



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
 )  
 --- ) ADP Case No. 18-01940  
 )  
 Applicant for Public Trust Position )

**Appearances**

For Government: Aubrey M. De Angelis, Esquire, Department Counsel  
For Applicant: *Pro se*

04/12/2019

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns regarding financial considerations. Eligibility to occupy a public trust position is denied.

**Statement of the Case**

On October 25, 2016, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On May 30, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued her a set of interrogatories. Applicant responded to those interrogatories on June 20, 2018. On August 27, 2018, the DOD CAF issued a Statement of Reasons (SOR) to her, under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD CAF was unable to make an

affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant received the SOR on September 11, 2018. In a sworn statement, dated October 30, 2018, Applicant responded to the SOR and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on January 25, 2019, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to her case. Applicant received the FORM on February 6, 2019. Applicant's response was due within 30 days of the receipt of the FORM. Applicant apparently chose not to respond to the FORM, for as of March 26, 2019, she had not done so. The case was assigned to me on March 26, 2019.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted some of the factual allegations in the SOR (SOR ¶¶ 1.a., 1.d., 1.f., and 1.g.). She denied with comments and attachments the remaining allegations. Applicant's admissions, comments, and the information in the attachments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 49-year-old employee of a defense contractor. She has been serving as a medical service coordinator with her current employer since February 2017. A 1988 high school graduate, she received an associate's degree in 2006. Applicant has never served with the U.S. military. She has never held a security clearance, and it is unclear if she ever held a position of public trust. Applicant was married in 1992. She has two children, born in 1993 and 1996.

### **Financial Considerations<sup>1</sup>**

It is unclear when Applicant's financial difficulties first arose, although those problems and the unidentified circumstances that led to them were sufficient to motivate her to voluntarily jointly file, with her husband, for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code in November 1996. Deemed by the bankruptcy trustee as having no

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<sup>1</sup> General source information pertaining to the financial issues discussed below can be found in the following exhibits: Item 4 (e-QIP, dated October 25, 2016); Item 5 (Enhanced Subject Interview, dated November 21, 2017); Item 5 (Subject Contact, dated March 26, 2018); Item 6 (Response to Interrogatories, dated June 20, 2018); Item 9 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 7, 2017); Item 10 (Equifax Credit Report, dated April 20, 2018); Item 11 (Equifax Credit Report, dated December 31, 2018); Item 7 (Bankruptcy Petition, filed November 14, 1996); and Item 8 (Bankruptcy Petition, filed May 3, 2007).

assets, Applicant's unspecified debts were discharged in March 1997.<sup>2</sup> Although her financial slate was clean and she was given a fresh start following the 1997 bankruptcy discharge, unemployment from February 2007 until April 2007, as well as various unspecified circumstances and issues again arose within a decade, and in May 2007, she again voluntarily jointly filed for bankruptcy under Chapter 7.<sup>3</sup> This time, she managed to accrue \$113,897 in debts to creditors holding unsecured nonpriority claims, essentially consumer charge accounts, credit cards, medical bills, student loans, and vehicle-related expenses.<sup>4</sup> Recognizing that debts for most student loans (Applicant listed \$23,920 in such loans) are not discharged, the bankruptcy judge discharged Applicant's other debts on August 22, 2007.<sup>5</sup>

Once again, the financial slate was clean and she was given another fresh start, and once again, the cycle of financial difficulties reappeared, only this time, they did so within four years, starting in 2011. She had been unemployed from September 2007 until January 2008. In 2011, faced with foreclosure on her residence, she submitted a deed in lieu of foreclosure; she drank heavily, consuming up to seven or eight drinks at a time (when three or four led to intoxication), and she became intoxicated every weekend; and she became depressed. While she timely filed her federal personal income tax return for the tax year 2011, she failed to make her final payment of the accrued tax, interest, and penalty, until November 2014.<sup>6</sup> During the next few years, additional issues arose involving unspecified mental health treatment and additional periods of unemployment, and she failed to pay her personal state income taxes for the year 2016, although she told an investigator from the U.S. Office of Personnel Management (OPM) in November 2017 that she would start paying the estimated \$790 owed starting the following month,<sup>7</sup> something she failed to do as of March 2018.<sup>8</sup> Instead, on an unspecified date, Applicant

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<sup>2</sup> Item 7, *supra* note 1.

<sup>3</sup> Item 8, *supra* note 1.

<sup>4</sup> Item 8 (Schedule F – Creditors Holding Unsecured Nonpriority Claims).

