



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 20-01345  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

03/22/2021

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not present sufficient information to mitigate the security concerns raised by her record of financial delinquency. The criminal conduct security concerns raised by her arrest record are mitigated by her good employment record and the passage of time without recurrence. Clearance eligibility is denied.

**Statement of the Case**

On September 4, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and Guideline J, criminal conduct. The DCSA CAF explained in the SOR why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified*

*Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.*

On September 24, 2020, Applicant responded to the SOR and requested a decision on the written record in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On October 23, 2020, the Government submitted a File of Relevant Material (FORM), which included seven documents (Items 1-7) proffered as evidence in support of its position that it is not clearly consistent with the national interest to grant Applicant access to classified information. DOHA forwarded a copy of the FORM to Applicant, and instructed her that any response was due within 30 days of receipt. Applicant received the FORM on November 20, 2020, and she submitted an undated response that was received by DOHA on January 4, 2021. Her response included her proposed revisions to the FORM and a request for a decision with a hearing. In an email to Department Counsel dated January 25, 2021, Applicant asked that a decision be made without a hearing so as to avoid any further delays with adjudication of her security clearance eligibility.

On January 25, 2021, Department Counsel indicated that the Government did not object to consideration of the documents Applicant submitted in response to the FORM. On February 10, 2021, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on February 19, 2021.

### **Evidentiary Rulings**

Department Counsel submitted as Item 4 in the FORM a summary report of personal subject interviews (PSI) of Applicant conducted on May 23, 2019, and December 6, 2019, by two different investigators for the Office of Personnel Management (OPM), as well as a court record concerning a mortgage foreclosure. The summary report was included in a DOD report of investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of a PSI where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In her response to the FORM, Applicant objected to consideration of the summary of her interviews, stating that the summary contained "severe inaccuracies;" that the interviews were conducted under unsworn declaration; and one of the investigators conducted the interview by cell phone. She did not detail the nature or extent of the reported information claimed to be erroneous, but she requested a re-investigation with reassignment to another OPM investigator.

Federal Rule of Evidence 901(a) provides that the “requirement of authentication or identification is a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” While there is a rebuttable presumption that Government officials discharge their duties in good faith (See e.g., ISCR Case No. 18-02592 at 4 (Appeal Board Jan. 6, 2021), the Government failed to meet its threshold obligation under the Directive ¶ E3.1.20 to authenticate the summary report. After being placed on notice of Applicant’s objections, the Government could have taken some steps to have the PSI authenticated by the interviewers by affidavit or other attestation to their authorship. That portion of Item 4 consisting of the summary report of the PSIs is not accepted into evidence for lack of authentication. The court summary document included in Item 4 is admissible as a business record under the Directive ¶ E3.1.20 and is accepted for my consideration.

Regarding Applicant’s request that she be interviewed by another investigator, the administrative judge does not have the authority to order a new background investigation or rule on how security officials conduct investigations. See e.g., 19-01759 at 3 (App. Bd. June 8, 2020). Applicant also asked that updated credit information be obtained because Items 5 and 6, credit reports from April 10, 2019, and April 30, 2020, are “old reports.” While DOHA officials have the authority to direct further investigation under ¶ E3.1.2.1 of the Directive, neither the administrative judge nor Department Counsel has a duty to obtain or present mitigating evidence. See ISCR Case No. 19-03376 at 2-3 (App. Bd. Feb. 8, 2021) (citing ISCR Case No. 19-02819 at 3 (App. Bd. Dec. 21, 2020)). If Applicant wanted the administrative judge to consider a more recent credit report, it was her responsibility to provide it. Directive ¶ E3.1.15. The credit reports in the FORM are admissible under ¶ E3.1.20 of the Directive as records compiled in the regular course of business.

FORM Items 1 through 7 (excepting the summary report of the PSIs) and Applicant’s FORM response (Applicant exhibit (AE) A) are incorporated in the record subject to issues of proof, relevance, and materiality.

