments of \$1,223, and a net monthly remainder of only \$91. (AE G) Applicant attributed the changes in his reported gross income to a compensation raise and the lower net income figure to increased deductions from his 401(k) loan to facilitate the payoff of his mortgage debt. (AE C) Applicant has savings of \$200 and retirement savings worth under \$70,000. (GE 2) The home he recently sold has been eliminated as a carried asset on his balance sheet. (Tr. 58)

Believing his reported delinquent debts were charged off, Applicant did not consider himself liable for any of the listed debts. (Tr. 65-66) Informed otherwise, he expects to address his old debts (both his own and those owned by his ex-spouse) with freed-up funds he will have at his disposal once he repays his 401(k) loan at the rate of \$1,200 a month, predictably within 18 months. (Tr. 58) With the 401(k) loan repaid, he expects to have additional resources (at least \$1,200 a month) to address his delinquent debts. (Tr. 53-56)

Since the hearing, Applicant completed financial counseling with a reputable credit counseling service. (AE H) His counseling service provided a detailed financial action plan that covered causes of his financial hardship (divorce in 2007, relocation in 2012, bills in collection status, identified hardship, and increases in living expenses), his cited goals (debt reduction, control of his budget, building a savings account, stopping collection calls, and setting up a payment plan), and suggested actions (i.e., contact creditors to make payment arrangements, education and budget counseling, destruction of credit cards, maintain regular payments, open a debt management program to reduce debt, set savings goals, track expenses, find supplemental work, and consider educational resources). (AE H)

Besides furnishing a financial plan, Applicant's counseling service completed a budget assessment designed to increase his available resources to address his outstanding debts. (AE H) His counseling service did not provide any debt consolidation service or accept payments for remittance to his identified creditors. (AE H)

Endorsements

Applicant furnished several endorsements from colleagues who have worked with him and are familiar with his financial history dating to his past marriage. (AE E) His colleagues characterize him as a person of outstanding character and judgment. Applicant's direct supervisor credited him with being a reliable and trustworthy performer. (Tr. 25) After expressing familiarity with Applicant's finances, his supervisor expressed no security concerns with the former's finances. (Tr. 27-28) In Applicant's performance evaluation for 2012, he is credited with outstanding performance. (AE B; Tr. 25-26, 52)

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. 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.

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 an embedded software engineer with a considerable history of financial problems associated with joint debts accumulated during a prior marriage that are unpaid and have since been charged off. As a part of their 2007 divorce agreement they accepted individual responsibility for their respective debts created during the marriage.

While Applicant paid off most of the debts he assumed responsibility for, he did not until recently accept financial responsibility for the joint debts his ex-spouse assumed and failed to satisfy. Applicant’s failure to satisfy one debt of his own acceptance and take responsibility for his ex-wife’s joint debts once he learned of her defaults raises security concerns.

Financial concerns

To date, Applicant has not addressed any of the charged-off delinquent debts listed in the SOR that remain his legal responsibility as a joint obligor. Four of the listed debts (creditors 1.a-1.d) reflect debts he co-signed for on his ex-wife’s behalf. A fifth debt (creditor 1.e) represents a debt he accepted responsibility for under the terms of his separation agreement. Outstanding balances on Applicant’s unpaid debts approximate \$45,000. Applicant’s past history of accumulations of delinquent debts and his past inability to resolve the debts accumulated during his marriage warrant the application of two of the disqualifying conditions (DC) of the AGs for financial considerations: ¶ 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.

Extenuating circumstances associated with Applicant’s debts are dated and entail debts allocated to his wife that she failed to resolve following their divorce. 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,” is applicable to Applicant’s situation. Since learning his wife’s debts

were unpaid and charged-off, he has committed to paying off the \$15,000 he borrowed from his 401(k) retirement plan to complete the sale of his home. Once he repays the loan, he will use his freed-up resources to address his own remaining debt, as well as his ex-wife's charged-off car loan and student loans.

Moreover, all of the listed debts accrued during Applicant's marriage and predate his 2007 separation agreement. Applicant did not become aware that his ex-wife had stopped paying on her assumed debts until 2011. Applicant is current with all of his post-separation obligations and promises to remain so. Although certainly not dispositive under Appeal Board guidance, most of the covered debts are aged and are potentially barred by his state's six-year statute of limitations for written obligations. See A Rev. Stat. Ann. § 12-541, *et seq.*¹ Under all of the circumstances considered, MC ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," is applicable to Applicant's situation.

Financial counseling and follow-up payment initiatives with a major creditor (his home lender holding his first and second purchase mortgages) reflect responsible, prudent attempts to regain control of his finances. His good-faith efforts merit the application of 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."

Historically, the Appeal Board has never required an applicant to show that he is debt free and possessed of a plan for paying off all of his debts immediately or simultaneously with the payment of his other debts. See ISCR Case No. 07-06482, at 3 (App. Bd. May 21, 2008). To qualify for application of the good-faith mitigating condition (MC ¶ 20(d)), an applicant need only show good-faith efforts to repay overdue creditors, or some other good-faith plan for repayment, accompanied by reasonable actions to effectuate that plan. ISCR Case No. 05-11366, at 4 n.9 (App. Bd. Jan 12, 2007) By his repayment initiatives to complete the closing of his home sale, Applicant showed responsible, good-faith efforts to satisfy a major mortgage obligation that was once a joint debt of his own and his ex-spouse.

Applicant has developed a detailed budget and long-term repayment plan with the help of his chosen counseling firm to resolve both his own debt delinquency (creditor 1.e) and the defaulted debts of his ex-spouse. His earning prospects for the foreseeable future are promising and strengthened by the positive professional support he has received from his employer. Prospects are excellent for Applicant's successful completion of his repayment plan and restoration of his finances to stable levels.

¹ Based on the admitted credit reports and other documentation, the listed student loans of Applicant's ex spouse involve privately funded student loans that may not be exempt from statute of limitation coverage in the same way as Federally guaranteed student loans.

Consideration of Applicant's background and financial history, and his latest efforts to repay the marital debts he assumed responsibility for under the terms of his separation agreement, as well as the defaulted debts allocated to his ex-spouse, enables Applicant to mitigate judgment and trust concerns associated with his finances. Applicant's documented corrective efforts to date are sufficient to enable him to mitigate security concerns rated to the listed debts in the SOR.

From a whole-person standpoint, the evidence is sufficient to demonstrate that Applicant has mounted responsible, good-faith efforts over the six-plus years since completing his separation agreement and later learning of his ex-wife's defaults. Because his loan from his 401(k) retirement plan to satisfy closing demands on his home sale currently consumes most of his available resources, his delayed commitments to address the remaining marital debts is reasonable under all of the circumstances and meets the minimum good-faith payment requirements of Guideline F.

To his credit, Applicant has performed well for his employer and is highly regarded by his direct supervisor and colleagues. His meritorious accomplishments at work reinforce the good-faith repayment efforts he is demonstrating with his creditors. In making a whole-person assessment, careful consideration was given to the respective burdens of proof established in *Egan (supra)*, the AGs, and the facts and circumstances of this case in the context of the whole person. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.e

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:	FOR APPLICANT
Subparagraphs 1.a through 1.e:	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

