

Applicant responded to the SOR on August 17, 2015, and requested a hearing. The case was initially assigned to me on October 20, 2015, and reassigned to another judge on October 23, 2015 for venue change reasons, before being reassigned to me on October 29, 2015. The case was scheduled for hearing on November 20, 2015. At the hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on two witnesses (including himself) and three exhibits (AEs A-C). The transcript (Tr.) was received on December 4, 2015.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement it with documented payment initiatives regarding his outstanding second mortgage. 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 correspondence and email exchanges between Applicant's counsel and the lender, Applicant's financial statement, credit union account statements, and a state financial determination. Applicant's post-hearing submissions were admitted as AE D.

In December 2015, I confirmed my receipt of Applicant's submissions and admission of the same. I noted Applicant's settlement offer and the lender's counter offer with terms of payment. Based on Applicant's submissions, I notified the parties that I would hold the record open until February 19, 2016, to afford Applicant the opportunity to document his signed approval of the lender's counter offer and satisfaction of the latter's payment terms. In January 2016, Applicant documented his satisfaction in full of the lender's offered settlement terms. Applicant's submissions were admitted as AE E.

Summary of Pleadings

Under Guideline F, Applicant allegedly accrued a delinquent second mortgage obligation in the amount of \$26,034. Allegedly, this mortgage debt remains outstanding.

In his response to the SOR, Applicant admitted the debt with explanations. He claimed the debt arose from a home equity loan secured by a second mortgage on Applicant's home. He claimed the first mortgage was foreclosed in August 2010 and disclaimed any fault for the foreclosure. He attributed the foreclosure to his loss of work.

Further, Applicant claimed the lender offered no help and threatened foreclosure if Applicant did not cure the default within three months. And he claimed that when he failed to cover the debt owed, the lenders foreclosed on their respective mortgages and should have been fully compensated from the sale proceeds.

Findings of Fact

Applicant is a 49-year-old employee of 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 September 1997 and has one child from this marriage (age 18) and a step daughter (age 26), both of whom reside at home. (GE 1; Tr. 53-54) He earned his high school diploma in 1983 with honors. (GE 1; Tr. 22) Applicant attended college classes between September 1988 and May 1996 (GE 1) and earned two associate's degrees in May 1991 and a bachelor's degree in May 1996 with distinction. (GE 1; Tr. 24-25, 27-28)

Applicant has been employed by his current firm since July 2014. (GE 1; Tr. 55) Contemporaneously with his current employment, he has worked for another contractor as a temporary, part-time logistics lead. (GEs 1 and 5; Tr. 59) Previously, he held low-paying seasonal jobs with other employers. (GE 1) Between April 2013 and December 2013 he was unemployed, and between July 2011 and April 2013, he was employed in a professional capacity. (GE 1)

Records also reveal that between May 2008 and July 2011 Applicant worked as an engineering technician for another defense contractor before the firm lost its contract. (GE 1; Tr. 58-59) Between March 1996 and March 2008, Applicant worked various jobs (mostly seasonal work), with one reported layoff between April 2006 and October 2006. (GE 1; Tr. 35) He has held security clearances since 2009 with no reported adverse incidents or reprimands. His assurances that he has always maintained satisfactory performance ratings are accepted. (Tr. 52-53)

Applicant enlisted in the Navy in 1984 and served three years of active duty before receiving an honorable discharge in April 1988. (GEs 1 and 5; Tr. 22-23) While in training, he distinguished himself in his electronic course work and throughout his active duty Navy service. (Tr. 23-24) Between April 1988 and April 1991, he served in the Active Reserve, and between April 1991 and April 1993, he served in the Inactive Reserve. (GEs 1 and 5; Tr. 26)

Applicant's finances

Applicant and his wife purchased a home in December 2004 and financed their purchase with a Veterans Administration (VA) guaranteed first mortgage of \$196,150. (GEs 3-5; Tr. 30) In January 2006, while still fully employed, Applicant obtained a second mortgage from creditor 1.a in the amount of \$24,655. (GEs 3-4; Tr. 30)

While out of work and working low paying jobs (beginning in April 2006), Applicant and his wife encountered financial difficulties and struggled to keep up their mortgage payments on their first and second mortgages over the ensuing three years. (GEs 1-5; Tr. 30-31) After making his mortgage payments for almost three years following his 2006 layoff, Applicant defaulted on his first mortgage in April 2009, and on his second mortgage with creditor 1.a in October 2009. (GEs 3-5; Tr. 30-32, 36)

In March 2007, Applicant placed his home on the market for sale and received two offers: one for \$205,000 and another for \$207,000. (Tr. 33, 37). Each of the offers, if accepted by Applicant and his first mortgagee, and finalized with a sale, would have satisfied the balance owing on the first mortgage and most of the second mortgage as well. (AE A; Tr. 36-37) Credit reports confirm that his first mortgage account was charged off in January 2010. (GEs 3-4)

In the face of his layoff in 2006 and resumed work in low paying jobs, Applicant worked diligently with both his first mortgagee and his creditor 1.a mortgagee to restructure his mortgage payments to affordable levels, but to no avail. Records confirm that creditor 1.a charged off its loan in January 2010, and the first mortgagee followed in September 2010 with its noticed commencement of foreclosure proceedings. (GEs 3-4; Tr. 41-43)

At the time of the first mortgagee's foreclosure of its interest in September 2010, Applicant had a deficiency balance of \$30,117 on the first mortgage. (GEs 2-5) For three years prior to the first mortgagee's foreclosure, he made earnest attempts to sell his home in a falling real estate market. (GE 5; Tr. 39)

All of Applicant's received offers were turned down due to the strict loan-to-value ratios placed on sales by the VA. (GE 5; Tr. 37-39) VA loan restrictions required the sale price to be no less than 92 per cent of the appraised value of the property, which in the case of Applicant's home would be \$212,000 based on the VA's appraised value of \$230,000. (GE 5 and AE A)

Prior to the scheduled hearing, Applicant contacted creditor 1.a by written correspondence in November 2015 to inquire about potential arrangements for repaying the second mortgagee's deficiency balance to clear his credit. (AE A; Tr. 74-7) Because creditor 1.a had never contacted Applicant about its deficiency balance, Applicant felt no prior urgency to explore settlement with the lender. (Tr. 41-42) In his November 2015 letter, he inquired of creditor 1.a as to whether the lender was willing to work with Applicant in structuring a payment settlement. (AE A) Prior to the hearing, he received no reply from the creditor.

Applicant subsequently learned that his home sold for \$150,000 at the scheduled foreclosure sale, leaving a deficiency balance of less than \$5,000 on the first mortgage and almost a \$26,000 deficiency owing to the second mortgagee. (GEs 3-5; Tr. 40-41) This made creditor 1.a essentially a sold-out junior lienor under recognized principles of foreclosure law. (Tr. 43)

With limited take-home income (estimated to be \$1,500 bi-weekly) and modest available resources, that currently includes unemployment checks, Applicant could not easily satisfy the deficiency balance without imposing heavy burdens on his family budget. (GE 5 and AE A; Tr. 75-77) Moreover, he was under the mistaken impression at the time about creditor 1.a's charged off debt. Applicant believed he was relieved of any ongoing legal responsibility for the loan deficiency. As a result of this mistaken

impression, he made no effort before the hearing to address the debt. (Tr. 41) Even with potentially available funds in his 401(k) retirement account, the available funds in this 401(k) account (only \$11,764) was not enough to fund his creditor 1.a debt. (AE B; Tr. 79-80) While his annuity with another firm (currently \$84,327) permits withdrawals (but not loans), this firm imposes penalties on withdrawals. (AE C; Tr. 80-81), Applicant did not want to invade his annuity to pay off the creditor 1.a debt. Having once before withdrawn from his 401(k) account to pay bills, subjecting himself to a penalty, he did not want to access his 401(k) retirement account again. (Tr. 75, 78-79)

Afforded a post-hearing opportunity to address his creditor 1.a deficiency, Applicant engaged creditor 1.a and made an initial \$10,500 settlement offer to the lender in December 2015. (AE D) Creditor 1.a, in turn, rejected Applicant's offer and made a counteroffer of \$14,793, with scheduled payments as follows: a series of \$250 monthly payments due in December 2015 and January 2015, respectively, and a final balloon payment of \$14,293 in February 2016. (AE D)

