



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



In the matter of:)
)
) ISCR Case No. 19-02282
)
Applicant for Security Clearance)

Appearances

For Government: Brittany Muetzel White, Esq., Department Counsel
For Applicant: *Pro se*

01/23/2020

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s finances were damaged by unemployment and underemployment, resulting in a substantial amount of delinquent debt. After she obtained employment in October 2017 with a Department of Defense (DOD) contractor, she employed two credit restoration companies (CRC) to ensure the validity and amounts of her debts. She established a track record of debt payments to address her student loans and two other delinquent debts. She mitigated security concerns arising under Guideline F (financial considerations). Eligibility for access to classified information is granted.

Statement of the Case

On November 20, 2017, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On August 29, 2019, the DOD Consolidated Adjudications Facility (CAF) issued a statement of reasons (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 Guideline F. (HE 2) On September 18, 2019, Applicant responded to the SOR and requested a hearing. (HE 3)

On November 26, 2019, the case was assigned to me. On December 12, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for December 23, 2019. The hearing was held as scheduled. During the hearing, Department Counsel offered five exhibits; Applicant offered six exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 16-21; GE 1-5; Applicant Exhibit (AE) A-AE F) I granted Applicant's request for additional time to submit documentation. On January 3, 2020, DOHA received a transcript of the hearing. On January 20, 2020, I received one post-hearing exhibit, which was admitted into evidence without objection. (AE G (25 pages)) Applicant said she had no additional evidence to submit, and the record closed on January 20, 2020. (Tr. 48, 57; HE 5)

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

Procedural Matters

Department Counsel moved to withdraw the allegations in SOR ¶¶ 1.p, 1.q, and 1.u. (Tr. 13-14) Applicant did not object, and I granted the motion. (Tr. 14) I lined out SOR ¶ 1.p, 1.q, and 1.u, wrote "withdrawn" on the SOR, and initialed and dated my change to the SOR. (Tr. 14; HE 2)

Findings of Fact

In Applicant's SOR response, she admitted the SOR allegations in ¶¶ 1.a through 1.x. (HE 3) She wrote "I admit, this account is no longer on my credit report and has been restored" for SOR ¶¶ 1.f, 1.h, 1.j, 1.k, 1.m, 1.n, and 1.o. She also wrote, "I admit, this account is no longer in delinquent [status] on my credit report and has been restored" for SOR ¶¶ 1.w and 1.x. She provided extenuating and mitigating information for several other SOR allegations. Her admissions are accepted as findings of fact.

Applicant is a 44-year-old security receptionist employed by a defense contractor since October 2017. (Tr. 5-6) In 2005, she received a General Education Diploma (GED), and she received an associate's degree in human services that same year. (Tr. 5-6) In 2012, she received a license for massage therapy. (Tr. 6) In 2011, she married and her daughter is 25 years old. (Tr. 7-8) She has never served in the military. (Tr. 6)

Financial Considerations

Applicant was unemployed or under employed from March 2011, to May 2012, from November 2013, to August 2014, and from March 2016, to October 2017. (Tr. 5, 21-24; GE 1; GE 5 at 4) Applicant timely filed and paid her federal and state income taxes. (Tr. 47-48)

The debts listed in the SOR are documented in her SCA, credit reports, or her Office of Personnel Management (OPM) personal subject interview (PSI), or in more than one of these documents. (GE 1-5) The SOR alleges 24 delinquent debts totaling \$52,588. After subtracting the three withdrawn SOR allegations in ¶¶ 1.p, 1.q, and 1.u, 21 delinquent debts totaling \$47,624 remain, and their status is as follows:

SOR ¶ 1.a alleges that Applicant owes \$12,866 for a charged-off debt. Applicant and her husband financed a vehicle in 2011 as a joint account. (Tr. 24-25; GE 4 at 4) They were unable to afford the payments, and they had the vehicle voluntarily repossessed in 2012. (Tr. 24-25; GE 5 at 4) The date of the last payment is September 2015. (GE 4 at 4) Applicant's spouse is the primary account holder, and Applicant has responsibility as a joint account holder. (AE G at 2) Two months before her hearing, Applicant said as soon as the account and creditor are located, she and her husband intended to "rectify" the debt. (Tr. 25-26) After her hearing, Applicant's husband provided a letter in which he agreed to pay this debt. (AE G at 6-7) On January 6, 2020, the creditor wrote that Applicant's husband agreed to pay the creditor \$214 per month beginning January 15, 2020, until the balance is paid in full. (AE G at 2, 9) On January 7, 2020, Applicant's spouse paid the creditor \$215. (AE G at 10)

SOR ¶ 1.b alleges that Applicant has a debt placed for collection for \$2,312. Applicant left an apartment before her lease ended. (Tr. 27) She made \$50 payments in September, October, and November 2019. (Tr. 27-28; AE F) Her November 15, 2019 credit report indicates a different collection agent than the SOR, a balance of \$2,511, and in the comments, it states that the Applicant disputes the account information. (GE 4 at 2)

SOR ¶ 1.c alleges that Applicant owes \$2,083 for a charged-off debt. She rented-to-buy a dinette set in October 2016, and her most recent payment was made in May 2017. (Tr. 28; AE C; AE G at 12) A print out from the creditor indicates that from October 2016, to May 2017, Applicant and her spouse made eight payments totaling \$1,144. (AE G at 13) Her November 15, 2019 credit report stated that the joint account was based on a rental agreement, and the account balance was \$2,083. (GE 4 at 4) The original debt was \$2,975, and as of November 7, 2018, Applicant and her spouse owed \$1,100. (AE G at 12) On January 2, 2020, Applicant wrote the creditor seeking information about the debt. (AE G at 11) On January 10, 2020, the creditor confirmed the balance owed is \$1,061. (AE G at 1-2) Applicant's husband accepted responsibility for this debt, and he said he intend to resolve this debt with one payment. (AE G at 6) If Applicant's husband does not pay this debt, Applicant said she intends to pay it. (AE C)

SOR ¶ 1.d alleges that Applicant has a telecommunications debt placed for collection for \$1,964. Her November 15, 2019 credit report indicates a balance of \$1,964, and in the comments, it states that the Applicant disputes the account information. (GE 4 at 2) On January 7, 2020, Applicant agreed to a payment plan the creditor proposed to make monthly \$30 payments beginning on January 15, 2020, until the debt is paid. (AE G at 14) She intends to pay this debt. (AE C)

SOR ¶ 1.e alleges that Applicant has a medical debt placed for collection for \$1,686. She incurred the debt in July 2013. She said at her hearing that she had not contacted the creditor or made payments. (Tr. 29-30) Applicant used CRC2 to establish the amount of the debt. (AE C) Applicant and the creditor agreed upon a \$35 monthly payment plan to address a debt for \$1,686. (AE G at 16-18) On January 15, 2020, she made a \$35 payment to the creditor. (AE G at 25)

SOR ¶ 1.f alleges that Applicant has a telecommunications debt placed for collection for \$1,287. Applicant's May 2019 credit report lists this debt. (Tr. 30; GE 3 at 2) She has not contacted the creditor or made payments. (Tr. 21) Applicant said the debt was removed from her credit report. (AE C)

SOR ¶ 1.g alleges that Applicant has a medical debt placed for collection for \$1,067. Applicant was in a vehicle accident, and on December 19, 2019, her attorney paid this debt. (Tr. 30-31; SOR response)

SOR ¶¶ 1.h, 1.m, and 1.n allege that Applicant has three medical debts placed for collection for \$840, \$389, and \$375, and they are owed to the same creditor. Applicant said the debts were removed from her credit report through the assistance of CRC2. (Tr. 32, 35-36) She believed that she previously paid these three debts. (Tr. 33)

SOR ¶ 1.i alleges that Applicant has a debt placed for collection for \$690. Applicant made four payments of either \$35 or \$53. (Tr. 33-34; AE E) Applicant and the creditor agreed on a \$34 monthly payment plan in November 2019 to address a \$637 debt. (AE G at 23) She made the first payment; the current balance is \$603; and future payments will be automatically debited from her bank account. (AE G at 23)

SOR ¶¶ 1.j and 1.k allege that Applicant has two medical debts placed for collection by the same collection agent for \$491 and \$486. Applicant did not recognize the collection agent, and CRC2 said the two debts did not appear on her current credit report. (Tr. 35) CRC2 did not have any information about this creditor. (Tr. 35)

SOR ¶ 1.l alleges that Applicant has a debt placed for collection for \$406. At her hearing, Applicant said she has not made any payments because she is using CRC2 to confirm the correct amount of the debt. (Tr. 36; AE C) Her November 15, 2019 credit report indicates a bank-originated debt, a balance of \$406, and in the comments, it states that the Applicant disputes the account information. (GE 4 at 2) On January 16, 2020, she made a \$150 payment to the creditor. (AE G at 25) On January 16, 2020, the creditor wrote that the debt had a zero balance and was resolved. (AE G at 15)

SOR ¶ 1.o alleges that Applicant has a charged-off debt for \$4,827. Applicant had an account with the creditor, and the debt may have resulted from the purchase of furniture. (Tr. 36-37; GE 5 at 4) She was unfamiliar with the amount of the debt. (Tr. 37) She has not contacted the creditor or made any payments. (Tr. 37)

Department Counsel withdrew the following SOR allegations: ¶ 1.p, a debt placed for collection for \$1,964; ¶ 1.q, a charged-off debt for \$689; and ¶ 1.u, a debt placed for collection for \$2,311. (Tr. 13-14, 29; HE 2)

SOR ¶ 1.r alleges that Applicant has a charged-off medical debt for \$1,685. Applicant is utilizing CRC2 to establish the amount of the debt. (Tr. 37; AE C) Once the amount of the debt is established, and she has paid some other debts, she intends to pay this debt. (Tr. 37; AE C) She has not made any payments to the creditor. (Tr. 37)

SOR ¶¶ 1.s and 1.t allege that Applicant has two student loan debts that are 120 days past due for \$8,360 and \$3,798. A September 18, 2019 statement from the creditor indicates two student loans for \$3,891 and \$4,854 were addressed through \$90 monthly payments for more than one year. (SOR response) An October 15, 2019 statement from the creditor indicates two student loans for \$3,597 and \$8,299 were addressed through \$135 monthly payments for eight months. (SOR response) Her student loans are current. (Tr. 37-38)

SOR ¶¶ 1.v and 1.x allege that Applicant has two medical debts that were placed for collection for \$1,167 and \$99. Applicant did not make any payments to the two creditors. (Tr. 38) Her November 15, 2019 credit report comments for the debt in ¶ 1.v that the Applicant disputes the account information. (GE 4 at 2, item 2) She did not recognize the debt in SOR ¶ 1.x; it is not listed on her November 15, 2019 credit report; and she believed it was deleted from her credit report. (Tr. 38; GE 4; AE C)

SOR ¶ 1.w alleges that Applicant has one medical debt placed for collection for \$746. Applicant utilized CRC2 to establish the amount of the debt in SOR ¶ 1.w. (AE C) On January 15, 2020, she made a \$35 payment to the creditor.

Applicant had a medical debt for \$890 placed for collection in September 2019. (AE G at 22) She was credited with a payment for \$267 in August 2019. (*Id.*) She made a \$26 payment on January 2, 2020, and the current balance is \$597. (*Id.* at 20-22) The collection agent is not shown on her November 15, 2019 credit report, and there is insufficient evidence to connect this debt to any of the debts alleged on her SOR. (GE 4)

Applicant made a \$39 payment to another collection agent on January 15, 2020. (AE G at 25) The collection agent is not shown on her November 15, 2019 credit report, and there is insufficient evidence to connect this debt to any of the debts alleged on her SOR. (GE 4)

On December 17, 2019, a collection agent informed Applicant that she had a \$3,329 medical debt placed for collection. (AE G at 19) The collection agent is not shown

on her November 15, 2019 credit report or SOR. (GE 4) There is insufficient evidence to connect this debt to any of the debts alleged on her SOR. (GE 4)

Applicant's November 15, 2019 credit report indicates the following information: (1) she has a \$15,947 debt with a scheduled payment of \$498 on a 72-month payment plan that is current (GE 4 at 2-3); (2) her student loans with the following balances are current: \$8,265; \$3,575; \$4,827; and \$3,869 (GE 4 at 3); (3) some of her student loans may be duplications (GE 5 at 5); (4) a vehicle loan with high credit of \$18,431 was paid in September 2017 (GE 4 at 4-5); (5) the following 12 SOR debts are not listed: 1.e, 1.f, 1.g, 1.h, 1.j, 1.k, 1.m, 1.n, 1.o, 1.r, 1.w, and 1.x (GE 4); and (6) all of the SOR debts not listed on her November 15, 2019 credit report except for SOR ¶ 1.f and 1.o are medical debts.

Applicant employed two credit restoration companies (CRC1 and CRC2) to assist her in determining which debts on her credit report were valid. (Tr. 35-36; GE 5 at 3-4; AE G at 3-4) On September 18, 2019, and December 18, 2019, CRC2 listed the accounts currently disputed and already deleted from her credit report. (SOR response; AE B) It is noteworthy that CRC2 is disputing some accounts that Applicant indicated at her hearing were valid, such as her student loan accounts; however, she may be disputing the amount of the debt. She was unfamiliar with several of the debts that appeared on her credit report. (Tr. 35-36)

On January 16, 2020, CRC2 wrote:

After an extensive amount of research in assisting [Applicant] with accounts, we learn[ed] there are several accounts listed which are either not belonging, incorrect balance reporting and/or not primary account holder. There are several accounts that we do not have knowledge of or access to, as they are not physically reporting on the current reports. We also do not have any history or knowledge throughout any portion of her enrollment in our credit education program of any accounts below. The following accounts have been contacted, [they either do not exist or they do not belong on Applicant's credit report]. (AE G at 4)

CRC2 listed nine debts in the following SOR paragraphs as not substantiated: 1.w (\$746); 1.x (\$99); 1.o (\$4,827); 1.f (\$1,287); 1.j (\$491); 1.k (\$486); 1.m (\$389); 1.n (\$375); and 1.h (\$840). (AE G at 4) Applicant recently made a payment to address the debt in SOR ¶ 1.w.

Applicant and her husband share expenses. Her husband is employing training drivers for delivery trucks. (Tr. 47) Applicant's budget provides the following monthly information: pay \$3,010; expenses \$1,062; rent \$1,780; food \$300; gas \$200; and miscellaneous items \$150. (AE A) Her net remainder is a negative \$482; however, her husband agreed to pay \$450 monthly to address the SOR debts and household expenses and to pay half of the rent once the family debts are paid. (AE G at 6) He also pays for vehicle loans, utilities, vehicle insurance, and his child support (Tr. 43; AE A; AG G at 6) Her spouse's gross monthly income is \$3,846; however, he has worked for his current

employer for only about five months. (AE G at 8) She may have miscalculated the amount of her spouse's contributions. Her budget shows monthly payments totaling \$313 to address SOR debts as follows: SOR ¶¶ 1.s and 1.t, student loans (\$228); SOR ¶ 1.i, retail account (\$35); and SOR ¶ 1.u, withdrawn (\$50). She has allocated about 10 percent of her net income to address her SOR debts.

Character Evidence

Applicant's cousin by marriage has known her for 14 years. (Tr. 51) He described her as honest, reliable, loyal, and trustworthy. (Tr. 51) He believes she will pay her debts and establish her financial responsibility. (Tr. 53)

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 [or her] 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.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The debts listed in the SOR are all documented in her SCA, credit reports, or OPM PSI or in more than one of these documents. The record evidence 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 in ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), 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).

Applicant’s conduct in resolving her debts warrants full application of AG ¶ 20(b). Applicant’s finances were damaged by underemployment and unemployment. Her financial problems resulted from circumstances largely beyond her control. She has a track record of paying her student loans, as shown by her payments addressing the student loan debts in SOR ¶¶ 1.i and 1.u and the other debts on her credit report that are current. Her attorney paid the medical debt in SOR ¶ 1.g, and she paid the debt in SOR ¶ 1.i. She believed she paid the medical debts in SOR ¶¶ 1.h, 1.m, and 1.n, and they were removed from her credit report. Her husband agreed to pay the debts in SOR ¶ 1.a and 1.c. I found her promise to resolve her unresolved debts to be credible. 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. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)). The overall record of her financial history shows she has a track record of paying her debts, when she has the means to do so.

Two recent Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533, the Applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. She filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The Applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support. The Appeal Board determined that AG ¶ 20(a) was “clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment),” even though that Applicant’s debts were unresolved at the time the Administrative Judge’s decision was issued. The Appeal Board also noted the absence of evidence of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4. However, it is important to indicate that Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an Applicant, who had been sporadically unemployed and lacked the ability to pay his creditors, observing that “it will be a long time at best before he has paid” all of his creditors. The Applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The Applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by Applicant was not “responsible” in light of his limited circumstances.” *Id.*

Applicant’s credit reports indicate that several of her debts are in charged-off status. CRC1 and CRC2 disputed some debts, and they were removed from her credit reports. Eventually charged-off debts will be dropped from her credit report. “[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. Title 15 U.S.C. § 1681c. See Federal Trade Commission website, *Summary of Fair Credit Reporting Act Updates at Section 605*, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.

Debts may be dropped from a credit report upon dispute when creditors believe the debts are not going to be paid, a creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off. A debt may be dropped from a credit report when it is in the process of being transferred to a collection agent. Applicant does not receive mitigating credit for debts that are charged off or dropped from her credit report unless they were invalid, paid, or settled. She continues to have the responsibility to search her records and to contact the creditors to ascertain the status of the debts listed on the SOR. If she validates the debt, she has the security responsibility of paying or settling the debt.

Applicant receives some mitigating credit under AG ¶ 20(c). Although Applicant did not provide proof that she completed financial counseling, she enrolled in CRC1 and CRC2. She also generated a budget. Applicant’s financial situation was damaged by insufficient income as a result of several years of unemployment and underemployment. Applicant established that she acted responsibly under the circumstances by making the payments she was able to make beginning in October 2017, when she received her current employment.

