



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



In the matter of:)
)
 ---) ADP Case No. 19-00876
)
 Applicant for Public Trust Position)

Appearances

For Government: Gatha Manns, Esquire, Department Counsel
For Applicant: *Pro se*

10/22/2019

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns regarding financial considerations. Eligibility for a security clearance is denied.

Statement of the Case

On January 10, 2018, Applicant applied for a public trust position and submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On March 29, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (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* (AG) (December 10, 2016), 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 find that it is clearly consistent with the national interest to grant or continue 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.

In a sworn statement dated June 5, 2019, Applicant responded to the SOR, and she 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 July 5, 2019, and she was afforded an opportunity after receipt of the FORM 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 July 18, 2019. Her response was due on August 17, 2019. Applicant chose not to respond to the FORM, for as of October 16, 2019, no response had been received. The case was assigned to me on October 16, 2019.

Findings of Fact

In her Answer to the SOR, Applicant admitted, with very brief comments, nearly all of the factual allegations pertaining to financial considerations in the SOR (SOR ¶¶ 1.a. through 1.k., and 1.m. through 1.bb.). Applicant's admissions and comments 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 50-year-old employee of a defense contractor. She has been serving as a registered nurse with her current employer since February 2018. She previously served as a director of clinic operations for another employer from November 2016 until December 2017, when her position was eliminated due to budget cuts; and before that, as an independent nurse contractor from August 2005 until December 2017. A 1987 high school graduate, Applicant received a diploma in nursing in 1996; an associate's degree in nursing in 1999, and a bachelor's degree in nursing in 2002. She has never served with the U.S. military. She was married in 1991, and divorced in 2010. She remarried in 2011. She has two children, born in 1990 and 1992. (Item 3)

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 30, 2018); Item 4 (Equifax Credit Report, dated February 22, 2019); Item 7 (Enhanced Subject Interview, dated September 28, 2018); Item 5 (Applicant's Response to the Interrogatories, dated February 22, 2019); Item 2 (Applicant's Answer to SOR, dated June 5, 2019); and Item 3 (e-QIP, dated January 10, 2018).

When Applicant completed her January 2018 e-QIP, she acknowledged that she had filed for bankruptcy in 2011 and 2012; that she had one delinquent automobile loan; had a lien; and that she had failed to file her federal income tax returns for several tax

years. (Item 3, at 38-47) She was interviewed by an investigator from the U.S. Office of Personnel Management (OPM) in September 2018. During that interview, she discussed the above financial issues, but it was only after she was confronted with additional delinquent accounts that she shared the facts associated with those accounts as well. (Item 7)

During the trustworthiness eligibility review process, Applicant attributed her failure to maintain her financial accounts in a current status, as well as her failure to file her income tax returns, to a variety of issues: her 2010 divorce, unspecified medical emergencies, and her period of unemployment, all leading to insufficient funds. Her failure to file her multi-year federal income tax returns was attributed to trying to do so without professional assistance, and subsequent fear of filing because of her failure to file for the previous year(s). (Item 7; Item 2) Some of the delinquent accounts were charged off, some were sold or transferred to debt purchasers, and one lien was filed. She attributed her multiple bankruptcy filings to legal advice that she reportedly received from her attorney. (Item 5)

The SOR alleged the filing of four voluntary petitions for bankruptcy under Chapter 13; unfiled federal income tax returns for the tax years 2010, 2011, 2012, 2013, 2014, 2015, and 2016; a federal tax lien; as well as 21 delinquent accounts, including unpaid federal and state income taxes, totaling approximately \$137,935. With respect to the delinquent accounts, Applicant contended that some of the accounts listed in the SOR may have already been resolved, and that she had been making monthly payments on other accounts, but she failed to submit any documents, such as a statement from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support her contentions. As to the federal income tax returns, Applicant contended that she had already filed those returns, but once again, she failed to submit any documentation to support her contention. The SOR allegations are set forth below:

SOR ¶¶ 1.a. through 1.d.: These refer to Applicant's repeated filings of voluntary petitions for bankruptcy under Chapter 13 in September 2012 (dismissed in November 2012); in October 2011 (dismissed in June 2012); in January 2010 (dismissed in February 2012); and August 2009 (dismissed in March 2010). The most recent petition reflected liabilities of approximately \$146,957. In each instance, the dismissals were ordered because of Applicant's failure to make plan payments to the trustee. (Item 6)

SOR ¶¶ 1.e., 1.bb., and 1.cc.: These refer to Applicant's failure to file her federal and state income tax returns for the tax years 2010, 2011, 2012, 2013, 2014, 2015, and 2016, as well as her failure to pay the respective federal and state income taxes for those years. In her January 2018 e-QIP, she acknowledged her failure to file those federal income tax returns. (Item 3, at 40-42) However, in her Answer to the SOR, she contended that she had done so. (Item 2) She failed to submit any documents, such as account transcripts, copies of the reportedly filed federal income tax returns, or any correspondence from the Internal Revenue Service (IRS) to confirm her contentions. In addition, in her most recent Chapter 13 voluntary petition, she reported \$20,000 in delinquent federal income taxes and \$17,000 in delinquent state income taxes. (Item 6)

In the absence of the appropriate documentation, the issues regarding the federal and state income tax returns, including the nonpayment of taxes, have not been resolved.

There is a legal requirement to file a federal income tax return, and it is based upon an individual's gross income and other enumerated conditions. Once it is determined, under 26 U.S.C. § 7203, *Willful failure to file return, supply information, or pay tax*, that there is an obligation to so file, the following applies:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year."

SOR ¶ 1.f.: This refers to a student loan with a total balance of \$60,515, of which \$4,361 is past due. Applicant claimed that she had an agreed repayment plan, and that she was making monthly payments of \$447. (Item 7, at 9) However, she failed to submit any documents, such as a statement from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support her contentions. In the absence of such documentation, I must conclude that the account is not yet in the process of being resolved.

SOR ¶ 1.g.: This refers to an automobile loan with a past-due and unpaid balance of \$20,066 that was charged off. Her monthly payments were \$642. Applicant claimed that the loan became delinquent in 2016. (Item 5, at 9; Item 4, at 2; Item 7, at 6) She indicated that because the loan has a very high interest, she intended to pay it off first. (Item 7, at 6) She failed to submit any documents, such as a statement from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support her contentions. In the absence of such documentation, I must conclude that the account is not yet in the process of being resolved.

SOR ¶¶ 1.h., 1.o., 1.p., 1.r., 1.t., 1.u., 1.w., and 1.y. through 1.aa.: These refer to various medical accounts with unpaid balances of \$2,202, \$509, \$485, \$247, \$242, \$205, \$174, \$169, \$169, and \$121 for which Applicant has not made any resolution efforts. (Item 4, at 2; Item 5, at 11-14; Item 7, at 6-9) These accounts are not yet in the process of being resolved.

SOR ¶¶ 1.i. and 1.k.: These refer to two bank-issued credit-card accounts with unpaid balances of \$845 on one account that was sold to a debt purchaser; and \$366 on the other account for which \$543 was charged off in March 2016. (Item 5, at 8; Item 4, at 2) Applicant admitted that she was indebted to the creditors, but contended that she had been making agreed-upon \$75 monthly payments to the first creditor, and had paid off both accounts on March 1, 2016. (Item 7, at 10) She failed to submit any documentation, such as statements from the creditors agreeing to repayment plans, cancelled checks, copies of money orders, a bank register, or receipts, to support her contention that she had an agreement with one creditor; that she was making any payments to that creditor; or that either account had been paid off as she had contended. In the absence of such documentation, I conclude that the accounts have not been resolved, and are not yet in the process of being resolved.

SOR ¶ 1.j.: This refers to a bank-issued credit-card of account with an unpaid balance of \$512 that was sold to a debt purchaser. (Item 5, at 9; Item 4, at 2) Applicant admitted that she is indebted to the creditor, but failed to explain if she had made any efforts to resolve the account. This account is not yet in the process of being resolved.

SOR ¶ 1.l.: This refers to a federal tax lien in the amount of \$9,649 that was filed against Applicant in 2010. (Item 5, at 6) Applicant contended that the lien should have been resolved before she was interviewed by the OPM investigator in September 2018, but acknowledged that if it had not already been resolved, she intended to pay it off by February 2019. (Item 7, at 4) Applicant failed to submit any documentation, such as a signed release of lien, cancelled checks, copies of money orders, a bank register, or receipts, to support her contention that she paid off the lien amount and that it had been released. In the absence of such documentation, I conclude that the federal tax lien has not been resolved, and is not yet in the process of being resolved.

SOR ¶ 1.m.: This refers to a line-of-credit account with an unpaid balance of \$2,754 that was charged off. (Item 5, at 8) Although Applicant initially indicated that she had no knowledge of the account, she subsequently admitted that she is indebted to the creditor. (Item 7, at 8; Item 2) She failed to explain if she had made any efforts to resolve the account. The account is not yet in the process of being resolved.

SOR ¶ 1.n.: This refers to a cellular-telephone account with an unpaid balance of \$768. (Item 5, at 8) Applicant admitted that she is indebted to the creditor. (Item 7, at 4; Item 2) She failed to explain if she had made any efforts to resolve the account. The account is not yet in the process of being resolved.

SOR ¶ 1.q.: This refers to an Internet account with an unpaid balance of \$350. (Item 5, at 11) Applicant admitted that she is indebted to the creditor, but contended that she had “been making monthly payment arrangements.” (Item 7, at 8; Item 2) She failed to submit any documentation, such as statements from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support her contention that she either had an agreement or that she was working on such an agreement; or that she was making any payments to the creditor. In the absence

of such documentation, I conclude that the account has not been resolved, and is not yet in the process of being resolved.

SOR ¶ 1.s.: This refers to an unspecified type of account with an unpaid balance of \$243. (Item 5, at 12) Although Applicant initially indicated that she had no knowledge of the account, she subsequently admitted that she was indebted to the creditor. She also stated that she believed the debt had been settled. (Item 7, at 8; Item 2) She failed to submit any documentation, such as statements from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support her “belief” that she had settled the account. In the absence of such documentation, I conclude that the account has not been resolved, and is not yet in the process of being resolved.

SOR ¶ 1.v.: This refers to an unspecified type of account with an unpaid balance of \$175. (Item 5, at 13) Although Applicant initially indicated that she had no knowledge of the account, she subsequently admitted that she was indebted to the creditor. She also stated that she believed the debt had been settled. (Item 7, at 7; Item 2) She failed to submit any documentation, such as statements from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support her “belief” that she had settled the account. In the absence of such documentation, I conclude that the account has not been resolved, and is not yet in the process of being resolved.

SOR ¶ 1.x.: This refers to an unspecified type of account with an unpaid balance of \$169. (Item 5, at 13) Although Applicant initially indicated that she had no knowledge of the account, she subsequently admitted that she was indebted to the creditor. She also stated that she believed the debt had been settled. (Item 7, at 7; Item 2) She failed to submit any documentation, such as statements from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support her “belief” that she had settled the account. In the absence of such documentation, I conclude that the account has not been resolved, and is not yet in the process of being resolved.

The most recent report of Applicant’s net monthly income appears in her Voluntary Petition for Bankruptcy under Chapter 13 filed in September 2012. It was \$3,000. She also reported \$1,325 in monthly expenses. (Item 6) It is not known what Applicant’s current financial resources may be because she did not report her current net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. The only evidence of financial counseling was the on-line counseling she received in connection with her bankruptcy filings. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than she had been.

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].” (*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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to such information “only upon a finding that it is clearly consistent with the national interest to do so.”

DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. In this regard, 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 DOHA to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

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 commonsense 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.” “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 (4th Cir. 1994))

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. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

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 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." (*Egan*, 484 U.S. at 531) 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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required.

Applicant filed four voluntary petitions for bankruptcy under Chapter 13 that were dismissed because of her failure to make plan payments to the trustee. In addition, she had unfiled federal income tax returns for the tax years 2010, 2011, 2012, 2013, 2014, 2015, and 2016; a federal tax lien; as well as a substantial number of delinquent accounts, including unpaid federal and state income taxes. With respect to Applicant's failure to file her federal income tax returns for the identified tax years, AG ¶ 19(f) has been established. With respect to her failure to satisfy her various delinquent debts, AG ¶¶ 19(a) and 19(c) have been established. There is no evidence that Applicant has been unwilling to satisfy her debts regardless of an ability to do so, and 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:

(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

(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), and 20(g) minimally apply, but none of the other conditions apply. 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)). The nature, frequency, and recency of Applicant's continuing financial difficulties, and her failure to voluntarily and timely resolve her delinquent accounts for several years, make it rather easy to conclude that it was not infrequent and it is likely to remain unchanged, much like it has been for several years. Applicant attributed her failure to maintain her financial accounts in a current status, as well as her failure to file her income tax returns, to a variety of issues: her 2010 divorce,

unspecified medical emergencies, and her period of unemployment, all leading to insufficient funds. Her failure to file her multi-year federal income tax returns was attributed to trying to do so without professional assistance, and subsequent fear of filing because of her failure to file for the previous year(s). She attributed her multiple bankruptcy filings to legal advice that she reportedly received from her attorney.

