

Applicant responded to the SOR on October 19, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on January 6, 2016. He had 30 days to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. Applicant did not respond to the FORM.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated three delinquent debts exceeding \$59,000, respectively. Allegedly, each of the listed delinquent debts remain delinquent.

In his response to the SOR, Applicant admitted each of the listed debts and provided explanations. He claimed he is no longer indebted to the U.S. Department of Education (DOE) since the student loan account was transferred to an entity charged with servicing the DOE student loans. He claimed the current balance on his student loan has been reduced to \$28,188, with a last payment in October 2015 for \$400. Applicant claimed his creditor 1.b debt was charged off due to financial hardship (i.e., his wife's losing her job), but he has continued to make payments on the loan from January 2013 to October 2015, with a most recent payment of \$200 in October 2015. And, he claimed his creditor 1.c debt was paid off in October 2015.

Findings of Fact

Applicant is a 55-year-old engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in August 1981 and has three adult children from this marriage, ages 32, 24, and 23. (Item 3) He earned an associate's degree in June 1982 and a bachelor's degree in August 1994. (Item 3) He claimed no military service. Applicant has worked for his current employer since August 1983 as an engineer.

Finances

Between 2013 and 2014, Applicant accumulated three delinquent student loan accounts. (Items 4 and 5) He opened his student loan account in September 2007 and received disbursed loan funds of \$27,736. (Items 4 and 5). Applicant's credit reports document that Applicant was current with his DOE student loan account through March 2012. (Item 5) In March 2012, his student loan account was transferred to an educational servicing arm of the DOE. Records indicate that Applicant was delinquent in his loan account for 120 days or more after making a most recent reported payment in March 2013. Thereafter, the loan was transferred to another lender in August 2013. (Item 5) Applicant claimed to have made 12 timely payments, and a last payment of \$400 in October 2015, on his student loan account with his lender. He claimed to have

a present balance on his account, which is in current status. However, he provided no documented proof of his payment and current account status. (Item 2)

Applicant's claim that his student loan referenced in subparagraph 1.a of the SOR is in current status at this time is too lacking in documentary corroboration to be accepted. Credit reports (like the ones admitted in this case) create presumptions of authenticity and accuracy. The Appeal Board has explained that credit reports can "normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations." ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) The Government's admitted credit reports are entitled to considerable weight.

An updated credit report, while not conclusive, might have shed light on the status of Applicant's creditor 1.a student loan, but was not provided. Without a historical payment summary to track Applicant's payment history on the loan, inferences of payment status with this lender have no probative evidence to draw upon to verify Applicant's payment claims with creditor 1.a. Applicant's claims that he is current with creditor 1.a cannot be accepted without documented proof that his student loan account is in current status with creditor 1.a's successor servicing agent.

In May 2008, Applicant opened a line-of-credit with creditor 1.b. Reported credit limits on the account were \$44,100. (Item 5) The account became delinquent in April 2013 with a past due balance of \$4,380. (Item 5) Records reveal that the account was closed in October 2013 and charged off with a delinquent balance of \$30,172. (Item 4) Applicant has since made payments on the account and reduced the delinquent balance to \$26,772 with a most recent payment of \$200 in July 2015. (Items 2 and 5) Applicant's creditor 1.b account is still in delinquent status, however, with no documented plan to pay or resolve the delinquent account.

Credit records reveal that Applicant opened an account with creditor 1.c (date unknown) and the account became delinquent in July 2013 with a past due balance of \$768. (Item 5) Applicant claimed he paid this debt, and the debt was removed from his 2015 credit report. (Item 2) Applicant's 2015 credit report reflects the deletion of this relatively small creditor 1.c debt without explanation. Considering all of the facts in the record, his claims of payment of this debt are credible and are accepted.

Applicant attributed his creditor 1.b and 1.c debts to financial hardship due to his wife's losing her job. (Item 2) However, he provided no details about the duration of her unemployment or the effects her unemployment had on his own finances. He furnished no evidence either of his income, financial counseling, family budget, or personal financial statement. (Item 2)

Character Evidence

Applicant provided no character references on his behalf, either with his answer or with his response to the FORM. Nor did he furnish any performance evaluations or evidence 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."

The AGs 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.

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 guideline is 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. . . 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.

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 Executive Order 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 fully employed engineer for a defense contractor who accumulated delinquent debts exceeding \$59,000. Two of the listed debts were charged off (i.e., debts owed to creditors 1.a and 1.b). Neither of these listed debts bear documented evidence of their being addressed over the past year and returned to current status. Only Applicant's debt owed to creditor 1.c has been fully paid and resolved.

Applicant's collective accumulation of delinquent debts 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 obligation," apply to Applicant's situation.

Applicant's pleading admissions with respect to his accumulation of delinquent 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 filing lapses

and debts are fully documented in his credit reports. Some judgment problems persist over Applicant's insufficiently explained accrual of delinquent student loan and line-of-credit debts. To date, he has taken insufficient documented steps to resolve his two principal delinquencies and demonstrate he acted responsibly in addressing his listed debts. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Inferentially, Applicant's delinquent debts are attributable in part to inattention and the loss of spousal employment. Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay or otherwise resolve his debts. Partially 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."

What is not clear from this developed record are the specifics of Applicant's claims of bringing his creditor 1.a student loan and creditor 1.b line of credit debts into current status. Neither updated creditor reports nor explanations from these two creditors covering the status of Applicant's accounts with these creditors were provided. Without documentation of the payment histories of creditors 1.a and 1.b, and the specific steps he has taken to address these past-due debts, mitigation credit is not available to Applicant based on the evidence developed in the record.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent mortgage and consumer debts and failure to resolve them. Resolution of his listed delinquent accounts is a critical prerequisite to his regaining control of his finances.

While unanticipated financial burdens might have played some role Applicant's failures to address his delinquent debts on a consistent basis, he failed to provide more specific explanatory material for consideration. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of her 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 lapses in judgment associated with his accumulation of delinquent student loan and line-of-credit debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's accrual of delinquent student loan and line-of-credit debt accumulations and his lack of more specific explanations for his debt accruals and resolution of them, it is still too soon to make safe predictions of Applicant's ability to satisfactorily resolve his debts.

More evidence is needed to determine whether Applicant's is making the necessary progress with his creditors to facilitate conclusions that his finances are sufficiently stabilized to permit him access to classified information. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a and 1.b. Favorable conclusions are warranted with respect to subparagraph 1.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

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|------------------------|-------------------|
| Subparagraphs 1.a-1.b: | Against Applicant |
| Subparagraph 1.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