“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant loses some mitigating credit for failing to maintain contact with some of her creditors.

In her SOR response, Applicant admitted responsibility for and is taking reasonable and responsible actions to resolve her remaining SOR debts, showing some good faith and partial mitigation under AG ¶ 20(d). 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) in order to claim the benefit of [the “good faith” mitigating condition].

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) (internal citation and footnote omitted)).

AG ¶ 20(e) is not fully applicable. CRC2 disputed most of the SOR debts. Applicant’s November 15, 2019 credit report, the most recent credit report of record in this case, does not list the following 12 SOR debts: 1.e, 1.f, 1.g, 1.h, 1.j, 1.k, 1.m, 1.n, 1.o, 1.r, 1.w, and 1.x. All of the SOR debts not listed on her November 15, 2019 credit report except for SOR ¶ 1.f and 1.o are medical debts. On December 17, 2019, a collection agent informed Applicant that she had a \$3,329 non-SOR medical debt placed for collection. (AE G at 19) As indicated previously, a debt that is dropped from a credit report may still be a valid debt, and Applicant has the security responsibility of verifying with the creditors the amount and status of her debts. She also has a security responsibility to resolve the non-SOR \$3,329 medical debt. She indicated that she believed she paid some of the SOR debts that were dropped from her credit report; however, full mitigating credit is not warranted because she did not provide “documented proof to substantiate the basis of the dispute or provide[] evidence of actions to resolve the issue” as required in AG ¶ 20(e).

In sum, Applicant fell behind on her debts because of unemployment and underemployment. Her student loans, her largest debt sector, are in established payment

plans, and do not appear on her current credit report as delinquent. She is making payments to address several additional SOR debts. She has multiple non-SOR debts in current status, and one large non-SOR medical debt in collection status. Her attorney paid the medical debt in SOR ¶ 1.g, and she paid the debt in SOR ¶ 1.i. She believes she has paid some other SOR debts, and some debts on her credit report are erroneous. Her husband took responsibility for the debts in SOR ¶¶ 1.a and 1.c. Because of her limited financial resources, she is taking reasonable and responsible actions to address her debts. While more action is necessary to resolve all of her delinquent debts, her efforts are sufficient to mitigate financial considerations security concerns. Assuming, financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

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 Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 44-year-old security receptionist employed by a defense contractor since October 2017. In 2005, she received a GED and an associate's degree in human services. In 2012, she received a license for massage therapy. In 2011, she married and her daughter is 25 years old. Applicant's cousin by marriage has known her for 14 years. He described her as honest, reliable, loyal, and trustworthy. He believes she will pay her debts and establish her financial responsibility. Her cousin's statement supports granting Applicant's access to classified information.

Applicant's budget shows monthly payments totaling \$348 to address SOR debts as follows: SOR ¶¶ 1.s and 1.t, student loans (\$228); SOR ¶ 1.i, retail account (\$35); SOR ¶ 1.u, withdrawn (\$50); and SOR ¶ 1.w (\$35). She has allocated about 10 percent of her net income to address her SOR debts. Her attorney paid the medical debt in SOR ¶ 1.g for \$1,067, and Applicant paid the debt in SOR ¶ 1.i for \$406. Her husband agreed to pay

the debt in SOR ¶ 1.a for \$12,866, and he made an initial \$215 payment. He also agreed to pay the debt in SOR ¶ 1.c for \$1,144 with a single payment once he has the funds saved. Applicant's most recent credit report shows several accounts in current status. I am confident Applicant will continue to resolve her delinquent debts. She believes she has paid other debts shown on the SOR as delinquent, and she did not recognize some debts on the SOR, and they were disputed and removed from her credit report. In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted), the Appeal Board addressed a key component 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ' . . . established a plan to resolve his 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 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 understands how to budget and what she needs to do to establish and maintain her financial responsibility. There is no reason not to trust her. Moreover, she has established a "meaningful track record" of debt re-payment. I am confident she will pay her delinquent debts because of her track record of financial progress shown over the last two years. Of course, the government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the government from subsequently revoking it, if warranted.

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. Applicant mitigated financial considerations security concerns.

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:	FOR APPLICANT
Subparagraphs 1.a through 1.o:	For Applicant
Subparagraphs 1.p and 1.q:	Withdrawn
Subparagraphs 1.r, 1.s, and 1.t:	For Applicant
Subparagraph 1.u:	Withdrawn
Subparagraphs 1.v, 1.w, and 1.x:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge