



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



In the matter of:

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ISCR Case No. 18-02342

Applicant for Security Clearance

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel

For Applicant: Leon J. Schachter, Esq.

11/12/2019

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant made significant progress resolving her delinquent debts especially after she received the statement of reasons (SOR). However, she used a corporate credit card to purchase personal items costing thousands of dollars while she was overseas, and she failed to expeditiously repay the corporation for the personal charges. For two years she has not paid the corporation anything. Personal conduct security concerns are refuted; however, financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 28, 2017, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On February 1, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines F (financial considerations) and E (personal conduct). (HE 2) On April 22, 2019, Applicant responded to the SOR and requested a hearing. (HE 3)

On May 29, 2019, Department Counsel was ready to proceed. On July 22, 2019, the case was assigned to me. On July 23, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice, setting Applicant's hearing for September 26, 2019. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered 3 exhibits; Applicant offered 53 exhibits (some of Applicant's exhibits had multiple parts); there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 8-9, 13-18; GE 1-3; Applicant Exhibit (AE) A-AE BB) On October 7, 2019, DOHA received a transcript of the hearing. Applicant provided 20 post-hearing exhibits, which were admitted without objection. (AE Y1-AE FF4) Some of Applicant's post-hearing exhibits had multiple parts, and some duplicated previously submitted exhibits. AE Y1 through AE BB were given new exhibit numbers because of exhibits admitted at the hearing. All proffered exhibits were admitted into evidence. The record closed on October 28, 2019. (Tr. 141, 149) On October 29, 2019, I emailed Applicant's Counsel and requested that he provide the letter that he promised to send to the creditor in SOR ¶ 1.ff and any subsequent response from the creditor. (HE 7) I did not receive a response to my post-hearing request.

Some details in this case were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

### **Findings of Fact**

In Applicant's SOR response, she admitted the SOR allegations in ¶¶ 1.a, 1.b, 1.c, 1.f through 1.p, 1.s, 1.w, 1.x, 1.y, 1.aa, 1.bb, 1.cc, and 1.dd. (HE 3) She partially admitted the allegations in SOR ¶¶ 1.e and 1.ff. She denied the other SOR allegations. (HE 3) She also provided extenuating and mitigating information. (HE 3) Her admissions are accepted as findings of fact.

Applicant is a 42-year-old cybersecurity analyst employed by a defense contractor for the previous 10 months. (Tr. 21) Her resume provides details about her professional background. (AE U) She was married from 2002 to 2010, and she has no children. (Tr. 21; GE 1) She has three years of college, and she majored in cybersecurity. (Tr. 21) She volunteers in her community and assists several professional organizations. (Tr. 23; SOR response) Recently, she successfully completed the Certified Information Security Professional (CISP) Examination. (Tr. 24) She has completed other information technology training courses. (SOR response; AE A1, A2)

Applicant served in the Army from 1995 to 2004. (Tr. 28) She left active duty as a sergeant (E-5), and she received an honorable discharge. (Tr. 28; AE FF1) She received the following awards, ribbons, and decorations: Army Achievement Medal (3<sup>rd</sup> Award); Air Force Achievement Medal; National Defense Service Medal; Global War on Terrorism Service Medal; Noncommissioned Officer (NCO) Professional Development Ribbon; Army Service Ribbon; and Overseas Service Ribbon. (AE FF1) She successfully completed numerous Army training courses. (AE FF1) Applicant's enlisted specialty was in information security. (Tr. 28) Applicant has a service-connected disability, and she receives payments from the Department of Veterans Affairs (VA). (Tr. 31-32; AE FF1) She was unemployed from October 2017 to July 2018, from May 2015 to September 2015, from June 2011 to July 2011, from November 2010 to December 2010, from May 2006 to October 2008, and from July 2005 to October 2005. (Tr. 64-65, 110-111; GE 1) In April 2002, she received a certificate of commendation from the Association of the U.S. Army. (AE FF3) In 2002, she received an Army Achievement Medal for being the battalion NCO of the quarter. (AE FF4)

### **Financial Considerations and Personal Conduct**

Applicant's SOR alleges 32 delinquent debts totaling \$92,948. Their status is as follows:

SOR ¶ 1.a alleges a charged-off debt for \$18,937. Applicant purchased a used vehicle, and she learned that she was unable to afford the payments. (Tr. 29) The vehicle was voluntarily repossessed. (Tr. 29, 37) She started a payment plan after the creditor sold the vehicle; however, due to her unemployment, she was unable to continue making the payments. (Tr. 30) On March 9, 2019, the creditor acknowledged receipt of a \$100 payment. (Tr. 34-35; AE G) The creditor indicated there should be a payment agreement established enabling the creditor to withdraw \$100 monthly from Applicant's account to address the debt; however, she did not establish the automatic debit from her account. (Tr. 38; AE G) The current balance owed according to the creditor was \$8,776. (Tr. 32-33; AE G; AE Y3) She made a \$100 payment in August 2019, and then she stopped making payments. (Tr. 33-35; AE Y2) She asked her consolidated debt payment plan (CDPP) to add this debt to her plan. (Tr. 33; AE Z)

SOR ¶ 1.b alleges a charged-off debt for \$9,143. Applicant accepted overseas employment; she did not have time to sell the vehicle; and she surrendered the vehicle to the creditor holding a lien on her vehicle resulting in this debt. (Tr. 39, 42) She was transferred overseas in December 2016. (Tr. 44; AE U) She paid \$147 in April 2019. (Tr. 44; AE H) She said she maintained "constant" communication with the creditor about the debt. (Tr. 41) At her hearing, she estimated the balance owed on the debt was about \$2,700. (Tr. 43) In August 2019, she paid \$100. (AE Z2) In October 2019, the creditor agreed to settle the debt for \$800, and Applicant paid \$800 that same month resolving the debt. (AE Z2-AE Z4)

SOR ¶ 1.c alleges a debt placed for collections for \$1,363. When Applicant was transferred overseas in December 2016, there was confusion over the status of her account. (Tr. 45-50; AE U) When she discovered the creditor sought more money, she

was unemployed and unable to resolve the debt. (Tr. 46) Applicant paid the creditor a total of \$1,090, and she made the final payment of \$545 on April 19, 2019, resolving the debt. (Tr. 46-48; AE I; AE BB2)

SOR ¶ 1.d alleges a debt placed collection for \$5,841. Applicant left an apartment and moved to a different state. (Tr. 50) She acknowledged that she broke her lease. (Tr. 52) In June 2011, her landlord wrote that Applicant “is a current resident in good standing at this property. She moved in on 26 August 2009 and has given notice to move out in July 2011.” (AE J) The creditor’s letter did not mention any charges to be imposed at the termination of the lease. (AE J) The creditor sent information about the delinquent debt to credit reporting companies in September 2011. (Tr. 53; GE 2) Applicant disputed her responsibility for this debt, and she filed disputes with the credit reporting companies in 2018. (Tr. 50-54) She contacted the creditor; however, Applicant believed the creditor was unable to provide information about the debt most likely due to frequent turnover in the rental office. (Tr. 53) The debt was removed from all of her current credit reports except one. (Tr. 51, 54)

The SOR alleges 19 medical or dental debts placed for collection totaling \$20,156 and listed in the following paragraphs: 1.e; 1.f; 1.g; 1.i; 1.j; 1.k; 1.l; 1.n; 1.o; 1.q; 1.s; 1.t; 1.u; 1.v; 1.w; 1.x; 1.aa; 1.dd; and 1.ee; for the following amounts: \$3,647; \$3,288; \$2,807; \$2,031; \$1,638; \$1,246; \$1,059; \$792; \$559; \$518; \$394; \$382; \$382; \$382; \$366; \$322; \$172; \$115; and \$56.

Applicant said the SOR and her credit report erroneously list the debt in SOR ¶ 1.e for \$3,647 as a medical debt, and it is actually a debt for employer-sponsored training. (Tr. 55-56) Her April 2019 credit report shows a \$3,769 debt originating in 2015 from the creditor listed in SOR ¶ 1.e actually resulted from a computer-training course. (AE K2) She said she disputed her responsibility for the debt in SOR ¶ 1.e. (Tr. 55-57; AE K) She showed that she requested that her employer pay the debt in 2014. (AE AA1; AE AA 2) She received the training. (Tr. 55-59) She believed her employer was paying the debt; however, she did not provide proof of employer payments. (Tr. 57-58) She said that she elected to include the debt in her CDP; however, it is not listed on her original CDP plan or on her amended October 2019 plan. (Tr. 61-62; AE L; AE EE1)

SOR ¶¶ 1.q, 1.t, 1.u, 1.v, and 1.ee allege five medical debts for \$518, \$382, \$382, \$382, and \$56, which are being collected by the same collection agent. Applicant disputed these five debts because the creditor would not describe the treatment she received, and in any event, even if the debts were valid, she believed they may be duplicates of other medical debts. (Tr. 81-83, 85-86) TransUnion wrote Applicant and indicated the accounts under collection by the creditor in SOR ¶¶ 1.q, 1.t, 1.u, 1.v, and 1.ee were deleted from her credit report. (AE O) However, she did not provide Equifax or Experian credit reports.

When Applicant was out of work, she did not have medical insurance, and she accrued medical bills. (Tr. 62, 73) She accumulated delinquent medical bills in 2011, 2012, and 2016. (Tr. 73) She made some payments to address her medical debts when she was employed. (Tr. 62, 74-76; AE Y; AE Z) She paid off several of her medical debts. (Tr. 66-67) She decided to employ CDP to pay her medical debts. (Tr. 62) On April 17, 2019,

she enrolled in CDPD to address 12 medical or dental SOR debts as well as the debt in SOR ¶ 1.z for \$315, and the non-medical debts in SOR ¶¶ 1.f for \$3,288 and 1.h for \$2,920. (Tr. 64; AE L; AE Z; AE EE1) Her payments to CDPD of \$436 were scheduled to begin on May 15, 2019. From May to August 2019, she paid CDPD \$2,169 for an average of \$434 per month for those five months. (AE X1-X5; AE EE2-EE6) She said she was making payments to CDPD twice a month. (Tr. 70, 76) The documentation she submitted did not show consistent bimonthly payments to CDPD. In June 2019, she made one \$112 payment; in July 2019, she did not make any payments; and in August 2019, she paid \$1,238 bringing her CDPD account current as of August 2019. (AE EE1-EE6) On June 27, 2019, CDPD emailed Applicant and informed her that two medical debts and the debt in SOR ¶ 1.z were paid. (AE V) On October 22, 2019, she changed her monthly “auto pay” payment to \$358. (AE EE1 at 2) She did not provide documentation showing payments in September and October 2019.

SOR ¶ 1.h alleges a debt placed for collection owed to a dating service for \$2,573. Applicant believed the services provided were not equal to those promised, and she disputed her responsibility for the debt. (Tr. 72) Ultimately, she accepted responsibility for the debt, and she placed the debt on her list for CDPD resolution. (Tr. 70-71; AE L; AE EE1)

SOR ¶ 1.m alleges a telecommunications debt placed for collection for \$853. On March 22, 2019, Applicant paid the creditor \$598, and the creditor said the debt is “settled in full.” (Tr. 79-80; AE M)

SOR ¶ 1.p alleges a vehicle insurance debt placed for collection for \$533. On April 2, 2019, the creditor wrote that the balance owed was zero, and the debt was settled in full. (Tr. 80; AE N)

SOR ¶ 1.r alleges a utility debt placed for collection for \$463. Applicant disputed her responsibility for this debt. (Tr. 84) She said she called the creditor; however, the creditor was unable to find any information on her account. (Tr. 84) She disputed the debt, and TransUnion wrote the debt was deleted from the TransUnion credit report. (AE O) She conceded the debt remained on one of her other credit reports. (Tr. 84-85)

SOR ¶¶ 1.y and 1.z allege two payday-loan debts placed for collection by the same collection agency for \$315 and \$315. On May 28, 2019, Applicant paid the debt in SOR ¶ 1.y for \$315. (Tr. 87-89; AE O; AE W; AE DD) In June 2019, CDPD informed Applicant that the debt in SOR ¶ 1.z was paid. (AE V)

SOR ¶ 1.bb alleges a utility debt placed for collection for \$151. On April 2, 2019, Applicant paid this debt. (Tr. 89-90; AE P)

SOR ¶ 1.cc alleges a telecommunications debt placed for collection for \$128. On April 2, 2019, Applicant paid this debt. (Tr. 90; AE Q)

Applicant received financial counseling. (Tr. 33-34; AE T) Applicant’s February 2019 budget indicates the following monthly amounts: gross income of \$8,643; net income

of \$7,911; expenses and liabilities of \$4,541 (rent is shown as \$1,350 and \$1,530); and remainder of \$6,571. (AE S) Usually the remainder is calculated by subtracting the expenses and liabilities from the net income, and using this calculation, the remainder would be \$3,370.

### **Corporate Credit Card**

SOR ¶ 1.ff alleges Applicant improperly charged \$32,177 to a corporate credit card, and her employer terminated her employment in September 2017. SOR ¶ 2.a cross-alleges the allegation in SOR ¶ 1.ff as a personal conduct security concern.

In about November 2016, Applicant accepted a position in Europe. (Tr. 91, 112-113) Her employer asked her to spend two weeks in Southwest Asia doing audits or audit training. (Tr. 91, 114) She stayed in Southwest Asia from about December 2016 to March or April 2017, a period of about three months. (Tr. 114-115, 120) She traveled from Europe to Southwest Asia twice. (Tr. 120) She was employed when she was in Europe and Southwest Asia. (Tr. 114) She stayed in a hotel for her first few days in Southwest Asia, and her hotel expenses were properly charged on her corporate credit card. (Tr. 115, 119) Most of the time she was in Southwest Asia, she stayed in an apartment, and her rent was not charged on her corporate credit card because her employer paid for her apartment. (Tr. 114-115) There was a per diem amount that limited the amount she would be reimbursed for meals. (Tr. 117)

Applicant understood that she would be submitting a reconciliation of her expenses after she returned to Europe. (Tr. 117) She purchased airline tickets and paid for a rental car with her corporate card. (Tr. 118, 121, 130) She received oral authorization to charge the rental car on her corporate credit card. (Tr. 130-131) After she returned to Europe, she submitted her expense reports related to her time in Europe and Southwest Asia. (Tr. 121-122) She was in Europe until October 2018. (Tr. 121) Her employer disputed her charge for flying business class on one occasion; however, she believed it was authorized because of the circumstances in a country where she waited for a connecting flight. (Tr. 122, 132-133) She purchased clothing using her corporate credit card, such as a jacket; however, she believed this expense was authorized. (Tr. 122) She also purchased a printer for her computer using her corporate credit card. (Tr. 130) She was unable to provide information about most of her purchases on her corporate credit card.

Applicant provided some emails to and from her employer to clarify and corroborate her statement about her use of the corporate credit card. On November 30, 2016, she emailed her supervisor:

I went over my finances last night and I have already spent quite a bit preparing for this trip. So I know my corporate card may not be ready but paying [for] a few nights in a hotel may not be ideal if the company is not taking care of it. Just want to be upfront so there will be no issues.

Applicant's supervisor responded in an email as follows:

Understood, we will cover the expenses, just won't pay out immediately if you have to expense it, hence my concern. I am working an angle on accommodations, might be able to directly cover it, so you won't have to expense it. I am requesting a corporate card for you, but not sure yet when you might get your hands on it. Shooting to get this [resolved] by the end of the week.

On October 6, 2017, Applicant emailed her supervisor and one other person:

I am currently planning how I will pay for the next couple months [of] payments before I start a new position. I would like to know if the company will be denying unemployment benefits. So I know if this is an option as a source for repayment or not. Thank you ma'am.

(AE R)

On November 28, 2017, Applicant reported the following information in her SCA:

I did use the corporate credit card for personal use and work related use. I was told that if we used it for personal use to pay it off right away. I also used it for work transportation and lodging, flight to [Europe] from [Southwest Asia] when I first moved, etc. . . . I tried to expense report much of it since the company was to pay for a lot of it and they rejected it. I was then asked [to] pay it all back in one lump sum. I could not so I was terminated. I came up with a payment plan and showed where they did not take care of things they said they would initially. We agreed upon the termination and repayment of the card though they are not responding for next payment. I have informed them of my recent job acceptance and my good faith in paying my debt.

(GE 1 at 19) Applicant's SCA states, "Provide the amount (in U.S. dollars) of violation:" and Applicant responded, "\$25,000 (Estimated)." (GE 1 at 61) She provided an explanation about what she was doing to take corrective action as follows:

I have started paying the card back and have an arrangement with the company to pay back monthly and again when I start working again. I paid a good faith payment before I left Italy [in] September [2017]. I have since tried to contact the POC and Human Resources to let them know I had secured a new job and how [I] would like to know a better way to send a payment since I would be Afghanistan because I really want to pay my debt. I have received no answer from the POC or human resources. I have email to show this.

(GE 1 at 61) She provided no emails from her former employer agreeing to a monthly payment plan. She provided no emails to her former employer explaining she was now

employed, and she did not provide any evidence of any payments after her October 6, 2017 email to her former employer.

On December 12, 2017, Applicant emailed her employer, "This is my third email to get in contact with you about paying my debt back. Can you please respond? Thank you." On December 13, 2017, a representative of her employer emailed Applicant, "Just send us a check for the full outstanding amount. Please respond." (Tr. 103-104; AE R) Applicant did not provide her response, if any, to her former employer's email of December 13, 2017.

Applicant provided additional information about her stay in Southwest Asia from about December 2016 to April 2017. Applicant was supposed to work at a DOD facility in Southwest Asia. (Tr. 92) When she arrived in Southwest Asia, she "didn't have a job. [She] basically sat there." (Tr. 92) She received a corporate credit card, and her supervisor orally said she could use it for reasonable expenses. (Tr. 92, 126; AE R) She understood that she could pay it back once she started to work again after she returned to Europe. (Tr. 92) After she returned to Europe, her employer audited her credit card, and told her she was only authorized to use the credit card for official business. (Tr. 92) Her employer asked her to pay the charges on her card. (Tr. 93) She made one \$2,000 payment with a cashier's check shortly after she returned to Europe from Southwest Asia; however, she did not receive a receipt showing this payment. (Tr. 101, 107, 124) At her hearing, she said 90 percent of the charges on her corporate credit card were for business purposes, and the remainder were for personal expenses. (Tr. 94, 96-97) However, in her SOR response, her attorney wrote that she "estimates that about \$10,000 of the balance was for personal use." (SOR response) She did not use the corporate credit card for blatantly improper purchases such as gambling or purchase of illegal drugs. (Tr. 98) Applicant had a personal credit card in Southwest Asia; however, it had a maximum limit of \$250. (Tr. 110)

Applicant's supervisor told her to make sure she paid back their employer. (Tr. 127) He said, "Pay them off as soon as possible." (Tr. 127) She understood that she could charge personal expenses; however, she had to repay those charges later. (Tr. 134-135) She acknowledged that she did not reimburse her employer for all of her personal expenses. (Tr. 128) She said she believed she did not retain copies of her expense reports. (Tr. 128-129) Her employer never filed a lawsuit to collect the funds from Applicant. (Tr. 137)

Applicant said her employer was able to review her charges on her card on the Internet; however, she was unable to see the charges because she was no longer employed by the company. (Tr. 94-95) Applicant indicated the amount of the debt as \$32,177 related to an amount on a promissory note. (Tr. 106-107) Applicant did not provide: a copy of the promissory note; the documentation supporting the amount owed; and/or a copy of her employer's rules, policies, or regulations regarding appropriate charges on her employer's corporate credit card.

Applicant's counsel said he wanted to submit a post-hearing-generated letter to the creditor asking for a copy of the bank statements pertaining to the corporate credit card that would show which charges were personal and which charges were corporate. (Tr.



101, 105, 108-109) The letter to the creditor was supposed to be submitted as an exhibit after the hearing. (Tr. 108-109, 140-142) I did not receive the letter to the creditor. (HE 7)

## 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 security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(b) unwillingness to satisfy debts regardless of the ability to do so”; and “(c) a history of not meeting financial obligations.” The record establishes AG ¶¶ 19(b) and 19(c).

AG ¶ 20 lists financial considerations mitigating conditions which may be applicable in this case:

- (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;
- (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; and
- (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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's SOR alleges 32 delinquent debts totaling \$92,948. Her finances were damaged by divorce, medical problems, and unemployment. These circumstances were largely beyond her control. However, she did not act responsibly under the circumstances because she did not take sufficient action to resolve her debt to her former corporate employer.