### **Findings of Fact**

The SOR alleges under Guideline F that, as of September 4, 2020, Applicant owed \$32,207 in delinquent credit-card debt (SOR ¶ 1.a - \$1,685; SOR ¶ 1.g - \$8,620; SOR ¶ 1.j - \$1,065; SOR ¶ 1.k - \$1,362; SOR ¶ 1.l - \$715; SOR ¶ 1.m - \$6,726; SOR ¶ 1.n - \$8,624; and SOR ¶ 1.x - \$3,410); medical collection debts totaling \$4,846 (SOR ¶ 1.b - \$1,218; SOR ¶ 1.c - \$1,520; SOR ¶ 1.d - \$308; SOR ¶ 1.e - \$25; SOR ¶ 1.s - \$158; SOR ¶ 1.t - \$355; SOR ¶ 1.u - \$445; SOR ¶ 1.v - \$475; and SOR ¶ 1.w - \$342); a cell phone debt in collection for \$1,044 (SOR ¶ 1.f); an insurance debt in collection for \$238 (SOR ¶ 1.q); and a water bill in collection for \$50 (SOR ¶ 1.r). Applicant defaulted on federal student loans in collection for \$50,469 (SOR ¶ 1.h) and \$28,511 (SOR ¶ 1.i) and a tuition debt of \$754 (SOR ¶ 1.p). Additionally, Applicant had a mortgage loan foreclosed in 2015 (SOR ¶ 1.o).

Under Guideline J, Applicant was allegedly convicted of February 1993 (SOR ¶ 2.f) and November 1999 (SOR ¶ 2.e) driving under the influence (DUI) offenses, and arrested for DUI in April 2008 (SOR ¶ 2.d) and February 2014 (SOR ¶ 2.b). She was also arrested

in February 2012 for battery (SOR ¶ 2.c) and in June 2015 for probation violation – reckless driving (SOR ¶ 2.a). (Item 1.)

When Applicant answered the SOR, she admitted the debts in SOR ¶¶ 1.a, 1.c-1.d, 1.f-1.i, and 1.n and the mortgage foreclosure. She indicated that the debt in SOR ¶ 1.n had been transferred to the account in SOR ¶ 1.g, so they are the same debt, and the debt has been paid off. She explained that she had taken steps to arrange repayment plans or had established plans in place for other debts. She denied the debts alleged in SOR ¶¶ 1.b, 1.e, 1.j-1.m, and 1.p-1.x, and stated that she did not recall them. As for the alleged arrests, Applicant admitted her arrest for violating her probation in 2015 and explained that she was unable to satisfy the community service component because of illness. She denied that she was charged with DUI in February 2014 in that she was instead charged with reckless driving – reduced from DUI. She also denied a February 2012 battery in that the “entire case/charge was dropped.” Regarding the April 2008 incident, Applicant explained that she was not charged with DUI, but rather with reckless driving with alcohol. Applicant admitted her DUIs that occurred in November 1999 and February 1993, and explained that she “learned valuable lessons from these past mistakes of misdemeanor/charges listed.” (Item 2.)

After considering the evidence accepted in the record, I make the following findings of fact:

Applicant is 50 years old, never been married, and has no children. She has a bachelor’s degree in information systems, having pursued her college studies on and off between August 1989 and August 2009. (Item 3.) She paid for her education in part with student loans. She has worked for a succession of several companies in the information-technology sector starting in January 1999 but experienced some unemployment from March 2000 to May 2000, November 2003 to January 2006, and March 2006 to June 2006, after layoffs. She then worked as a systems engineer for a defense contractor from June 2006 to June 2012, with some brief funding-related periods of unemployment totaling about a year during that time. Applicant was granted a Secret clearance for her duties in approximately June 2006. (Item 3.)

### **Financial Considerations**

Applicant worked for another defense contractor from June 2012 to May 2013, when she was laid off. Unemployed until October 2014, she fell behind on several financial obligations, including on her mortgage loan, which she obtained for \$103,976 in July 2007. The loan became approximately \$35,000 past due. (Item 3.) The company then holding her mortgage foreclosed and sold her residence in October 2015 (SOR ¶ 1.o). (Items 2-5.)

From October 2014 until another layoff in December 2014, Applicant was employed as a senior test specialist for a research corporation involved in contract work for the DOD. She began having health issues at that time and for almost the next two years, she was self-employed as a systems engineer. Her clearance eligibility lapsed for lack of DOD-

contract work. (Item 2.) From October 2016 to November 2016, Applicant worked full time as a housekeeper at a motel. (Item 3.)

In early November 2016, Applicant relocated to her current locale to work as a contract systems engineer for a large defense contractor on a military base. In December 2016, she had emergency surgery that led to her hospitalization for two weeks when she had no health benefits or income. She began receiving pay on January 17, 2017. (Item 2.) In September 2017, she was laid off. She collected unemployment compensation until February 2018, when she began working for a computer company as a technical specialist. Applicant had new medical issues in June 2018 that caused her to take short-term disability leave until August 2018. (Item 2; AE A.) It is unclear to what extent her care was covered by health insurance. She had to take leave without pay from her job due to health concerns and resigned from that employment in February 2019 because of health issues. With an offer for employment from his current employer contingent on contract funding from the DOD, Applicant lived off her savings from February 2019 until June 2019 while she recovered her health. (Items 2-3.)

On March 27, 2019, Applicant completed a Questionnaire for National Security Positions (security clearance application or SCA) for her current employer. In response to inquiries concerning delinquency involving routine accounts, Applicant disclosed the foreclosure of her mortgage loan in October 2015, which she indicated was caused by long-term unemployment after she was laid off from a defense contractor position due to loss of DOD contract funding. The loss of income led her to lose her home and good credit. Concerning actions taken to address her financial situation, Applicant stated, “Currently employed – Current Car loan – Renting Condominium Property – repairing credit status up to date.” She listed no other financial issues on her SCA. (Item 3.) Applicant was granted an interim clearance in approximately May 2019. (Item 2.)

As of April 10, 2019, Applicant’s credit report showed that she owed nothing on the foreclosed mortgage loan as of November 2015. However, she had several outstanding delinquencies on her credit record. The history of those accounts and repayment efforts, if any, is set forth in the following table.

Debt	Delinquency history	Payment status
\$1,685 revolving charge (SOR ¶ 1.a)	First delinquent Aug. 2014; \$1,685 for collection Mar. 2015; on credit report as of Apr. 2020; disputed with credit bureaus (Items 5-6); admitted debt as of Sep. 2020. (Item 2)	On Sep. 24, 2020, she indicated she was in the process of rectifying the issue (Item 2); paid \$1,178.84 in full settlement Dec. 24, 2020. (AE A.)
\$1,218 medical debt (SOR ¶ 1.b)	First delinquent June 2018; for collection Mar. 2019; on credit report as \$1,218 collection balance Apr. 2020. (Item 6.)	Denies debt for lack of recall. (Item 2.) No evidence of payments.

\$1,520 medical debt (SOR ¶ 1.c)	Past due as of Dec. 2016; for collection Aug. 2017; on credit report as \$1,520 balance Apr. 2020 (Items 5-6); admits anesthesia debt from unexpected surgery incurred with no medical insurance. (Item 2.)	Admits debt incurred for unexpected surgery; working on resolving debt in Sept. 2020 (Item 2); paid \$40 in Dec. 2020 under payment plan toward \$1,440 balance with collection entity. (AE A.)
\$308 medical debt (SOR ¶ 1.d)	First delinquent June 2018; for collection May 2019; on credit report as \$308 balance Mar. 2020. (Item 6.). (Items 5-6.)	Denied debt in Sept. 2020 (Item 2); arranged to make \$40 monthly payments from Nov. 2020 through July 2021; made \$40 payments in Nov. 2020 and Dec. 2020. (AE A.)
\$25 medical debt (SOR ¶ 1.e)	First delinquent Feb. 2018; for collection Nov. 2019; on credit report Apr. 2020. (Item 6.)	Denied debt in Sept. 2020, basis no recall. (Item 2.) No evidence debt has been paid.
\$1,044 wireless phone debt in collection (SOR ¶ 1.f)	First delinquent Oct. 2014; \$1,044 for collection June 2017; unpaid as of Apr. 2020. (Item 5.)	Admitted debt in Sept. 2020; indicated efforts in place for repayment arrangement. (Item 2.) No evidence of any payments.
\$8,620 credit card charge-off (SOR ¶ 1.g)	For collection Feb. 2012; \$8,620 charged off; \$8,603 balance Mar. 2019; \$4,066 balance Apr. 2020. (Items 5-6.)	Resolved in full through wage garnishment; judgment released July 2020. (AE A.)
Student loan \$50,469 (SOR ¶ 1.h)	\$39,810 consolidated loan opened Dec. 2014; first delinquent May 2016; \$50,469 collection balance Apr. 2020 (Items 5-6); balance \$50,521 as of Nov. 2020. (AE A.)	June 2020 started student-loan rehabilitation program requiring nine monthly payments of \$412 within ten months for loans in SOR ¶¶1.h, 1.i, and 1.p (Item 2: AE A); Dec. 2020 new loan-rehabilitation plan requiring nine monthly payments of \$5 starting Jan. 2021. (AE A.)
Student loan \$28,511 (SOR ¶ 1.i)	\$23,733 consolidated loan opened Dec. 2014; first delinquent May 2016; \$28,511 collection balance Apr. 2020 (Items 5-6); \$28,541 balance Nov. 2020. (AE A.)	In rehabilitation program (see SOR ¶ 1.h).

\$1,065 credit-card debt (SOR ¶ 1.j)	First delinquent Sep. 2014; \$1,065 for collection Apr. 2016; unpaid as of Apr. 2019; disputed with credit bureaus, after resolution listed on credit report as \$1,065 past due Apr. 2020. (Items 5-6.)	Stated in Sept. 2020 debt being removed from credit report. (Item 2; AE A.) No evidence debt has been removed from credit report or paid.
\$1,362 credit-card debt (SOR ¶ 1.k)	First delinquent Dec. 2014; \$1,362 for collection Mar. 2016; unpaid as of Apr. 2019; disputed with credit bureaus, after resolution listed on credit report as \$1,362 past due Apr. 2020. (Items 5- 6.)	Stated in Sept. 2020 debt being removed from credit report. (Item 2; AE A.) No evidence debt has been removed from credit report or paid.
\$715 credit-card debt (SOR ¶ 1.l)	First delinquent Oct. 2014; \$715 for collection May 2015; disputed with credit bureaus, after resolution listed on credit report as \$715 past due April 2020. (Items 5-6.)	Stated in Sept. 2020 debt being removed from credit report. (Item 2; AE A.) No evidence debt has been removed from credit report or paid.
\$6,726 credit-card debt (SOR ¶ 1.m)	Account opened Sept. 2012; paid through July 2014; \$6,726 charged off Mar. 2019; disputed with credit bureaus, after resolution listed on credit report as \$6,726 past-due Mar. 2020. (Items 5-6.)	Stated in Sept. 2020 debt being removed from credit report. (Item 2; AE A.) No evidence debt has been removed from credit report or paid.
\$8,624 credit-card debt (SOR ¶ 1.n)	Account opened Dec. 2010, first delinquent Oct. 2014; \$8,624 charged off Apr. 2016; disputed with credit bureaus, after resolution listed on credit report as \$8,624 past due Dec. 2019. (Items 5-6.)	Stated in Sept. 2020 debt was balance transfer to creditor in SOR ¶ 1.g. (Item 2; AE A.) No corroboration debt is duplicate of SOR ¶ 1.b.
Mortgage foreclosure 2015 (SOR ¶ 1.o)	\$103,976 mortgage obtained July 2008, last payment July 2014; transferred to creditor Aug. 2014; scheduled payment \$896 monthly; foreclosure sale Oct. 2015. (Items 2-3, 5-6.)	Zero balance as of Nov. 2015 after foreclosure sale. (Items 2, 5-6; AE A.)

\$754 educational debt (SOR ¶ 1.p)	Account opened Nov. 2005 for \$2,500, to be repaid at \$40 per month; \$754 past-due balance Feb. 2019. (Item 5.)	Denied debt as of Sept. 2020 based on no recall (Item 2; AE A); not on April 2020 Equifax credit report. (Item 6.) In loan rehabilitation program.
\$238 insurance debt (SOR ¶ 1.q)	\$238 for collection Jan. 2016; unpaid as of Feb. 2019. (Item 5.)	Denied debt as of Sept. 2020 based on no recall (Item 2; AE A); not on April 2020 Equifax credit report. (Item 6.) No evidence debt is not legitimate or has been paid.
\$50 water utility debt (SOR ¶ 1.r)	\$50 for collection Oct. 2016; unpaid as of Feb. 2019. (Item 5.)	Denied debt as of Sept. 2020 based on no recall (Item 2; AE A); not on April 2020 Equifax credit report. (Item 6.) No evidence debt is not legitimate or has been paid.
\$158 medical debt (SOR ¶ 1.s)	\$158 for collection Dec. 2014; unpaid as of Feb. 2019. (Item 5.)	Denied debt as of Sept. 2020 based on no recall (Item 2; AE A); not on April 2020 Equifax credit report. (Item 6.) No evidence debt is not legitimate or has been paid.
\$355 medical debt (SOR ¶ 1.t)	\$355 for collection Apr. 2017; unpaid as of Mar. 2019. (Item 5.)	Denied debt as of Sept. 2020 based on no recall (Item 2; AE A); not on April 2020 Equifax credit report. (Item 6.) No evidence debt is not legitimate or has been paid.
\$445 medical debt (SOR ¶ 1.u)	\$445 for collection Dec. 2014; unpaid as of Feb. 2019. (Item 5.)	Denied debt as of Sept. 2020 based on no recall (Item 2; AE A); not on April 2020 Equifax credit report. (Item 6.) No evidence debt is not legitimate or has been paid.
\$475 medical debt (SOR ¶ 1.v)	\$475 for collection May 2017; unpaid as of Mar. 2019. (Item 5.)	Denied debt as of Sept. 2020 based on no recall (Item 2; AE A); not on April 2020 Equifax credit report. (Item 6.) No evidence debt is



		not legitimate or has been paid.
\$342 medical debt (SOR ¶ 1.w)	\$342 for collection Dec. 2014; unpaid as of Feb. 2019. (Item 5.)	Denied debt as of Sept. 2020 based on no recall (Item 2; AE A); not on April 2020 Equifax credit report. (Item 6.) No evidence debt is not legitimate or has been paid.
\$3,410 credit-card debt (SOR ¶ 1.x)	\$3,140 for collection Apr. 2015; unpaid as of Apr. 2019. (Item 5.)	Denied debt as of Sept. 2020, asserts no recall (Item 2; AE A); not on April 2020 Equifax credit report. (Item 6.) No evidence debt is not legitimate or has been paid.

On September 4, 2020, the DCSA CAF issued an SOR to Applicant in part because of the aforesaid delinquent accounts on her credit record as of April 2019 or April 2020 or both. (Item 1.) When she answered the SOR on September 24, 2020, Applicant attributed her financial issues to unemployment or lack of income while self-employed and more recently to some health setbacks in December 2016, June 2018, and February 2019 that compromised her income. She denied any unwillingness to address her indebtedness. She indicated that she took “a tremendous 60% pay cut” while working for the computer company from February 2018 to February 2019 (Item 2), but she did not provide any details about her income or expenses. There is no evidence that she has had any financial or budget counseling. The latest credit report in the record is from April 2020. It reflected a lack of progress toward addressing several of the debts in the SOR, as set forth in the above table, but also that she was making timely payments of \$379 monthly on an automobile loan obtained for \$15,654 in February 2018. (Item 6.)

### **Criminal Conduct**

On her March 2019 SCA, Applicant responded affirmatively to an inquiry into whether she had been arrested in the last seven years, and she listed a February 2014 reckless driving offense. She stated that she briefly crossed over into the bike lane on the right side of the road and was driving too slowly. (Item 3.) Available information shows a more extensive arrest record, including several alcohol-related offenses.

On February 10, 1993, Applicant was arrested for misdemeanor DUI – alcohol. She was convicted of the offense on May 6, 1993, and fined \$700. (Item 7.) Applicant admits the offense but denies any recall of the details. (Item 2.)

On November 20, 1999, Applicant was again arrested for misdemeanor DUI – alcohol. She was convicted of the offense on November 27, 2000, and sentenced to 11 months and 29 days of probation. (Item 7.) Applicant admits the offense but denies any recall of the details. (Item 2.)

Applicant was arrested on April 12, 2008, for DUI, 1<sup>st</sup> offense, a 2<sup>nd</sup> degree misdemeanor. (Item 7.) Applicant recalls that she was arrested in her driveway by a highway patrolman who claimed she was driving recklessly. The officer searched her vehicle, and Applicant recalls that he found “an old flask from a ‘beach day’ a month prior with the smell of alcohol inside, but no liquid.” Court records show that, on January 19, 2010, she was convicted of reckless driving with alcohol. (Item 2.) She had to complete a victim impact course and a “rehab” course for the offense. (AE A.)

On February 13, 2012, Applicant was arrested for battery – touch or strike, a 1<sup>st</sup> degree misdemeanor. (Item 7.) She was charged with battery –general. On February 17, 2012, the charge was dropped for failure to prosecute (abandonment or no information filed), and her case was closed. Applicant asserts that the incident was a “misunderstanding.” (Item 2; AE A.)

On February 26, 2014, Applicant was arrested and charged with DUI. She refused to submit to a blood alcohol test. In June 2014, she was convicted of reckless driving – reduced from DUI, placed on probation for 12 months, and ordered to complete 72 hours of community service. (Items 2, 7.) Applicant asserts that she was in “a poor place” at that time. She had been laid off, could not find DOD-contract work, and was losing her home to foreclosure. (Item 2.)

On June 11, 2015, Applicant was arrested and charged with probation violation for failure to complete her community service for the February 2014 reckless driving offense. She asserts that illness prevented her from fulfilling her community service. She was sentenced for the offense on July 24, 2015. At the discretion of the probation officer, she completed her community service working in a corrections facility, and her case was closed. (Items 2, 7.)

Applicant asserts that she has learned “valuable lessons from these past mistakes,” citing her accomplishment in earning her college degree, her contributions in the defense and aerospace industry, and changed circumstances. (Item 2.) She denies any current consumption of alcohol. (AE A.)

## **Character and Work References**

Applicant was rated as an excellent performer by her manager for her work in 2020. She exceeded her manager’s expectations and showed herself to be a self-directed systems software engineer expert. Applicant consistently delivered above-average overall team performance while mentoring new application engineer co-workers. She maintained a positive outlook and had respect for others in the workplace. Applicant was recognized by engineering leadership for providing very good support to their team. A department manager described Applicant as a “wonderful partner to work with.” He found her detailed in her requests, timely in following up, courteous, and professional. (AE A.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified 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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F: Financial Considerations

The security concerns about financial considerations are articulated 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. . . .

An applicant is not required to be debt free, but is required to manage her finances in a way as to exhibit sound judgment and responsibility. 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.

Guideline F security concerns are established when an individual fails to pay financial obligations according to terms. Applicant has admitted that she became seriously delinquent on 9 of the 24 accounts listed in the SOR (§§ 1.a, 1.c-1.d, 1.f-1.i, and 1.o-1.p). She indicated that the \$8,624 credit-card debt in SOR 1.n was transferred to the creditor in SOR § 1.g, which charged off a balance of \$8,620. However, she presented no corroborating documentation of a debt transfer, and the accounts were separately listed on her April 2020 credit report with outstanding balances of \$4,066 and \$8,624. Both accounts had been charged off, and Applicant did not explain why the creditor in SOR § 1.n would report a past-due balance of \$8,624 if the debt had been transferred. Even assuming that they are the same debt, the other admitted delinquencies amply establish security concerns under AG §§ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant denies the alleged medical collection delinquencies in SOR §§ 1.b, 1.e, and 1.s-1.w; the insurance debt in SOR § 1.q; the \$50 water-utility debt in SOR § 1.r; and the credit-card debts in SOR §§ 1.j-1.m and 1.x. She presented no documentation to substantiate her disputes of those debts, which are reported on her credit reports as of April 2019 or April 2020 or both. The Government bears the burden of production on controverted issues of fact under § E3.1.14 of the Directive. The Appeal Board has long held that a credit report can normally be sufficient to meet the Government's burden of

producing substantial evidence of allegations of indebtedness. See e.g., ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015).

Applicant's denial of the debts on the basis of lack of recall is insufficient to disprove her liability for the debts. Regarding the disputed medical debts, the \$1,218 medical collection debt (SOR ¶ 1.b) first became delinquent in June 2018. Applicant admitted having medical issues around that time. The other disputed medical debts were placed for collection in December 2014 (SOR ¶¶ 1.s, 1.u, and 1.w) or April 2017 (SOR ¶¶ 1.t and 1.v). She had emergency surgery in December 2016 when she lacked income and health insurance. The debts in SOR ¶¶ 1.t and 1.v could well be for her care at that time. As for the disputed credit-card debts (SOR ¶¶ 1.j-1.m and 1.x), her April 2020 credit report from Equifax indicates with respect to the debts in SOR ¶¶ 1.j-1.k and 1.m "Consumer disputes after resolution." A reasonable inference can be drawn that Applicant unsuccessfully disputed her liability for those debts.

Several of the debts on her April 2019 credit report had been dropped from her credit record as of April 2020. 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 if they become no longer legally collectible because of a state statute of limitations, which is longer. See Title 15 U.S.C. § 1681c. Debts may also be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid or when the debt has been charged off. Even so, debts may still have security significance if they are no longer legally collectible or have been dropped from a credit record, particularly if they resulted from financially irresponsible behavior or remain unaddressed without reasonable justification. Absent any evidence showing that she is not legally liable for any of the debts which she disputes, I find that AG ¶¶ 19(a) and 19(c) apply to those SOR debts which she disputes but are listed on one or both of her credit reports, including those accounts which have been charged off or those which no longer appear on her credit report.

The burden is on Applicant to mitigate the negative implications for her financial judgment raised by her record of financial delinquency. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. The following may apply in whole or in part:

- (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 person has received or is receiving 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.

Available credit information for Applicant shows that several of the accounts were placed in collection or charged off five or more years ago (*i.e.*, SOR ¶¶ 1.a, 1.g, 1.l, 1.o, 1.q, 1.s, 1.u, 1.w, and 1.x). Even so, AG ¶ 20(a), which provides for mitigation of debts that happened “so long ago,” cannot reasonably apply. Only the debts in SOR ¶¶ 1.a and 1.g have been fully resolved. An applicant’s ongoing, unpaid debts evidence a continuing course of conduct and are considered recent. *See, e.g.*, ISCR 17-03146 at 2 (App. Bd. Jul. 31, 2018) (citing *e.g.*, ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017)).

AG ¶ 20(b) is partially mitigating in that she fell behind on many of the accounts because of unemployment or underemployment after unexpected layoffs and because of health issues that compromised her income through lower pay on disability leave, uncompensated leave time, or inability to work full-time while recuperating. After being laid off in May 2013, she was unemployed until October 2014. She gained employment only to be laid off again in December 2014. She worked only part time while self-employed and experiencing health issues from December 2014 until November 2016. While unemployed and then self-employed, she fell seriously behind on her mortgage loan and eventually lost her home to foreclosure in October 2015. Only one month into a new job on a DOD contract, she had emergency surgery in December 2016. She suffered another financial setback when she was laid off in September 2017 and unemployed until February 2018. Although she was gainfully employed from February 2018 to February 2019, health issues in June 2018 led her to take uncompensated leave that summer and to eventually resign from that job.

However, for AG ¶ 20(b) to fully apply in mitigation, Applicant has to demonstrate that she acted responsibly under her circumstances to address her delinquent debts once she was in a position to do so. Even giving her six months or so to regain some financial stability, she failed to provide sufficient information that could possibly justify her delay in addressing her defaulted student loans and her failure to take steps toward resolving other debts. Evidence of debt resolution is limited. She made payments of \$1,178.84 on December 24, 2020, to settle the \$1,685 credit-card delinquency in SOR ¶ 1.a; \$40 in December 2020 toward the \$1,520 medical debt in SOR ¶ 1.b; and \$40 each in November 2020 and December 2020 toward the \$308 medical debt in SOR ¶ 1.d. The \$8,620 credit-card delinquency in SOR ¶ 1.g was fully resolved as of July 2020 through wage garnishment. While she entered into a student-loan rehabilitation program in June 2020 for her three defaulted student loans totaling \$79,819.65, she was apparently unable to

maintain the \$412 monthly payments because she entered into a new loan rehabilitation program requiring her to make nine \$5 monthly payments starting January 21, 2021. She indicated in September 2020 that efforts were in place to address her \$1,044 wireless phone debt in SOR ¶ 1.f, but she presented no evidence of any progress on that debt. Without information in the record about Applicant's income and expenses, it is difficult to conclude that she acted fully responsibly within her means to address her financial issues.

The Appeal Board has held that an applicant must demonstrate "a plan for debt payment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts." See ADP Case No. 17-00263 at 4 (App. Bd. Dec. 19, 2018), citing, e.g., ISCR Case No. 16-03889 at 5 (App. Bd. Aug. 9, 2018). There is no evidence that Applicant made any attempt to contact some of her creditors or otherwise take action toward resolving or settling those debts. Ignoring a debt until it drops off one's credit record or it is no longer be legally collectable is not sound financial judgment.

There is no evidence Applicant has had any credit counseling, which is required for mitigation under AG ¶ 20(c). Applicant's settlement of the debt in SOR ¶ 1.a, while recent, is considered a good-faith effort under AG ¶ 20(d). Wage garnishment to collect a financial judgment (SOR ¶ 1.g) and resolution through creditor foreclosure (SOR ¶ 1.o) do not qualify for mitigation under AG ¶ 20(d). That said, because those debts have been resolved, they are no longer a source of financial pressure for Applicant. Neither AG ¶ 20(c) nor ¶ 20(d) apply to the remaining alleged debts. It is unclear how many \$412 payments Applicant made toward her student loans, which have yet to be rehabilitated. She presented no documentation showing that the debts which she disputes and either are still on her credit report or have been dropped from her credit report are not legitimate obligations. Mitigation under AG ¶ 20(e) requires documented proof. Debts may be dropped from a credit record due to the passage of time, the fact that they are no longer legally collectable, or other reason unrelated to payment. While Applicant has made some progress toward addressing her record of serious delinquency, not enough is known about her current financial situation, including her income and expenses, to overcome the financial judgment concerns in this case. The financial considerations security concerns have not been adequately mitigated.

### **Guideline J: Criminal Conduct**

The security concern about criminal conduct is articulated in AG ¶ 30, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or unwillingness to comply with laws, rules, and regulations." Applicant's misdemeanor convictions of February 1993 and November 1999 drunk-driving offenses and of April 2008 and February 2014 alcohol-related reckless driving offenses are incidents that raise security concerns under disqualifying conditions AG ¶¶ 31(a) and 31(b), which provide:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The evidence also establishes that Applicant was charged on June 11, 2015, with violating her probation for the February 2014 reckless driving offense. She admits that she failed to complete required community service hours. That offense implicates AGs ¶¶ 31(a), 31(b), and 31(d), which provides:

(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

While a conviction is not required for criminal conduct to raise a security concern, the evidence is insufficient to show that Applicant committed a battery in February 2012. Applicant provided little detail about the incident, other than that it was due to a misunderstanding, and the charge was not prosecuted. The criminal conduct AGs provide for mitigation of unproven charges under ¶ 32(c), “no reliable evidence to support that the individual committed the offense.”

Conditions under AG ¶ 32 that could mitigate the security concerns raised by Applicant’s DUIs, reckless driving, and probation violation include the following:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant’s DUI offenses of the 1990s cannot be viewed in isolation from her more recent alcohol-related reckless driving in 2008 and 2014. She exhibited a troubling pattern that reflects adversely on her judgment and reliability. The time span between these incidents makes it difficult to mitigate her criminal conduct solely on the basis of the passage of time. However, the lack of any recurrence of criminal conduct in the last five years is evidence of some rehabilitation under AG ¶ 32(d). Her reform is undermined somewhat in that she appeared to minimize the extent to which alcohol was involved in her reckless driving. Her description of the February 2014 reckless driving on her SCA – it involved driving too slowly and crossing into the bike lane – gave no indication that alcohol was involved. She refused to submit to a breath, blood, or urine test for alcohol and was initially charged with DUI. However, she no longer consumes any alcohol, and has an excellent employment record with her current employer. In 2020, she exceeded her manager’s expectations and showed herself to be a self-directed systems software



engineer expert. Her dedication to her work and positive change in her circumstances are significant deterrents to any future criminal conduct. The criminal conduct security concerns are adequately mitigated.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors in 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 the granting or continuing of national security clearance eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the [pertinent] guidelines" and the whole-person concept. My comments under Guidelines F and J are incorporated in my whole-person analysis, but some additional comment is warranted.

The security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. It is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness with regard to her fitness or suitability to handle classified information appropriately. See ISCR Case No. 09-02160 (App. Bd. June 21, 2010). It was incumbent on Applicant to show that her financial situation is sufficiently stable and not likely to present an ongoing security concern. There is evidence of delinquent medical bills in recent years. While she has begun repaying some of the debts, she has not made sufficient progress to fully allay the financial considerations security concerns. Her timely payments on a February 2018 car loan weigh in her favor, but too many unanswered questions exist about her financial situation.

Regarding the criminal conduct security concerns, the Government expressed concern in the FORM about Applicant's failure to accurately report her arrest record on her March 2019 SCA. In the whole-person assessment, it casts some doubt as to whether Applicant can be counted on to abide by her obligations, including whether she can be counted on to fulfill her commitments to repay her delinquent debts.

The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009),

(citing *Adams v. Laird*, 420 F 2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

### **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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p-1.x:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.f:	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 or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

---

Elizabeth M. Matchinski  
Administrative Judge