

Applicant responded to the SOR on April 10, 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 September 21, 2015, and did not respond to the FORM. The case was assigned to me on November 10, 2015.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated two debts exceeding \$39,000. Allegedly, each of the listed delinquent debts remain outstanding.

In his response to the SOR, he did not dispute any of the listed debts, and he provided explanations. He claimed the student loan debt covered in subparagraph 1.a became delinquent when his son could not find a job after 2008 graduation and Applicant could not help him due to his own layoff. He claimed he is back to paying the student loan debt and has reduced the \$46,000 accrued balance to \$35,300, as of April 2015, is current in his payments, and is pledged to pay the student debt in full.

Addressing the creditor 1.b lease debt, Applicant claimed he moved out of his apartment with a proper 30-day notice before his lease expired. He claimed he vacated the apartment with the unit in good condition. He claimed his landlord later billed him for \$1,337, even though he vacated the apartment before his lease expired without any rent demands. Applicant claimed he challenged the landlord's billing and provided documentation from the landlord confirming only \$212 was still owing, as of February 2008. And he claimed he is trying to negotiate a settlement with the landlord.

Findings of Fact

Applicant is a 56-year-old electronics 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 in May 2010 and has one child (age unclear) from this marriage. (Item 3) He attended vocational classes in 1981 and earned an (ET) diploma in February 1981. (Item 3) He claimed no military service.

Applicant has worked for his current employer since March 2014. Between October 2012 and March 2014, he was unemployed. After working for his previous employer for over four years between June 2008 and October 2012, he was laid off. (Item 3) Previously, he worked for other employers. He experienced unemployment as well between February 2006 and June 2008. (Items 3 and 5)

Finances

In 2004, Applicant co-signed for student loans with creditor 1.a to fund his son's education in the approximate amount of \$32,000. (Item 3) These accounts became

delinquent in 2009 because (a) Applicant's son could not find a job after graduating from college in 2008 and (b) Applicant could not afford the monthly loan payments by himself. (Items 3 and 5) By 2012, the delinquency balance on the loans had grown to \$46,220, in part due to the added transfer fees by succeeding lenders. (Items 3 and 5)

In 2014, Applicant arranged for an installment agreement with the lender that called for minimum monthly payments of \$334. His bank statements attached to his answer reflect regular \$334 monthly payments between May 2014 and April 2015. (Items 2 and 5) He pledged to continue making his minimum monthly payments required to maintain the accounts in current status. (Items 2 and 5)

Applicant also incurred an alleged deficiency balance on a lease he vacated in February 2008 following a layoff. In his interview with an agent of the Office of Personnel Management (OPM) in June 2014, he assured that he paid half of the last month's rent with the landlord's approval before vacating the apartment. (Item 5)

Surprised to later get a bill from creditor 1.b for \$2,780, he has maintained a long-running dispute with the creditor over the last billed amount. His documented letter from his landlord in February 2008 confirmed a last payment of \$1,442 in February 2008 and a current balance due of \$212 to cover various apartment fees assessed by the landlord. (Item 2) Applicant continues to dispute creditor 1.b's \$2,780 claimed lease debt that is reported in Applicant's credit reports as an outstanding debt. (Items 2, 4 and 5)

Applicant attributed his debt delinquencies to periods of unemployment in 2008, and between October 2012 and March 2014. (Items 2-3 and 5) He considers his current financial condition to be much improved. (Items 2 and 5)

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. 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.

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 electronics technician implementation manager for a defense contractor who accumulated two debts that have been reported to be in delinquent status: one accepted and exceeding \$36,000 and another disputed in the alleged amount of \$2,780. His son’s student loan debt fell into delinquent status in 2009 when his son could not find work and Applicant himself was in layoff status. Applicant has since resumed payments on his son’s student loan accounts. These accounts have been returned to current status with the benefit of an installment agreement and documented regular monthly payments between May 2014 and April 2015.

The other listed SOR debt is a disputed payment demand from creditor 1.b that Applicant claims was previously settled in February 2008. He documented the basis of his dispute with a lease billing agreement that Applicant documented with a February 2008 letter from the landlord confirming receipt of a \$1,442 payment and a residual balance owing for miscellaneous fees totaling \$212. Subsequently, the landlord billed Applicant for the entire last month of the lease (i.e., \$2,780), which Applicant rejected and has continued to dispute the billing with the hopes of settling the account with the landlord.

Applicant’s accumulation of two delinquent debts warrant initially 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 obligations,” apply to Applicant’s situation.

Applicant’s pleading admissions with respect to his two listed 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 credit reports. To date, he is current with his son’s student loan accounts and has established a good-faith dispute with the apartment landlord who claims money owing from Applicant’s last month of his lease. Applicant documented in his pleading

submissions that he acted responsibly to resolve his two 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 student loan debts are attributable for the most part to income shortages following his layoff in 2008. Based on the documented materials in the FORM, extenuating circumstances are associated with Applicant's inability to pay or otherwise resolve his debts. 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."

While the specifics of Applicant's dispute with his landlord are not detailed, the 2008 letter from his landlord that he attached to his answer is persuasive proof that any money allegedly owed to the landlord is not \$2,780, but no more than \$212 for assorted landlord fees at the most. Applicant meets his burden of establishing a good-faith dispute and may take advantage of MC ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue."

Whole-person assessment enables Applicant to surmount the judgment questions raised by his accumulation of two alleged delinquent debts. Resolution of his listed delinquent student loan accounts and credit to his demonstrating a good-faith dispute of the debt alleged by his landlord reflect positive on his judgment, reliability, and trustworthiness.

Overall, clearance eligibility assessment of Applicant based on the amount of information available for consideration in this record enables him to establish judgment and trust levels sufficient to meet minimum clearance eligibility criteria. Taking into account all of the documented facts and circumstances surrounding Applicant's efforts to reduce his student loan balances (i.e., from \$46,000 to under \$36,000) and resolve a 2008 landlord debt, favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a and 1.b.

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): FOR APPLICANT

Subparas. 1.a-1.b:

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