Applicant took some important steps towards showing her financial responsibility. She paid some debts or made payments towards other debts before the SOR was issued. She paid or settled and paid the debts in SOR ¶¶ 1.b, 1.c, 1.m, 1.y, 1.z, 1.bb, and 1.cc after the SOR was issued. She placed or promised to place the debts in SOR ¶¶ 1.a, 1.e, 1.f, 1.g, 1.i through 1.l, 1.n through 1.q, 1.s through 1.x, 1.aa, 1.dd, and 1.ee into her debt payment plan after the SOR was issued. However, some mitigating credit is lost because these actions were not taken until after the SOR was issued. The Appeal Board has stated:

[T]he timing of ameliorative action is a factor which should be brought to bear in evaluating an applicant's case for mitigation. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened.

ISCR Case No. 17-04110 at 3 (App. Bd. Sept. 26, 2019) (reversing grant of a security clearance and citing ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018)).

She disputed the debts in SOR ¶¶ 1.d and 1.r. When she contacted these two creditors they were unable or unwilling to provide corroboration of the amount of the debt.

The debt owed to Applicant's former employer alleged in SOR ¶ 1.ff is not mitigated. She has not made any payments for about two years. When she used the corporate credit card for personal purchases, this was akin to an emergency situation. She was in a foreign country without the means to pay for basic personal necessities. She was derelict in her responsibilities for not seeking documented proof that she was authorized to charge personal expenses on her corporate credit card. She emailed her supervisor about her expenses, and he authorized her to charge expenses in an email. However, her email to her supervisor was not clear about her desire to charge **personal** expenses on her corporate credit card. In any event, she admitted that she knew that she needed to immediately repay her employer for the personal expenses charged on her corporate card upon the termination of her travel. She was employed from December 2016 to October 2017. (AE U)

Applicant said she paid her former employer \$2,000 in 2017, and she acknowledged that she made about \$3,000 (hearing statement), about \$10,000 (SOR response), or about \$25,000 (SCA) in personal charges on her corporate credit card. Applicant's resume (AE U) indicates she has extensive business and corporate information technology experience. With her professional background and experience it is difficult to understand why she would not retain documentation of her personal and business expenses, a copy of the promissory note, and receipts. She says she did not keep her own copy of receipts or a copy of her reconciliation of her corporate credit card charges. Her budget indicates she has a substantial monthly remainder available to address her debts, and she did not prove that if she submitted payments her former employer would refuse to accept them. She did not meet her burden of establishing that

she acted reasonably and responsibly in regard to the SOR ¶ 1.ff debt. Financial considerations security concerns are not mitigated.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 lists conditions that could raise a security concern and may be disqualifying in this case including:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior . . . ;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

SOR ¶ 2.a alleges that Applicant misused a corporate credit card by charging personal items on it, and she was terminated from her employment. The foundation for these allegations is Applicant's statements. She consistently denied unauthorized use of her corporate credit card. There is no evidence that her employer trained Applicant on use of her corporate credit card. Applicant mistakenly believed she could use her corporate credit card for personal expenses while overseas. Applicant refuted the allegation that she intentionally committed theft or misappropriated her employer's funds.

The record evidence does not establish Applicant engaged in *crimen falsi* or intentional falsehood. Applicant's statements of lack of deceit and theft are accepted as credible. Personal conduct security concerns are refuted.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance 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 AG ¶ 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 AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 42-year-old cybersecurity analyst employed by a defense contractor for the previous 10 months. Her resume provides details about her professional background. She has three years of college, and she majored in cybersecurity. She volunteers in her community and assists several professional organizations. She recently successfully completed the CISP Examination, and she has completed other information technology training courses. She served in the Army from 1995 to 2004; she left active duty as a sergeant; and she received an honorable discharge. She received some Army awards, ribbons, and decorations, and successfully completed numerous Army training courses. Applicant has a service-connected disability, and she receives payments from the VA.

Circumstances beyond Applicant's control harmed her finances, including periods of unemployment, divorce, and medical problems. She showed substantial progress resolving most of her delinquent debts particularly after the SOR was issued on February 1, 2019.

Applicant has known that she owed a substantial debt to her former employer, and for two years she has not submitted any payments to her former employer. Applicant's failure to "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 [his] reliability, trustworthiness, and ability to protect classified or sensitive information.” AG ¶ 16.

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the context of the whole person. Personal conduct security concerns are refuted; however, financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

### **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.ee:	For Applicant
Subparagraph 1.ff:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge