

Applicant responded to the SOR on December 9, 2014, 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 April 14, 2015, and responded to the FORM within the time permitted. The case was assigned to me on May 28, 2015.

In his response to the FORM, Applicant furnished a statement of explanation and an updated credit report of April 27, 2015 that reflects the removal of the three listed debts in the SOR. Applicant's post-FORM submissions are admitted as Items 5 and 6.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated three delinquent debts exceeding \$25,000. Allegedly, these listed debts remain unpaid.

In his response to the SOR, Applicant denied each of the alleged debts. He claimed each of the debts were resolved and no longer appear on his credit report of December 14, 2014. (Item 2) Applicant attached a copy of his most recent credit report, along with a letter of explanation.

Findings of Fact

Applicant is a 37-year-old senior technician 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 his first wife in April 2002 and divorced her in August 2011. (Item 3) He remarried in October 2011 and has no children from either marriage. (Item 1) Applicant attended college classes between March 2005 and April 2007. (Item 3) He enlisted in the Navy Reserve in October 2001 and served six years in the Navy's Inactive Reserve. (Item 3) He received an honorable discharge in October 2007. (Item 3)

Finances

While married to his first wife, Applicant opened three credit card accounts: one with creditor 1.a in January 2007, one with creditor 1.b in July 2008, and one with creditor 1.c in October 2006. (Item 4) Between 2010 and 2013, these three accounts became delinquent. When reported in Applicant's April 2013 credit report, these three debts exceeded \$25,000 and were charged-off by the respective creditors.

In both his SOR response and post-FORM submission, Applicant attributed responsibility for his listed debts to the actions of his first wife who utilized the three credit cards covering the listed debts in the SOR without his permission. (Items 2 and 5) He claimed he has since resolved the debts and has had them removed from his

updated credit report. He provided no documented specifics, though, of when and how his debts were settled or resolved.

Applicant's April 2013 credit report reveals that the three listed debts were charged off in 2011 (creditor 1.a), 2012 (creditor 1.c), and 2013 (creditor 1.b) for the amounts owed. (Item 4) Last payments reported were in 2008 for creditor 1.a, in 2013 for creditor 1.b, and in 2010 for creditor 1.c. (Item 4) While two of the accounts are listed as individual revolving accounts, creditor 1.b includes an authorized user (presumably Applicant's first wife). Whether Applicant's wife used his credit cards without his permission cannot be determined from the supplied credit reports or Applicant's explanations. Conceivably, assigned responsibility for the listed debts was covered in Applicant's divorce decree. However, his divorce decree was not included in the record. Applicant provided no explanations either as to why these three debts were not addressed with his first wife once he received the monthly bills from the creditors in issue.

In his post-FORM statement of response, he claimed he worked with his creditors in 2013 to settle his debts at a lower balance, and then had the debt entries removed from his credit report. (Items 5 and 6) For reasons unclear, he could not retrieve his payment records from his bank to document their satisfaction. (Item 5)

Applicant's three listed debts entail significant amounts. Two of the debts (creditors 1.a and 1.c) are covered in Applicant's updated April 2015 credit report as charged-off accounts. None of his credit reports reveal what 2013 payment actions Applicant took with his three listed creditors. Without more documented payment progress, Applicant's listed debts cannot be considered to be settled or resolved through voluntary payment initiatives. That one of his listed debts (creditor 1.b) no longer appears on his latest updated credit report is not by itself persuasive evidence of his satisfying the debt by payment or other means of resolution.

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."

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 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 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. 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

Applicant is a fully employed welder for a defense contractor who accumulated three delinquent debts between 2010 and 2013. These three debts represent defaulted consumer accounts opened by Applicant and ultimately charged-off by the individual creditors between 2011 and 2013 for non-payment. Applicant attributed the debt delinquencies to the actions of his first wife.

Applicant's accumulation of delinquent debts and his past inability or unwillingness to address these 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 most 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. Some judgment problems persist, too, over Applicant's unexplained delinquencies and his failure to demonstrate he acted responsibly in addressing his listed debts once he became aware his ex-wife was misusing his credit cards. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). These debts were charged-off by the creditors in 2012. Not only are his listed debt delinquencies ongoing, but he has failed to address them in any tangible way.

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).

In Applicant's case, his debts are attributable in part to the actions of his first wife who ostensibly misused the three credit cards in issue without Applicant's advance approval. 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 when and how Applicant's first wife misused his credit cards and why Applicant was not able to address the debts earlier before they were charged-off. Whether he acted responsibly is directly contingent upon his providing documented evidence of how he addressed his finances. Without documentation of financial counseling and specific steps he has taken to address his three delinquent 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 the three delinquent debts listed in the SOR. Since they became delinquent, he has not shown any manifest effort in addressing any of his covered debts to mitigate his still delinquent accounts. Resolution of his delinquent accounts is a critical prerequisite to his regaining control of his finances.

While spousal actions might have played a considerable role in his accumulation of the three delinquent debts in issue, Applicant 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 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.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations and his lack of more specific explanations for his debt accruals, it is still 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.

More time is needed to facilitate's Applicant's making the necessary progress with his finances 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 through 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

Subparas. 1.a through 1.c: Against 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

