DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 19-03197
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: Ronald C. Sykstus, Esq.

02/23/2022

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Decision

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HARVEY, Mark, Administrative Judge:

Applicant failed to take reasonable and responsible actions for several years to address a delinquent student loan that was $81,495 in 2018. Guideline F (financial considerations) security concerns are not mitigated at this time. Eligibility for access to classified information is denied.

Statement of the Case

On February 7, 2019, Applicant completed and signed her Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On January 13, 2020, the Defense Counterintelligence and Security Agency 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), as amended; 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 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 (financial considerations). (HE 2) On March 12, 2020, Applicant provided a response to the SOR and requested a hearing. (HE 3)

On October 30, 2020, Department Counsel was ready to proceed. Processing of Applicant's case was delayed due to the COVID-19 pandemic. On July 12, 2021, her case was assigned to me. On November 22, 2021, DOHA issued a notice of hearing, setting her hearing for December 23, 2021. (HE 1) Her hearing was held as scheduled in the vicinity of Arlington, Virginia using the Microsoft Teams teleconference system. (*Id*.)

During the hearing, Department Counsel offered five exhibits; Applicant offered 11 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 10-13; GE 1-5; Applicant Exhibit (AE) A-AE K) On January 10, 2022, DOHA received a transcript of the hearing. On February 12, 2022, I emailed the parties providing two state A administrative judicial decisions, and setting a suspense of February 22, 2022, for additional documents. (HE 3) On February 22, 2022, the parties submitted additional evidence and argument. (GE 6; AE L)

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

Legal Issue

Applicant requested, and I granted judicial notice of the state B Code Title 6, Civil Practice Section which indicates a promise to pay a debt does not defeat the statute of limitations to a debt. (Tr. 14) The only action that will defeat a statute of limitations defense to a debt in state B is a partial payment. (Tr. 14) At the time of her hearing, Applicant was a resident of state B (Tr. 16). The sole debt at issue resulted from Applicant's attendance at a university in state A, and her student loans borrowed from a state A entity. Applicant concluded the state B statute of limitations would bar a collection action, including an administrative garnishment, originating in state A. (AE L) Additional discussion is at pages 5-6, *infra*.

Findings of Fact

In Applicant's SOR response, she denied the SOR allegation in ¶ 1.a with explanations. (HE 3) She also provided some admissions. Her admissions are accepted as findings of fact. Additional findings follow.

Applicant is 46 years old, and a government contractor has employed her as a real property subject-matter expert and trainer. (Tr. 16-17) She has worked either as a federal employee or federal contractor with some breaks in employment for the last nine years. (Tr. 53) In 2007, she received a bachelor's degree in history at a university in state A. (Tr. 18) She worked in interior design and space planning for 13 years. (Tr. 19) She has never been married, and she does not have any children. (Tr. 51) She has never served in the military. (Tr. 51)

Financial Considerations

Applicant was unemployed in 2010, employed in 2011, unemployed in 2012, employed from 2013 to mid-2016, unemployed from mid-2016 to mid-2017, and employed thereafter to the present. (Tr. 49-50) She has also been underemployed at times. (Tr. 49-50) Her annual income over the past four years has ranged from $65,000 to $120,000. (Tr. 53) Her current income is $102,000. (Tr. 53) Her current net worth, which includes her retirement accounts, is approximately $40,000. (Tr. 99)

SOR ¶ 1.a alleges that Applicant has a delinquent student loan for $81,495. Applicant disclosed her student loan debt on her February 7, 2019 SCA and during her April 3, 2019, Office of Personnel Management (OPM) personal subject interview. (GE 1, GE 5)

From 1998 to 2002, Applicant obtained five student loans from a state A entity. (Tr. 23, 27-28, 44; GE 2 at 2-4, 7-15) The interest rate on her promissory notes was eight to nine percent. (Tr. 28-32) The creditor has provided the following balances:

Initial Balance (1)	Balance in October 2005 (2)	Balance in June 2016 (3)	Balances in August 2016 (4)	Loan Number and Exhibit (5)
$1,348 (Apr 2004)	$1,532	$2,160	$2,972	Loan 1 of 5; GE 2 at 14-15; AE H
$9,070 (Apr 2004)	$10,305	$15,589	$21,985	Loan 2 of 5; GE 2 at 12-13; AE H
$2,833 (Nov 1999)	$3,895	$5,874	$8,090	Loan 3 of 5; GE 2 at 10-11; AE H
$6,368 (Nov 2006)	Unknown	$8,810	$12,135	Loan 4 of 5; GE 2 at 9; AE H
$5,667 (Apr 2001)	$7,702	$11,444	$15,600	Loan 5 of 5; GE 2 at 7-8; AE H

The total balance in June 2016 was $43,877. (GE 2 at 7-15) On August 22, 2016, the creditor emailed Applicant and indicated the amounts owed in column (4), and the total balance was $60,782. (AE H) On September 12, 2018, the creditor wrote that the balance owed was $81,495. (GE 2 at 1) The June 2016 printout of the "current balance" in column (3) does not explain the various columns of figures. (GE 2 at 7-15) The documentation does not explain why the balance increased $37,618 in 28 months from June 2016 to September 2018.

Applicant said she made her first payments in 2010 because she may have had a deferment for unemployment or taking classes from her graduation in 2007 to 2010. (Tr. 33) She understood that her debt was accruing interest while she was in school and during the deferment. (Tr. 33-34)

Applicant said she disputed the debt because the creditor said she owes five times the amount she borrowed. (Tr. 21) Around 2012, a collection agent contacted her and

asked her to pay about $40,000. (Tr. 39) She said she borrowed $21,000 and her first bill "was close to $40,000." (Tr. 34) Her monthly payment was about $400, and she made about four payments. (Tr. 36) She stopped making payments because she had a period of unemployment. (Tr. 36) She did not make any payments after 2010 until 2016 when her pay was garnished for about two months. (Tr. 38-39) The garnishment was 25 percent of her wages. (Tr. 47) In 2016, Applicant emailed the original creditor asking for an income-based repayment plan; and the creditor replied that this was a federal student loan program that is unavailable because her loan is a state loan. (AE E) The creditor suggested that she provide evidence of financial hardship or extenuating circumstances if she wished to have relief from the garnishment of her pay. (*Id*.)

In 2018, Applicant filed a complaint to the Consumer Financial Protection Bureau (CFPB) asserting that the original creditor has refused to allow her to pay off each of her five loans individually. (AE F) The CFPB responded that they had no jurisdiction over non-federal student loans. (AE G)

Applicant believes the interest on her student loan might be compounding on a daily basis. (Tr. 37) She did not believe state A could garnish her pay outside of state A; however, she believed that if she moved back to state A, the creditor would attempt to garnish her wages. (Tr. 38) She has not made any payments since the garnishment in 2016. (Tr. 46-47) When the garnishment occurred in 2016, she was working for a state A company, but she was living and working on an island in the Pacific Ocean. (Tr. 38-39)

Applicant said she has not heard from the creditor since 2016 or 2017. (Tr. 22) In 2018, she retained a consumer counsel, Mr. C, to negotiate resolution of the debt. (Tr. 21, 40) On February 24, 2020, Mr. C wrote:

> Between August 16, 2018 [and] September 12, 2018, we made numerous attempts to contact [the original creditor and the collection agent] for the sole purpose of satisfying the alleged outstanding debt in a mutually beneficial manner based on verifiable and legally based information and details. . . . Between August 16, 2018 and September 12, 2018, our office made numerous written and phone demands to both [the original creditor and the collection agent] to provide an accurate and detailed accounting of the account at issue prior to resolving the account in satisfaction. However, such an accounting was never provided even as numerous follow up requests for this information was made by our office. Based on information provided to our office by [Applicant], we believe the amount in question, $81,494.91 is not an accurate balance, and is not owed by [Applicant]. Neither entity could or would provide any details to our office to reconcile nor verify the amount at issue. Therefore we could not in good consci[ence] or practice advise our client to pay a debt that a creditor refused to verify through a reasonable accounting of the account request. (AE D at 1-2)

Mr. C stated that reasonable offers to settle were made to the collection agent, and they were rejected. (*Id*. at 2) The creditor did not provide "a verifiable accounting or provide a complete chain of ownership title of the alleged debt." (*Id*.) Mr. C concluded that

she had an excellent defense to the debt due to the applicability of the state B's statute of limitations, and she does not owe the claimed amount of $81,494.91 to the creditor. (*Id*.) Mr. C did not provide any written correspondence to or from the creditor.