An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance, and by inference, his or her 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. (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). Applicant completed her e-QIP in January 2018; underwent her OPM interview in September 2018; the SOR was issued in March 2019; and the FORM was sent to her in July 2019. Each step of the trustworthiness review process placed her on notice of the significance of the financial issues confronting her. With respect to her delinquent debts, according to Applicant, she addressed several of those debts, but took no actions regarding the remaining debts. However, as stated above, she failed to submit any documents to support any of her purported resolution actions. With respect to her unfiled federal income tax returns, according to Applicant's acknowledgement in September 2018, she had not yet taken any corrective actions to file the delinquent income tax returns. It was not until the SOR was issued that she claimed to have filed those income tax returns, but once again, she failed to submit any documents to support her purported resolution actions.

The DOHA Appeal Board has observed:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting [sensitive] information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a [trustworthiness] adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to [sensitive] information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

The Appeal Board clarified that even in instances where an applicant has purportedly corrected his or her federal tax problem, and the fact that the applicant is now

motivated to prevent such problems in the future, does not preclude careful consideration of an applicant's public-trust worthiness in light of his or her longstanding prior behavior evidencing irresponsibility including a failure to timely file federal income tax returns. (See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employed an "all's well that ends well" analysis as inadequate to support approval of access to [sensitive] information with focus on timing of filing of tax returns after receipt of the SOR).

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.

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)) In this instance, there is no evidence, supported by documentation, that Applicant took any good-faith corrective actions with respect to her delinquent debts before she received the SOR. There are also substantial unverified comments by Applicant that she resolved or started to resolve some delinquent accounts, but she offered no documentation to support her contentions. Her contentions regarding the status of some accounts, and her unverified comments claiming that she had taken certain actions, without documents to support her claims, are insufficient to reflect good-faith actions. 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).

There is no evidence of financial counseling, other than the on-line counseling associated with Applicant's bankruptcy filings, or a budget. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than she had been. Applicant's actions, or inaction, under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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. 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).

There is some evidence in favor of mitigating Applicant's financial concerns. Applicant is a 50-year-old employee of a defense contractor. She has been serving as a registered nurse with her current employer since February 2018. She previously served as a director of clinic operations for another employer from November 2016 until December 2017, when her position was eliminated due to budget cuts; and before that, as an independent nurse contractor from August 2005 until December 2017. A 1987 high school graduate, Applicant received a diploma in nursing in 1996; an associate's degree in nursing in 1999, and a bachelor's degree in nursing in 2002.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant failed to timely file her federal and state income tax returns for the tax years 2010, 2011, 2012, 2013, 2014, 2015, and 2016. Although she now claims that she has finally filed those returns, she submitted no documentation to support her claims. She also had a number of delinquent accounts, including a federal tax lien and unpaid federal and state income taxes that were ignored by her for lengthy periods of time. Applicant contended that she had paid off some of the creditors, or entered into

repayment agreements with other creditors. However, because of her failure to submit documentation associated with her delinquent accounts, such as receipts, cancelled checks, or bank account transactions, to support her contentions that some accounts have been settled, paid off, or otherwise resolved; or that agreed settlements have actually proceeded to resolution; or that payments have actually been made to her creditors, it is difficult to assess the true situation, for we have mostly Applicant's unverified comments claiming that she had taken certain actions.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

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.

While Applicant contended that she took certain actions with respect to her delinquent debts and unfiled federal income tax returns, there is no documentary evidence to support a conclusion that any of Applicant's claimed actions took place. Applicant's current track record is extremely poor at best. 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).

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.k., 1.m. through 1.cc.:	Against Applicant
Subparagraph 1.l.:	For 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.

ROBERT ROBINSON GALES
Administrative Judge