<sup>5</sup> Item 8 (Discharge of Debtor, dated August 22, 2007).

<sup>6</sup> Item 6 (Account Transcript - 2011, dated June 15, 2018).

<sup>7</sup> Item 5 (Enhanced Subject Interview), *supra* note 1, at 5.

<sup>8</sup> Item 5 (Subject Contact), *supra* note 1, at 9. Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unlisted and unalleged delinquent accounts and other issues will be considered only for the five purposes listed above.

and the state department of revenue entered into a repayment plan calling for monthly automatic \$25 withdrawals.<sup>9</sup>

In addition to her two Chapter 7 bankruptcies, the SOR alleged five purportedly continuing delinquent debts totaling \$50,063 that had been placed for collection, as follows:

(SOR ¶ 1.a.) is a student loan with a total unpaid balance of \$20,547 (which subsequently increased to \$22,306, as reflected in her December 2018 credit report), of which \$767 (which subsequently increased to \$2,414, as reflected in her December 2018 credit report) was past due, for which Applicant has failed to report any efforts to resolve.<sup>10</sup> In her October 2016 e-QIP, Applicant said that she planned to contact the creditor and make arrangements to get the debt resolved, and since she had just obtained a new higher-paying job, her efforts would commence “very soon.”<sup>11</sup> In her June 2018 response to the interrogatories, she indicated an intent to contact the creditor “to get caught up.”<sup>12</sup> However, in her October 2018 Answer to the SOR, she admitted that the account remains delinquent, and she failed to mention any efforts to contact the creditor to resolve the account. According to her December 2018 credit report, Applicant made an unspecified payment to the creditor in December 2017, but as of 12 months later, she was at least 120 days or more than four payments past due.<sup>13</sup> The account has not been resolved.

(SOR ¶¶ 1.b. and 1.c.) are two medical accounts with unpaid balances of \$572 and \$315, which are under a combined repayment plan authorizing 18 monthly \$50 debits from her checking account, commencing in June 2018.<sup>14</sup> Applicant contended in her Answer to the SOR that the two of the medical accounts were on repayment plans and were being paid, but she failed to submit meaningful documentation, such as copies of receipts or her bank account statements, to support her contentions that any payments had been made. In the absence of such documentation, it is unclear if the accounts are in the process of being resolved.

(SOR ¶ 1.d.) is unpaid federal personal income tax for the tax year 2016 in the amount of \$4,164.10, as of July 2, 2018. Applicant was previously credited by the IRS with making \$100 payments on April 15, 2017, and again on September 13, 2017. No

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<sup>9</sup> Letter, dated May 31, 2018, attached to Applicant’s Response to Interrogatories.

<sup>10</sup> Item 9, *supra* note 1, at 7; Item 10, *supra* note 1, at 2; Item 2, *supra* note 1, at 2.

<sup>11</sup> Item 4, *supra* note 1, at 35.

<sup>12</sup> It should be noted that the Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

<sup>13</sup> Item 11, *supra* note 1, at 2.

<sup>14</sup> Item 10, *supra* note 1, at 2; Letter, undated, attached to Applicant’s Answer to the SOR.

further evidence was presented showing any other efforts by Applicant to resolve the delinquency, and there is no pending installment agreement.<sup>15</sup> In the absence of such evidence, that account has not been resolved.

(SOR ¶ 1.e.) is unpaid small business taxes in the amount of \$24,465 for the tax years 2015 and 2016 owed by the limited liability company (LLC)<sup>16</sup> that Applicant's father owned and for which he was the registered agent and responsible party.<sup>17</sup> Applicant worked full-time as general manager or office manager of the LLC from January 2008 until November 2015.<sup>18</sup> In January 2017, the IRS informed Applicant that she was responsible for the LLC's taxes, and it combined the taxes owed by the LLC to Applicant's unpaid income taxes for the tax year 2011.

On January 2, 2018, a financial services organization specializing in tax relief issues, representing Applicant, wrote a letter to the IRS requesting abatement of penalties associated with the LLC's taxes.<sup>19</sup> In the letter, Applicant was described as not the individual responsible for financial decisions for the business, but was merely the day-to-day office manager. She had no decision-making responsibilities with regard to payroll, accounting, or bookkeeping. She was directed to pay only those bills that she was instructed to pay by her father. Faced with insufficient funds to keep the operation afloat, Applicant requested that her father close it and sell the assets to pay for operating debt. Exacerbating the situation were the deteriorating family dynamics following the demise of Applicant's mother and the severe depression of her father. Applicant attempted to withdraw from the LLC in early 2015, but her father threatened suicide if she left. She refused to sign quarterly tax reports, and she was unaware of any issues involving the IRS as her father was the sole individual associated with the LLC who was authorized to do so.<sup>20</sup> The IRS responded on several occasions in 2018, indicating that it was working on the account, requesting additional information, and indicating on June 8, 2018, that the matter had been forwarded to the Special Procedures function of Applicant's area IRS office.<sup>21</sup>

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<sup>15</sup> Item 6 (Account Transcript - 2016, dated June 15, 2018).

<sup>16</sup> One of the most significant benefits of an LLC is that of pass-through taxes. The IRS treats one-member LLCs as sole proprietorships for tax purposes. This means that the LLC itself does not pay taxes and does not have to file a return with the IRS. LLC "owners" don't have to file a corporate tax return, but simply reports their share of profit and loss on their individual tax return.

<sup>17</sup> The "responsible party" is the person who ultimately owns or controls the entity or who exercises ultimate effective control over the entity. The person identified as the responsible party should have a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the person, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets. See IRS Instructions for Form SS-4, Rev. December 2017.

<sup>18</sup> Item 4, *supra* note 1, at 15; Item 5 (Subject Contact), *supra* note 1, at 9.

<sup>19</sup> Letter, dated January 2, 2018, attached to Applicant's Response to the interrogatories, and to Applicant's Answer to the SOR.

<sup>20</sup> Letter, *supra* note 19.

<sup>21</sup> Letter, dated June 8, 2018, attached to Applicant's Response to the interrogatories.

Applicant signed a 2013 Biennial Report for a state LLC in August 22, 2014, as the office manager, and as such she was a person authorized by the company to sign the report. However, the report in question clearly listed Applicant's father as the registered agent for the LLC. Applicant's name on the report is only her signature as a person authorized by the company to sign the report, not as the responsible party.<sup>22</sup> While the information reflected in the IRS-directed documentation regarding Applicant's status with the LLC constitutes a scintilla of evidence guessing that Applicant was a "responsible party" of the LLC, never actually identifying her as such, that level of evidence failed to constitute substantial evidence of that fact. Accordingly, while Department Counsel noted that DOHA is not the appropriate entity to determine Applicant's status with respect to the LLC tax liability, such a position does not prevent me from weighing the evidence to determine if there is substantial evidence of Applicant's liability and responsibility for the LLC taxes. Further confusing the situation is that according to the Secretary of State's records, this particular LLC, identifying Applicant's father as the registered agent of the LLC, became inactive on April 10, 2012.<sup>23</sup>

Applicant's joint family adjusted gross income was \$80,567 for the tax year 2011; \$64,453 for the tax year 2012; \$72,028 for the tax year 2013; \$75,761 for the tax year 2014; \$69,602 for the tax year 2015; and \$53,774 for the tax year 2016.<sup>24</sup>

Other than a certificate of credit counseling in May 2007 associated with Applicant's 2007 bankruptcy, and an inferred identical type of counseling associated with her 1996 bankruptcy, there is no evidence that Applicant has received more recent financial counseling. There is no evidence of a budget. Applicant did not explain what corrective actions she has taken over an extensive period to avoid the pitfalls or other factors that she identified as the ones that caused her financial difficulties. She offered only generalized explanations for her failure to make more timely attempts to resolve her accounts. Furthermore, there is no Personal Financial Statement to reflect her current net monthly income, monthly expenses, or any remainder available for discretionary use or savings. There is no evidence to indicate that Applicant's financial situation is now under control.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a [position of public trust]."<sup>25</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such

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<sup>22</sup> Item 12 (2013 Biennial Report, dated August 22, 2014).

<sup>23</sup> Administrative Judge Exhibit I (Business Entity Summary, dated April 11, 2019).

<sup>24</sup> Account Transcripts, various dates, attached to Applicant's Response to the interrogatories.

<sup>25</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

information. DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.<sup>26</sup>

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for a public trust position.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and common sense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>27</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>28</sup>

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather

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<sup>26</sup> It should be noted that a memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, Adjudication of Trustworthiness Cases, dated November 19, 2004, covers the handling of trustworthiness cases under the Directive. The memorandum directed the Defense Office of Hearings and Appeals (DOHA) to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

<sup>27</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>28</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.<sup>29</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline F, Financial Considerations**

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has had a long-standing problem with her finances, stretching back over two decades. As a result, various accounts became delinquent. She had two Chapter 7 bankruptcies and now has more delinquent accounts. Her student loans are delinquent and she owes the IRS over \$4,000. She may also owe the IRS over \$24,465 on behalf of the LLC. AG ¶¶ 19(a) and 19(c) have been established, but AG ¶ 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties under AG ¶ 20:

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<sup>29</sup> *Egan*, 484 U.S. at 531.



(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;<sup>30</sup>

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>31</sup>

(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 provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶¶ 20(b), 20(c), 20(d), and 20(e) minimally apply, but neither of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing

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<sup>30</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

<sup>31</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

financial difficulties make it difficult to conclude that it “was so infrequent,” or that it is “unlikely to recur.” Applicant’s financial problems started in 10-year cycles, with Chapter 7 bankruptcy discharges in 1997 and 2007, and the cycle started again within four years. While Applicant generally attributed her financial difficulties to a variety of factors, including heavy drinking, depression, mental health treatment, periods of unemployment, and to a degree, her relationship with her father, in truth, in the absence of more complete explanations and some documentation to support her contentions, few of those factors were due to conditions that were largely beyond her control. Applicant’s financial slate was clean and she was given a fresh start following both bankruptcies, but her account balances continued to rise until they became unmanageable, and then delinquent. A residence was almost foreclosed, but was saved by a deed in lieu of foreclosure; a student loan was largely ignored; state and federal personal income taxes went unpaid, and she does not have a pending installment agreement with respect to her delinquent 2016 federal personal income taxes.

While Applicant submitted a repayment agreement pertaining to her delinquent medical accounts, as noted above, she failed to submit meaningful documentation such as copies of receipts or her bank account statements, to support her contentions that any payments had been made. In the absence of such documentation, the accounts may be in the process of being resolved, or they may not be.

It is difficult to conclude that Applicant made substantial timely good-faith efforts to resolve her delinquent accounts, despite periods of having reasonably modest income during the years 2011 through 2016. Applicant was initially interviewed by the OPM investigator in November 2017, and although she made promises to contact her creditors to start resolving her delinquent debts, she essentially failed to follow through. An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her eligibility for a public trust position is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests.<sup>32</sup> A person who still has not addressed those debts raises even more doubts.

There is no evidence of a budget. There is limited and stale evidence of financial counseling. However, there is substantial evidence of a dispute related to the federal tax liability of the LLC that the IRS has attributed to Applicant. As of June 8, 2018, the IRS’s special procedures office was still looking into the matter. Applicant offered no evidence to indicate that her financial situation is now under better control. In this instance, to date, there is minimal meaningful evidence that corrective actions have been taken by Applicant. Applicant’s actions, or inaction, under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment.<sup>33</sup>

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<sup>32</sup> See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018).

<sup>33</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Trustworthiness decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, especially after a multi-year delay in taking any action, without further confirmed action, are insufficient.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of public trust by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

- (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.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of public trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>34</sup>

There is some evidence mitigating Applicant's conduct. Applicant is a 49-year-old employee of a defense contractor, serving as a medical service coordinator since February 2017. A high school graduate, she received an associate's degree in 2006. She experienced several relatively brief periods of unemployment.

The disqualifying evidence under the whole-person concept is more substantial. Applicant has had a long-standing problem with her finances, stretching back over two decades. Her delinquent debts were discharged by two Chapter 7 bankruptcies a decade apart, and her financial slate was clean and she was given a fresh start, but now she has more delinquent accounts. Her student loans are delinquent and she owes the IRS over

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<sup>34</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

\$4,000 for the tax year 2016. It is also possible that she may also owe the IRS over \$24,465 on behalf of the LLC. Applicant essentially ignored her debts over the years, despite making repeated statements in her e-QIP, to the OPM investigator, in her response to the interrogatories, and in her Answer to the SOR, that she would start making payments. She contended that there was a repayment plan for two medical accounts, and while she submitted the plan, she failed to submit documentation to reflect any payments were actually made. When she had the opportunity to present more current evidence of any good-faith efforts to resolve the other delinquent accounts alleged in the SOR, she failed to do so, even after the FORM was sent to her. Considering all of the above, I am unable to reach a positive conclusion pertaining to Applicant's eligibility for a position of public trust.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>35</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated an extremely poor track record of debt reduction and elimination efforts, seemingly continuing to avoid her debts. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has failed to mitigate the trustworthiness concerns arising from her financial considerations. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

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<sup>35</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraphs 1.f. and 1.g.:	Against Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a position of public trust to support a contract with the DOD. Eligibility is denied.

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ROBERT ROBINSON GALES  
Administrative Judge