Mr. C recommended that Applicant not make a partial payment. (Tr. 21-22) In 2018, the creditor wrote Mr. C and informed him that she owed $81,495. (Tr. 44; GE 2 at 1) The handwritten notes on the creditor's letter to Mr. C were made by an unknown person and will not be considered. (Tr. 46; GE 2 at 1) In 2018, the SOR debt was dropped from Applicant's credit report. (Tr. 20) She instructed Mr. C to approach the creditor and negotiate a settlement. (Tr. 24) However, Mr. C never wrote the creditor to make an offer to settle the debt. (Tr. 48) The last time she asked Mr. C about whether he had heard from the creditor was in 2020, and Mr. C said he had not heard from the creditor. (Tr. 49) There is no evidence that Mr. C informed the SOR ¶ 1.a creditor of the address of Appellant's current employer.

Applicant's rough estimate of the current amount of the debt is about $60,000 to $65,000. (Tr. 45-46, 50) She knows how to use a spreadsheet; however, she elected not to use one to determine the amount of her debt. (Tr. 51) She believed that the creditor would garnish 25 percent of her pay if she moved back to state A; however, she did not believe the debt could be collected in state B. (Tr. 38)

An expert on student loan collection actions wrote:

> Administrative wage garnishment is special and unique. The Higher Education Act (20 U.S.C. § 1095a) in combination with the Debt Collection Improvement Act of 1991 (31 U.S.C. § 3720D), allow wages to be garnished for default Federal student loans. However, the loan at issue is not a Federal loan, and thus Federal law does not apply, nor allow for an administrative wage garnishment.
>
> Unfortunately, [state A] is unique in that its legislature also allows for administrative wage garnishment, pursuant to [state A statute], more fully described in [state A statute] - Order to Withhold and Deliver. However, the law of [state A] regarding administrative remedies stops at its borders for the exact reason pointed out by Administrative Judge Harvey- the Full Faith and Credit Clause of the US Constitution only applies to judgments, not administrative remedies.
>
> In essence, while a judicial garnishment could cross state lines, time is limited in pursuing someone to obtain a judgment. Administrative remedies may not have a time clock, but they are limited in geography to the state which enacts such. This is a warning to [Applicant]. Should she ever return to [state A], the state could start garnishing her wages, regardless how long it has been since she last paid the loan. But, while she remains in [state B] or any other state other than [state A], [state A] has no power to reach her through administrative wage garnishment.

> NOTE: Should [Applicant's] employer have locations in [state A], the administrative remedy could be enforced against the [state A] location. This is not [state A] reaching into [state B]. It is [state A] reaching a business subject to [state A] law, that happens to employ [state B] resident. (AE L)

Department Counsel counters that Applicant's provides no authorities in state B indicating an administrative garnishment from state A would not be enforceable in state B, and that Applicant's company might open an office in state A. (GE 6) Theoretically, state A could use an administrative garnishment to obtain a judicial garnishment order in state A' courts. For the purposes of this decision, I will presume that state A will not file an administrative or judicial garnishment of Applicant's pay with her employer.

Applicant is current on all of her debts, including her federal student loans, except for the debt in SOR ¶ 1.a. (Tr. 23-24) Her 2021 credit reports do not contain any negative entries. (AE A-AE C) She did not describe any financial counseling or provide a budget. Applicant made two trips to Thailand and one trip to Europe over the last seven years for vacations. (Tr. 41-42) Her goal in 2022 is to stay current on her debts and to pay down her debts. (Tr. 52) Security is aware of the debt, and she does not believe it could be used to pressure or compromise her. (Tr. 25)

Applicant's counsel argued it is legal malpractice for an attorney to suggest that Applicant make a payment to the creditor. (Tr. 107-108, 111-112) He contended that prudent legal advice is to wait for the creditor to file a lawsuit because "that's never going to happen." (Tr. 107, 111) Her counsel described the student loan as a "usurious loan." (Tr. 109) He recommended against her taking money from her retirement account to attempt to settle the SOR ¶ 1.a debt. (Tr. 113)

Character Evidence

Applicant loves her employment, helping people, and assisting the Army. (Tr. 25, 53) She loves the United States and would not take any actions to jeopardize security. (Tr. 26, 100)

Applicant received a three percent merit pay increase in 2019, and she was awarded a certificate of appreciation from the commander of an important installation. (AE J; AE K) The certificate of appreciation lauded her outstanding work and exceptional contributions to mission accomplishment during October 2021. (AE K)

Seven character witnesses including family, coworkers, a former employer, and friends made statements on Applicant's behalf. Her sister and best friend said Applicant expressed frustration to her about the creditor in SOR ¶ 1.a. (Tr. 57-58) Applicant's brother-in-law, her sister, and a friend are aware of her disputing for several years her responsibility for repaying her student loan. (Tr. 58, 65, 72) Applicant is conscientious about paying her debts. (Tr. 58, 65) She is passionate about her work and family. (Tr. 59) The general sense of their statements is that Applicant has excellent integrity, and is detail oriented, diligent, trustworthy, responsible, professional, honest, and reliable. (Tr. 56-98)

She made important contributions to mission accomplishment. (Tr. 56-98) Their statements support approval of her access to classified information. (Tr. 56-98)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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 Director of National Intelligence 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. 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.

