

Material (FORM) on May 3, 2013, and did not respond with any information within the 30 days permitted. The case was assigned to me on June 21, 2013.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated (a) two medically-related judgments (one for \$1,008 and another for \$713) and (b) 13 delinquent accounts (some charged off and others in collection) exceeding \$15,000.

Under Guideline E, Applicant allegedly (a) was arrested in December 2008 for possession with intent to distribute marijuana (a felony) and convicted of an amended charge of marijuana possession; (b) was arrested in August 2009 for robbery: street with use of gun or simulated gun and assault on a family member; and (c) was arrested in April 2011 and charged with assault and battery.

In his response to the SOR, Applicant admitted all of the alleged debts and arrests. He provided no explanations of the circumstances surrounding his admitted debts and arrests, or what steps he has taken to mitigate them.

Findings of Fact

Applicant is a 24-year-old employee of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant is unmarried and has two children. (Items 5 and 6) He lives with his mother and does not have physical custody of his children. He completed his GED and has completed several trade-school courses. (Items 5 and 6) Applicant claims no military service.

Applicant's finances

Between 2008 and 2012, Applicant accumulated a number of delinquent debts. Two of the debts involve medical accounts that resulted in adverse judgments when Applicant did not pay or settle the accounts. (Items 8-10) One judgment was taken in May 2012 by creditor 1.a for \$1,008; the other judgment was taken in January 2009 by creditor 1.b for \$713. Applicant has made no payments on either of these outstanding judgments and has completed no settlement arrangements with the respective creditors.

Applicant's two largest debts represent defaulted student loans that became delinquent in August 2011 and were assigned to the Government for collection in 2012 in the respective amounts of \$3,792 (creditor 1.j) and \$6,692 (creditor 1.k). (Items 8-10). Applicant has made no payments on either of these assigned Government student loan debts and has completed no settlement arrangements with the Government to cover these debts.

Besides the two judgments and student loan debts, Applicant accrued 11 delinquent consumer and medical debts between 2008 and 2012. Comprising these debts are the following: his 1.c debt (for \$898); his 1.d debt (for \$352); his 1.e debt (for \$394); his 1.f debt (for \$57); his 1.g debt (for \$1,143); his 1.h debt (for \$419); his 1.i debt (for \$697); his 1.l debt (for \$237); his 1.m debt (for \$522); his 1.n debt (for \$696); and his 1.o debt (for \$112).

In a September 2011 interview with an agent from the Office of Personnel Management (OPM) Applicant addressed his finances and attributed his debts delinquencies to recurrent conditions of unemployment and his ongoing efforts to help his mother financially. Still, since his return to full-time employment in June 2011, he has failed to document any efforts to resolve his listed debts. Without more financial information from Applicant about his debt accruals and corrective steps taken, his monetary circumstances cannot be properly evaluated.

Arrest history

Records reflect that Applicant was arrested and charged with various offenses over a three-year period spanning December 2008 through April 2011. In December 2008, he was arrested and charged with possession with intent to distribute marijuana (a felony). Prior to his arrest, he had purchased marijuana with the intent of selling it. (Items 6 and 7) Before he was able to sell the marijuana, he was pulled over by police for a broken headlight. The arresting officer noticed the marijuana in Applicant's vehicle and charged him with marijuana possession with the intent to distribute the substance. (Items 6 and 7)

When Applicant appeared in court in March 2009 on his drug-related charges, the court convicted him on an amended charge of marijuana possession, less than one-half an ounce (a misdemeanor) and sentenced him to 12 months of incarceration (suspending 11 months). (Item 7) Applicant satisfactorily completed his sentencing conditions.

In August 2009, Applicant was arrested and charged with (1) robbery: street with use of a gun or simulated gun and (2) assault on a family member. (Item 6) Applicant was later convicted of assault on a family member and required to attend anger management classes. (Item 6) Applicant completed the required classes. (Item 6)

Applicant was arrested on a reported third occasion in April 2011. (Item 6) This time he was arrested and charged with assault and battery on a family member (his girlfriend). (Item 6) After Applicant's girlfriend told authorities that he never touched her, the charges were ultimately dismissed. (Item 6)

Endorsements

Applicant provided no endorsements on his behalf. Nor did he furnish any performance evaluations or documented community 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 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 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.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG, ¶ 15.

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*, 485 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).

Analysis

Applicant is a defense contractor employee who accumulated a number of delinquent debts (to include two adverse judgments and two major student loan defaults) during recurrent periods of unemployment. Other security concerns arise

from Applicant's series of arrests and charges stemming from his possession of illegal drugs and assaults on family members.

Financial concerns

Applicant's accumulation of judgments and other delinquent debts and his past inability and unwillingness to address these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines covering financial considerations: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and ¶19(c) "a history of not meeting financial obligations."

Applicant's pleading admissions of the debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's listed debts are fully documented in his latest credit reports and provide ample corroboration of his debts.

Applicant's debts are attributable in part to his inability to find well-paying work and the demands of his time and resources to care for his mother. His largest debts entail two student loan defaults that he has not addressed since at least 2011. Among his remaining debts are two adverse judgments that are still outstanding and unaddressed. Applicant's remaining debts consist of medical and consumer debts that were either charged off by the listed creditors or referred to collection. They, too, have not been addressed by Applicant and remain either unpaid or unresolved. Moreover, some judgment problems persist over Applicant's unexplained delinquencies and his failure to demonstrate he acted responsibly in addressing his listed debts once the underemployment conditions that contributed to the delinquencies had passed or eased, and his finances had improved. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

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. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay off or otherwise resolve his debts. On a recurring basis over the course of several years Applicant was unemployed. Available to Applicant is 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)."

Financial counseling and follow-up payment initiatives with his creditors could reasonably be expected of Applicant following his 2011 OPM interview to satisfy the good-faith and due diligence repayment requirements 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.” Based on the circumstances of this case, neither MC ¶ 20(c) or MC ¶ 20(d) apply.

While an applicant need not have paid or resolved every one of his proven debts or addressed all of his debts simultaneously, he needs a credible plan to resolve his financial problems, accompanied by implementing actions. See ISCR Case No. 07-06488 (App. Bd. May 21, 2008). Applicant has no payment history with any of his listed creditors or established payment plan for satisfying his proven debts. Applicant’s lack of documented corrective efforts taken to date stabilize his finances preclude him from meeting his evidentiary burden of mitigating the covered debts.

From a whole-person standpoint, the evidence is insufficient to demonstrate that Applicant has mounted sufficient good-faith efforts over the two years since he returned to full-time employment to satisfy his outstanding debts. Since he did not provide any endorsements or documentation of his work-related evaluations and civic contributions, whole-person assessment lacks sufficient information to provide any material countervailing considerations to take into account in making an overall trust assessment. Resolution of his delinquent accounts is a critical prerequisite to his regaining control of his finances. While unemployment conditions may account for many of Applicant’s accumulated debts, he failed to provide any explanatory material for consideration. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of his overall clearance eligibility, but were not provided.

Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his accumulation of delinquent debts. It is still too soon to make safe predictive judgments about Applicant’s ability to repay his debts and restore his finances to stable levels commensurate with the minimum requirements for holding a security clearance. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.o.

Personal conduct concerns

Security concerns over Applicant’s judgment, reliability and trustworthiness are raised under Guideline E as the result of his drug-related arrest and conviction in 2008 and his ensuing convictions in connection with all but his 2011 assault charges. By violating state drug and assault laws, Applicant displayed poor judgment, untrustworthiness, and unreliability. Both DC ¶ 16(c) “credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;” and DC ¶ 16(d)(3), “a pattern of dishonesty or rule violations,” apply to

Applicant's situation. Without more information from Applicant, it is too soon to make safe predictions about Applicant's ability to avoid any recurrent criminal offenses in the foreseeable future. None of the mitigating conditions are fully applicable to Applicant.

In evaluating all of the circumstances surrounding Applicant's offenses associated with his still recent charges and convictions, his explanations in his 2011 OPM interview, and whole-person considerations, the presented proofs are insufficient to enable him to convincingly refute or mitigate the adverse displays of judgment, untrustworthiness, and unreliability exhibited in his 2008 and 2009 offenses. Questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, are each core policy concerns of the personal conduct guideline (AG ¶ 15), and fully apply to Applicant's situation. Unfavorable conclusions are warranted with respect to subparagraphs 2.a and 2.b. Based on the dismissal of Applicant's 2011 charges without any showing of Applicant's culpability, favorable conclusions are warranted with respect to subparagraph 2.c.

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): AGAINST APPLICANT

Subparas. 1.a through 1.o:	Against Applicant
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GUIDELINE E: (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraph 2.a-2.b:	Against Applicant
Subparagraph 2.c:	For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

