

Applicant responded to the SOR on April 24, 2015, and requested a hearing. The case was assigned to me on July 7, 2015, and was scheduled for hearing on August 3, 2015. At the hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (herself) and no exhibits. The transcript (Tr.) was received on August 11, 2015.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with documented federal and state tax payment summaries covering tax year 2010 (federal) and 2013 (state), debt consolidated agreements and payments, and character references. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Applicant supplemented the record with consolidated debt payment and counseling agreements, a schedule of unsecured, non-priority creditors covered in Applicant's 2004 Chapter 7 bankruptcy petition, a federal (2010 tax year) payment history, and a state (2013 tax year) and a timely filed 2013 state tax return with an accompanying explanation. Applicant's post-hearing submissions are admitted as AEs A-F.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) incurred a state tax lien covering taxes owed for tax year 2013 in the amount \$3,249; (b) accrued the following delinquent debts: federal taxes owed for tax year 2010 in the amount of \$15,054 and six accumulated debts exceeding \$24,000, and (c) petitioned for Chapter 7 bankruptcy relief in July 2004 and received her discharge in October 2004.

In her response to the SOR, Applicant admitted several of the remaining listed debts (subparagraphs 1.c-1.g), but denied the remaining allegations. She claimed she paid or settled the remaining debts through debt consolidation agreements.

Findings of Fact

Applicant is a 55-year-old truck driver 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 married in August 1993, separated from her husband in 1999, and divorced him in April 2003. (GE 1; Tr. 56-57, 60) She remarried in July 2007. (Tr. 60-61) Applicant has no reported children from either marriage. (GE 1) She has three adult children (ages 33, 31, and 28) from relationships that did not lead to marriage. None of her children received financial support from their respective fathers. (Tr. 61)

Applicant has worked for her current employer since May 2011 as a truck driver. (GEs 1 and 5) Records reveal that she has been regularly employed by various trucking firms since April 2008 with no breaks in employment. (GE 1) She and her husband haul Government explosives. (Tr. 29) While married to her first husband (August 1993 to April 2003), she stayed at home to raise her children and was limited to part-time jobs. (Tr. 62)

Applicant's finances

Applicant has a lengthy history of financial setbacks and difficulties in managing her finances. As a truck driver, she periodically encountered slow downs in trucking assignments. In July 2004, she petitioned for Chapter 7 bankruptcy relief. (GE B; Tr. 50-51) In her petition, she scheduled \$23,000 in unsecured, non-priority claims. (AE B) She attributed her bankruptcy filing to marital problems with her first husband while raising five children (three of whom are hers). (Tr. 59) She received her Chapter 7 discharge in October 2004. Following her discharge, she was better able to manage her finances effectively before facing renewed financial shortages during the national economic downturn in the 2008-2012 time frame.

Between 2010 and 2012, Applicant accumulated a number of delinquent debts, which she attributed to income shortages. (GEs 1 and 5) During this period, she accrued delinquent federal and state income taxes exceeding \$23,000. (GE 5) Records document that Applicant accumulated delinquent federal income taxes of \$15,054 for tax year 2010 and incurred a state lien in 2013 covering delinquent state taxes owed in the amount of \$3,249. (GEs 2-4)

In April, 2013, Applicant and her husband engaged a good certified public accountant (CPA) to help them with their debts. With the aid of their retained CPA, Applicant and her husband established an installment agreement with the Internal Revenue Service (IRS) that called for monthly payments of \$350. (AE E; Tr. 30-31) Applicant's payment history with the IRS reflects credited monthly payments over a two-year period in excess of \$12,125 and satisfaction of the federal taxes owed for tax year 2013. (AE E; Tr. 30-31)

To date, Applicant has not established any installment agreement with her state taxing authority. (AE F) She did furnish a copy of her completed 2013 state tax return bearing a filing date of January 24, 2013 and an amount owed of \$2,465. (AE F) She claimed she paid most of the amount due with her state tax refund, leaving only a \$400 balance to satisfy the state tax due for 2013. (Tr. 35, 46) She provided no documentation, though, of her tax refund and her payments to the state taxing authority. (AE F; Tr. 47) She is in the process of making \$100 monthly payments for the next four months until the \$400 remaining balance is paid off. (Tr. 46-47)

Other delinquent debts accumulated by Applicant include a delinquency balance of \$17,079 on a work truck (i.e., an 18 wheel hauling truck) that Applicant and her husband purchased in 2006. (GEs 2-5) Faced with diminishing work opportunities between 2007 and 2010, she could not keep up with her truck payments and voluntarily surrendered the

vehicle to the lender in 2010. (GEs 2-5; Tr. 29-30) When the public sale of the truck did not produce enough sales proceeds to satisfy the balance owing, Applicant was notified by the lender in December 2013 of a \$17,079 deficiency balance. (GE 5) Applicant has since settled the balance due in full. (AE C; Tr. 30, 47)

Besides her truck delinquency, Applicant has incurred deficiency debts with other creditors. (GEs 2-5) The debts listed in the SOR are reported as follows: creditor 1.c, a credit card account opened in March 2005 for \$2,000 (currently listed as \$3,222); creditor 1.d, a credit card account opened in April 2009 for \$1,700 (currently listed as \$1,454); creditor 1.e, a consumer account opened in July 2006 for \$1,700 (currently listed as \$1,454), creditor 1.f, a credit card account opened in May 2008 for \$700 (currently listed as \$907); and creditor 1.g, a credit card account opened in 2006 for \$1,000 (currently listed as \$937). (AEs A and B) Both the creditor 1.f and creditor 1.g debts were opened in 2006 and reflect duplicate accounts. (GEs 2-4) Applicant's credit card advances were used for miscellaneous personal and work items. (GE 5; Tr. 53) She attributed her accrued debts to poor financial management. (GE 5)

In April 2013, Appellant established a payment agreement with a debt consolidation firm. (AE B) Her account activity statement of August 2013 reflects monthly payments of \$571 and deductions of various amounts covering customer fees and transaction fees between April 2013 and August 2015. (AE B) How these payments were allocated, and to what creditors, is unclear.

Contemporaneously with completing her debt consolidation agreement, Applicant engaged a financial consulting firm in April 2013 to counsel them on how to address their outstanding debts. She provided a list of creditors to the firm that includes four of Applicant's listed creditors in the SOR. (AE A) The agreement authorized the firm to debit Applicant's bank account with distributions to cover the counseling firm's fees and pay outs to the creditors scheduled in her agreement with the firm. (AE A) Payments to any of the listed creditors are not covered in this agreement.

Applicant established a separate payment plan with creditor 1.d in April 2013 to pay off her \$1,454 delinquent debt with this creditor. (AE D) Her documented payment history with this creditor over a two-year period (April 2013 through July 2015) credited Applicant with close to \$5,600 in total payments on this account. (AE D) These payments appear to be sufficient to have either discharged her creditor 1.d debt, or paid off most of this debt.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance 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 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. The following AG ¶ 2(a) factors are pertinent: (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.

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).

Analysis

Security concerns are raised over Applicant's history of petitioning for Chapter 7 bankruptcy relief (2004), accruing delinquent federal and state taxes (2010 and 2013), and accumulating delinquent consumer debts (including a deficiency on a repossessed truck).

Applicant's tax debt obligations and accruals of consumer debts over a three-year period (2010-2014) warrant the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶ 19(c), “a history of not meeting financial obligations,” apply to Applicant's situation.

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 also explicit in financial cases.

Applicant's accumulation of delinquent debts, inclusive of federal and state tax delinquencies, merit application of MC ¶ 20(b), "the conditions that resulted in the financial problem 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 hardships associated with her lack of trucking opportunities (some associated with the economic downturn) and her corresponding loss of income are extenuating with respect to the debts she incurred during recurrent periods of income contraction. Her recurrent hardships account for her continuing to accumulate tax and consumer debt delinquencies while fully employed.

To date, Applicant has made substantial gains in satisfying her outstanding debts and stabilizing her finances to post-bankruptcy levels. Applicant's repayment efforts over a two-year period (2013-2015) have produced positive results. Applicant's repayment efforts entitle her to the mitigating benefits of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Prospects for Applicant's satisfying the small balance owing on her 2013 state tax debt and remaining consumer debts under her debt consolidation program are promising and likely to succeed. Applicant's use of financial counseling to help her address her debts was also helpful and entitles her to the application of 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."

With her additional resources available from her trucking operations, Applicant is able to demonstrate the level of financial progress required to meet the criteria established by the Appeal Board for assessing an applicant's efforts to rectify her financial condition with responsible efforts considering her circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Establishing a meaningful track record of debt reduction does not require the satisfaction of every listed debt in the SOR, but only that she have an established plan for resolving her debts and taking significant steps to implement that plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) This, Applicant has achieved with her payment and counseling efforts.

From a whole-person perspective, Applicant's demonstrated repayment efforts are substantial and enough to overcome security concerns associated with her history of financial instability, dating to 2004 when she petitioned for, and was granted, Chapter 7 bankruptcy relief. Applicant's struggles with reduced employment opportunities and corresponding reduced income are extenuating, and her efforts to repay her creditors through direct payments and repayment agreements are commendable, given her circumstances.

Considering all of the circumstances surrounding Applicant's accumulation of tax and consumer debts and her repayment initiatives, her actions to date in addressing her finances are sufficient to meet mitigation requirements imposed by the guideline