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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially 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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board 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).

The SOR alleges Applicant owes one student loan debt totaling $81,495 in 2018. A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Circumstances beyond Applicant's control adversely affected her finances, including underemployment, and unemployment. However, "[e]ven 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. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant did not provide supporting documentary evidence that she maintained contact with the creditor in SOR ¶ 1.a. She did not provide documentary evidence of settlements or written offers to settle with the creditor; however, as the debt is with a state A entity, payment in full may be the only resolution. She is credited with making some payments in 2010 and 2016. Her payments are insufficient to establish a track record of payments, or good-faith mitigation of her delinquent SOR debt.

Applicant's delinquent student loan debt in SOR ¶ 1.a does not appear on her credit report. The SOR ¶ 1.a debt may have been 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. *See* 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 debt is 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.

Applicant asserts the creditor in SOR ¶ 1.a has exaggerated the amount of her debt. She did not provide the rate of compounding or even establish with certainty that the debt is compounded. The rule of 72 is commonly used to calculate approximate doubling times. The rule of 72 indicates to find the number of years required to double a debt or investment at a given interest rate compounded on an annual basis, one should divide the interest rate into 72. For example, to calculate how long it takes for a debt borrowed or invested at an eight percent interest to double, divide 8 into 72, and the result is 9 years. *See* Lending Tree Refinance website, *Finance Formulas, Doubling Time*, available at, https://financeformulas.net/ Doubling Time.html. It the interest rate compounds on a monthly or shorter basis, the doubling rate would be sooner. For example, if compounded on a monthly basis, the doubling time would be reduced to about 8.5 years.

If Applicant borrowed about $22,000 in about 2000, and she waited 10 years to make her first payment, the debt would be more than $44,000 in 2010. In 2010, she paid the creditor about $1,600. The remaining debt would double again by about 2019 to about $85,000. The debt would increase about $7,000 each year, and is currently about

$100,000. A state A administrative decision pertaining to the creditor in SOR ¶ 1.a illustrates how state A utilizes administrative garnishment to collect 25% of a debtor's pay, and a student-loan debt resulting from loans from 1989 to 1996 in that case will likely not be paid for many years beyond the decision year of 2008. (HE 3A)

Applicant's consumer attorney, Mr. C, provided reasonable financial advice to Applicant about state B's statute of limitations. State statutes of limitations for various types of debts range from 2 to 15 years. *See* Nolo Law for All website, Chart: Statutes of Limitations in All 50 States, http://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941. html. According to the Federal Trade Commission, Consumer Information webpage, it is illegal under the Fair Debt Collection Practices Act for a creditor to threaten to sue to collect a time-barred debt. http://www.consumer.ftc.gov/articles/0117-time-barred-debts. The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

> Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be [haled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). South Carolina case law is not binding on state courts in other states. However, the South Carolina Court of Appeals' description of the basis for this long-standing legal doctrine is instructive. *See also Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 486 (1988) (where the U.S. Supreme Court noted that "The State's interest in a self-executing statute of limitations is in providing repose for potential defendants and in avoiding stale claims.").

Applicant lived in two states with the following relevant statutes of limitations (SL) for the debt in SOR ¶ 1.a: state A is three years (written contracts); state A is 10 years (collection of debt on account); and state B is six years (written contracts). *See Credit.Com* website, https://www.credit.com/debt/statutes-of-limitations/. Once Applicant stopped making payments, the creditor had to file suit within the statute of limitations to maintain the collectability of their debt. There is no evidence that the creditor in SOR ¶ 1.a took judicial action in court to pursue collection of her debt.

In 2016, state A obtained an administrative garnishment order and garnished Applicant's pay for two months. State A can file another administrative garnishment order if the state discovers the address of her employer. *See, e.g.*, HE 3B. However, Applicant believes her employer would not enforce the order because she lives and works in state

B. Assuming Applicant's debt in SOR ¶ 1.a is collection barred in state B, it is still relevant to financial considerations security concerns:

> Applicant's argument concerning the unenforceability of the largest debt due to the running of the statute of limitations fails to demonstrate the Judge erred. First, security clearance decisions are not controlled or limited by statutes of limitations. Second, absent an explicit act of Congress to the contrary, the Federal Government is not bound by state law in carrying out its functions and responsibilities. Applicant does not cite to any Federal statute that requires the Federal Government to be bound by state law in making security clearance decisions. Third, a security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a delinquent debt is legally unenforceable under state law, has been discharged in a bankruptcy, or is paid, the Federal Government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner. See, e.g., ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003). In this case, the Judge's consideration of the unenforceable debt in making her security clearance eligibility determination was not arbitrary, capricious, or contrary to law.

ISCR Case No. 15-02326 at 3 (App. Bd. Oct. 14, 2014). The Appeal Board has "held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value." ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016) (citing ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008); ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005); ISCR Case No. 01-09691 at 2-3 (App. Bd. Mar. 27, 2003)). *See, e.g.,* ISCR Case No. 08-01122 (App. Bd. Feb. 9, 2009) (reversing grant of security clearance); ADP Case No. 06-14616 (App. Bd. Oct. 18, 2007) (reversing grant of security clearance and stating "reliance upon legal defenses such as the statute of limitations does not necessarily demonstrate prudence, honesty, and reliability; therefore, such reliance is of diminished probative value in resolving trustworthiness concerns arising out of financial problems" (citing ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)).

Applicant did not describe any financial counseling. There is not clear evidence that the debt in SOR ¶ 1.a is being resolved. I have assumed that Applicant could not be held financially responsible for the debt in SOR ¶ 1.a in state B. However, she did not provide sufficient documentation about why she was unable to make greater documented progress resolving the debt in SOR ¶ 1.a. There is insufficient assurance that this financial problem is being resolved. Under all the circumstances, she failed to establish mitigation of financial considerations security concerns.

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 46 years old, and a government contractor has employed her as a real property subject-matter expert and trainer. She has worked either as a federal employee or federal contractor with some breaks in employment for the last nine years. In 2007, she received a bachelor's degree in history at a university in state A. She worked in interior design and space planning for 13 years.

Applicant presented important good-character information. She loves helping people, her employment, assisting the Army, and the United States, and she would not take any actions to jeopardize security. She received a three-percent merit pay increase in 2019, and she was awarded a certificate of appreciation from the commander of an important installation, lauding her outstanding work and exceptional contributions to mission accomplishment during October 2021.

Seven character witnesses including family, coworkers, a former employer, and friends made statements on Applicant's behalf. Applicant is conscientious about paying her debts. She is passionate about her work and family. The general sense of her character statements is that Applicant has excellent integrity, and is detail oriented, diligent, trustworthy, responsible, professional, honest, and reliable. She made important contributions to mission accomplishment. Their statements support approval of her access to classified information.

Applicant provided important financial mitigating information. Her finances were harmed by several circumstances beyond her control. All of her debts are current, except for the debt in SOR ¶ 1.a.

The evidence against grant of a security clearance is more substantial at this time. Applicant did not provide documentation about why she was unable to make greater documented progress resolving the debt in SOR ¶ 1.a after the garnishment in 2016. Applicant did not provide a persuasive reason why she did not inform the creditor of her

current address, current employer's address, and offer to pay 25 percent of her pay to address her student loan debt or enable a voluntary garnishment of her pay after she became employed. However, I am not suggesting that Applicant take this action now. "The Board has previously noted that giving advice to Applicant on what to do to qualify for a security clearance would be inconsistent with the obligation to conduct adjudications in a fair and impartial manner." ADP Case No. 20-01945 at 3 (App. Bd. Jan. 27, 2022) (citing ISCR Case No. 11-10499 at 2 (App. Bd. Aug. 21, 2013)). Her lack of responsible financial action in regard to the debt in SOR 1.a over the last four years raises unmitigated questions about her reliability, trustworthiness, and ability to protect classified information. *See* AG ¶ 18.

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. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of her past-due debt, and a better track record of behavior consistent with her obligation, she may well be able to demonstrate persuasive evidence of her security clearance worthiness. 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 failed to mitigate 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

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

_____
Mark Harvey
Administrative Judge