

Applicant responded to the SOR on September 17, 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 December 1, 2015, and responded to the FORM within the time permitted with a statement explaining his wife's handling of his state tax lien for 2011 and his federal tax liens for tax years 2010 and 2012. His post-FORM documentation included a December 2015 letter from his tax advisors covering a tax savings account set up to administer his wife's commission deductions to meet their IRS tax obligations; IRS certificates of tax lien releases for taxes owed for tax years 2010 and 2012; and a December 2015 listing of their home for sale. Applicant's submissions are admitted as Items 8 through 10.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated delinquent debts as follows: (a) a medical judgment entered against Applicant in 2010 in the approximate amount of \$626; (b) two federal tax liens: one filed in 2012 for \$7,561 and one filed in 2010 \$37,372; and (c) two delinquent debts totaling \$152.

In his response to the SOR, Applicant admitted all of the allegations except for the alleged debts covered in subparagraphs 1.d and 1.e. Applicant claimed he paid the alleged judgment debt covered in subparagraph 1.a. He claimed he has been paying \$1,000 a month on the tax liens alleged in subparagraphs 1.b and 1.c. He claimed he paid the debt alleged in subparagraph 1.d and cannot locate the debt alleged in subparagraph 1.e. Applicant further claimed he has six children and has been helping them with their college expenses.

Findings of Fact

Applicant is a 54-year-old carpenter 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 October 1987 and has six children from this marriage, ages 16 to 26. (Items 2 and 3) He earned a high school diploma in June 1980 and listed no other education credits. Applicant claimed no military service and has worked for his current employer since May 2002. (Item 3)

Finances

Applicant presents with a considerable history of accrued federal tax liens. In a signed, sworn statement of February 2004, he acknowledged several adverse judgments that he subsequently satisfied in full and a 2003 tax lien with the IRS for \$8,431, covering tax years 1997, 2000, and 2001, that his wife satisfied in full in October 2003. (Item 7) Records document that Applicant incurred another federal tax lien in June 2006 for federal taxes owed in excess of \$115,000. (Item 6) These tax

problems that led to the 2003 and 2006 tax liens resulted from his wife's not paying enough estimated taxes from her real estate income. (Items 6 and 7) There is no record evidence that his wife changed her tax withholding practices before 2015.

Since 2008, Applicant and his wife accumulated additional delinquent debts. They accrued the following debts: a medical judgment entered against Applicant in 2010 in the approximate amount of \$626 (creditor 1.a); two federal tax liens covering federal taxes owed for tax years 2008 and 2010-2012, with one lien filed in 2012 for \$7,561 and the other filed in 2010 for \$37,372 (creditors 1.b and 1.c); and two medical debts (creditors 1.d and 1.e) in the respective amounts of \$31 and \$121.

Applicant attributed his delinquent tax debts to his juggling of his children's student loan payments with his state and federal tax obligations. (Item 8) He explained the irregular nature of his wife's real estate commissions (a problem similar to what happened with her understated tax withholdings in 1997, 2000-2001, and 2004-2005) that complicated their ability to coordinate their tax payment allocations in 2008 and 2010-2011. (Item 8)

IRS account transcripts attached to Applicant's answer confirm that Applicant was garnished bi-weekly by the IRS at the rate of \$1,000 a pay period (beginning in May 2012) to satisfy the \$37,372 tax obligation owed to the IRS for tax year 2008. (Item 2) The IRS, in turn, released its 2010 tax lien in December 2015. (Item 9) Documentation furnished by Applicant confirmed his satisfaction of the tax lien filed by the IRS in 2012 covering the \$7,561 in federal taxes owed the IRS for tax years 2010 and 2011. (Item 9) Whether the taxes covered by the IRS's 2012 lien were paid off voluntarily by Applicant or satisfied by levy is unclear. Applicant confirmed his satisfaction of the \$626 amount owing on the judgment taken by creditor 1.a in 2010. (Item 2) And Applicant documented his payoff of the \$31 debt owed to creditor 1.d. (Item 2)

Applicant assured he and his wife live within their means and have since placed their home on the market for sale for \$126,000. (Item 11) To date, there is no proof of sale of the house. To ensure that the required state and federal taxes are available for timely disbursement in the future, Applicant's wife opened a tax savings account in November 2015. (Item 7) Under the terms of their tax savings account agreement, 35 percent of her real estate commissions will be automatically deducted and reserved to meet her IRS obligations. (Item 9)

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 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 carpenter for a defense contractor who accumulated an adverse monetary judgment in 2010, two IRS tax liens in 2010 and 2012, respectively, and two small debts. The two tax liens, totaling in excess of \$45,000 in the aggregate, have since been resolved and released by the IRS. And both the \$626 judgment and \$31 consumer debt have been satisfied. Only resolution of Applicant’s small \$121 debt remains undocumented.

Applicant’s accumulation of delinquent debts are significant and reflect a recurring pattern of accruing delinquent tax debts and ensuing liens, beginning in 1997 and continuing through 2006. Listed SOR debts include an adverse monetary judgment and two substantial IRS liens. Together, 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 his accumulation of unaddressed 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 debts are fully documented in his credit reports. Some judgment problems persist over Applicant’s insufficiently explained accrual of an adverse judgment (creditor 1.a) and two IRS tax liens (creditors 1.b and 1.c). While Applicant’s tax liens have since been satisfied and released, neither of them were openly

resolved voluntarily and follow a pattern of major federal tax liens lodged between 2003 and 2006, and continuing through 2012. To be considered a good-faith resolution of a debt to an overdue creditor requires evidence of voluntary payment or some other good-faith action aimed at resolving the applicant's debts. See ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 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 for the most part to delays, competing financial obligations, and judgment lapses in addressing his consumer and federal tax debts. Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay or otherwise resolve his judgment and tax 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." Because Applicant's voluntary steps to resolve his tax delinquencies and show he acted responsibly in addressing his debts are demonstrably limited, his actions do not meet the requirements of the second prong of MC ¶ 20(b) (i.e., "and demonstrate he acted responsibly.") See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

While Applicant's tax liens have since been satisfied and released, neither of them were openly resolved voluntarily. To be considered a good-faith resolution of a debt to a overdue creditor requires evidence of voluntary payment or some other good-faith action aimed at resolving the applicant's debts. See ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) Repayment through garnishment, bankruptcy, or other legally available option does not meet the requirements of the good-faith mitigating condition. Accordingly, MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," has only limited application to Applicant's situation.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of an adverse judgment and two IRS tax liens covering multiple tax years. Good-faith resolution of his listed debts is a critical prerequisite to his regaining control of his finances. And these good-faith steps are for the most part missing in Applicant's addressing of his listed debts. Evidence of financial counseling and community and civic involvement is also lacking. While his wife's initiatives in setting up a tax savings account for future tax planning is encouraging, this action by itself is not enough to overcome his past tax judgment lapses in addressing his finances.

While unanticipated federal tax accruals might have played a considerable role in his joint failures to pay enough withholding taxes in the years covered in the tax liens, Applicant failed to provide more specific explanatory material covering his wife's failure to correct her withholding practices after resolving the 2003 tax lien. More detailed explanations for his wife's maintaining her withholding practices after being alerted of her withholding shortfalls are needed to mitigate financial concerns. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of his overall clearance eligibility, but were not provided.

Taking into account all of the documented facts and circumstances surrounding Applicant's accrual and resolution of an adverse judgment and tax liens covering multiple tax years (i.e., tax years 2008 and 2010-2011), it is still too soon to make safe predictions of Applicant's ability to manage his finances safely and prudently in the foreseeable future. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.c. Favorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.d and 1.e.

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

Subparagraphs. 1.a through 1.c:	Against Applicant
Subparagraphs: 1.d and 1.e.	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