In an ensuing submission Applicant accepted creditor 1.a's terms and documented his payment of the entire agreed amount in January 2015 in full compliance with creditor 1.a's demands. (AE E) Applicant is credited with satisfying the deficiency balance owed to creditor 1.a (AE E) and demonstrating current status with the remainder of his debts listed in his credit reports. (GEs 3-4) With his demonstrated good credit standing with his other creditors and documented settlement of his creditor 1.a debt, Applicant countered Government suggestions that his past failures to address his creditor 1.a deficiency balance reflected a calculated intention to avoid payment of the 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 chances; (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 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 comes to these proceedings as a highly trained and skilled professional who, after a significant layoff in 2006 and ensuing period of underemployment, encountered severe income shortages that ultimately caused him to default on his first and second mortgages. Security concerns are raised over Applicant’s accruing a delinquent deficiency balance on his foreclosed second mortgage following foreclosure of the first mortgage. Applicant’s accrual of a deficiency on his foreclosed second mortgage warrants 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.

Extenuating circumstances are present in connection with Applicant’s accumulation of a delinquent deficiency balance with creditor 1.a following foreclosure of the first mortgage. Applicant’s circumstances 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 his layoff in 2006 and ensuing underemployment contributed to Applicant’s problems with his two mortgages.

Before his layoff in 2006, Applicant enjoyed good credit. With his reduced income while unemployed and working low paying seasonal jobs, Applicant struggled to stay current with his two mortgages and ultimately defaulted on both of them. He sought assistance from his first mortgagee to no avail and tried for several years to market his property at levels sufficient to pay off his first mortgage and most of his second

mortgage, but without success. Although he received two satisfactory offers, he encountered resistance from the VA on the sale prices of both offers and could not complete the sales. Since the hearing, Applicant fully documented his satisfaction of the payment terms set by creditor 1.a

To his credit, Applicant has made substantial gains in working with creditor 1.a and ultimately meeting the creditor's terms with documented settlement of the outstanding deficiency balance. Applicant's payment efforts entitle him to the mitigating benefits of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

With the satisfaction of the only listed debt in the SOR and his improved credit standing, 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 his financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009).

Cases cited by Department Counsel covering characterized structured defaults by applicants with identified means to satisfy delinquent mortgages are distinguishable from Applicant's situation. These decisions all involve situations where the borrower possessed the financial means to cure the mortgage default but chose not to and intentionally defaulted in his loan by ceasing making payments. (Tr. 102-103) *Compare* ISCR case No. 12-02859 (App. Bd. May 16, 2014) which has precedential value with ISCR Case Nos. 11-08271 (May 30, 2013) and 10-10627 (January 20, 2012) that do not. These authored decisions raised questions about the applicant's judgment, reliability, and trustworthiness that are not present in the facts of Applicant's case.

Here Applicant showed sustained efforts to save his property from foreclosure before the burdens of unsuccessful attempts with his first mortgagee to modify his loan and market his property became too much to sustain and avoid the foreclosure. Ultimately, though, he satisfied his creditor 1.a debt; notwithstanding that the debt had long been written off. Overall, Applicant's actions represented good faith efforts to address his second mortgage debt, and not to avoid the debt through a structured default.

From a whole-person perspective, Applicant's demonstrated repayment efforts are substantial and enough to overcome security concerns associated with his 2010 foreclosure and resulting deficiency balance with his second mortgagee (creditor 1.a). His contributions to the national defense that are demonstrated with his eight years of military service are commendable and worthy of considerable weight when assessing his trustworthiness and reliability.

Considering all of the circumstances surrounding Applicant's accrual of a deficiency and settlement of the debt that had been charged off for many years with no evidence of creditor enforcement, his actions in settling his debt and overall positive credit standing are sufficient to meet mitigation requirements imposed by the guideline

governing his finances. Favorable conclusions are warranted with respect to the allegations covered by subparagraph 1.a. of Guideline F.

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

Subpara. 1.a:

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

