



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



In the matter of:)
)
) ISCR Case No. 21-01753
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to make timely payments on her student-loan debts in 2019 and 2020; however, she has an overall track record of financial responsibility. Circumstances beyond her control caused her financial problems. On March 15, 2021, she paid \$1,784 to her student-loan creditor before she received the statement of reasons (SOR). She promised to resume student-loan payments when the federal forbearance ends. She has no delinquent debts on her current credit report. Guideline F (financial considerations) security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On October 12, 2020, Applicant completed and signed an Electronic Questionnaires for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On September 3, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (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 DCSA 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)

Applicant provided an undated response to the SOR, and she requested a hearing. (Transcript (Tr.) 12; HE 3) On December 14, 2021, Department Counsel was ready to proceed. On March 25, 2022, the case was assigned to me. On June 13, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 15, 2022. (HE 1) The hearing was held as scheduled.

Department Counsel offered six exhibits into evidence, and Applicant did not offer any exhibits into evidence at her hearing. (Transcript (Tr.) 11, 18-20; GE 1-GE 6) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 20) On July 25, 2022, DOHA received a transcript of the hearing. The record was held open until August 16, 2022, to enable Applicant to provide additional documentation. (Tr. 75-76) Three post-hearing documents were received and admitted without objection. (Applicant Exhibit (AE) A-AE C) The record closed on August 16, 2022.

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

Findings of Fact

In Applicant's SOR response, she denied the allegations in SOR ¶¶ 1.a through 1.c. (HE 3) She also provided mitigating information.

Applicant is a 32-year-old senior scheduling manager and production control specialist who has been employed by a DOD contractor for the previous six years. (Tr. 6, 8) In 2008, she graduated from high school, and in 2012, she received a bachelor's degree with a major in biology. (Tr. 6-7, 29-30) She completed several post-graduate classes; however, she has not received a master's degree. (Tr. 7) She has never served in the military. (Tr. 8) There is no evidence of security violations, arrests, convictions, use of illegal drugs, or abuse of alcohol.

Applicant was married from 2016 to 2018, and she has custody of her five-year-old son. (Tr. 7-8) Her former husband lost his employment, and he was evicted from his residence. (Tr. 26) She tried to financially assist her former husband. (Tr. 26) He was financially irresponsible, and he had other non-financial issues that showed he had a lack of discretion and good judgment. (Tr. 66-67) Her husband was supposed to pay annual child support of \$12,500; however, he has not paid child support. (Tr. 25, 42) In 2019, she allowed her former husband to move in with her and their son. (Tr. 41) In 2020, she forced her former husband to move out of her residence. (Tr. 41) She was reluctant to aggressively pursue child support from him because she did not want him to insist on more access to their son. (Tr. 67)

Financial Considerations

After graduating from college in 2012, Applicant worked part time with her father who had medical issues, and she worked for two or three days a week at a pharmacy. (Tr. 21, 31-32) For most of 2014, a DOD contractor employed her. (Tr. 22) She took some additional college classes in 2014. (Tr. 30) She left her DOD-contractor employment because her husband wanted her to move. Next, she worked for an insurance company, and her pay was reduced about \$20,000. (Tr. 22) She followed her employment with an insurance company with work for a restaurant. (Tr. 23)

In 2016 to 2017, Applicant focused on saving money to pay off a single-wide mobile home. (Tr. 36) In January 2019, she paid off her vehicle loan. (Tr. 39) She recently paid some medical debts and paid off her single-wide mobile home. (Tr. 25, 41) In May 2021, she sold the mobile home, and used \$13,000 from the sale as a down payment to purchase some land and a house. Her mortgage was \$91,000. (Tr. 38) She used about \$20,000 to move a home on to the land she purchased and to make necessary repairs to this home. (Tr. 45, 53) In September 2021, she moved into the home. (Tr. 37-38; 68)

Applicant's current annual salary is \$82,000. (Tr. 44; AE C) She has \$10,000 in her 401(k) account. (Tr. 44) She has no savings account balance, and she has about \$2,000 in her checking account. (Tr. 45, 54) In 2021, she purchased a used vehicle for \$36,000, and her loan balance on it is down to about \$30,000. (Tr. 46) She settled some of her delinquent credit card debts. (Tr. 63)

Applicant filed her federal income tax returns for tax year (TY) 2020 and TY 2021 in April 2022, and she owes \$3,200 to the IRS for TY 2020. (Tr. 49-51; AE C) Her anticipated refund for TY 2021 is about \$2,400, and her accountant said her refund will be applied to her TY 2020 tax debt. (Tr. 51) She did not timely pay her taxes because she owed money for her home repairs. (Tr. 52)

Student Loans

After Applicant graduated from college in 2012, her student loans, which originated before 2013, were deferred for about one year. (Tr. 21, 30) Her student loans were a mix of federal-guaranteed loans and private loans. (Tr. 31) She considered student-loan consolidation; however, she preferred to work with the loans on an individual basis. She recognized that some of her payments were dispersed to all the loans. (Tr. 34; AE A; AE B) In May 2016, she began working for her current employer. (Tr. 23) She stopped making payments to her student loans around late 2016 or early 2017 because she was unable to work due to three of her hospitalizations for complications of pregnancy, and after her son was born, he had some medical problems. (Tr. 35, 54-55) She used medical leave without pay. (Tr. 23, 35) When her son had medical problems; she missed work to take him to appointments; and she incurred several medical debts. (Tr. 25) Around 2019, a medical creditor garnished \$900 from her pay over a two-month period. (Tr. 41-42)

Applicant's SOR alleges three charged-off student-loan accounts in ¶ 1.a for \$12,517; ¶ 1.b for \$4,713; and ¶ 1.c for \$2,910. (HE 2) Her November 5, 2020 credit

report, the earliest credit report of record, shows the three student-loan accounts had a high credit total of \$14,352 with a total balance of \$20,140 as shown on the following table. Eight student loans were in “pays as agreed” status, and they had a high credit of \$32,000 with a balance of \$43,845. (GE 4 at 4-7) When the balance exceeds the high credit on a debt, a history of the debts delinquency is established. One account has a balance of \$5,500 and a high credit of \$5,500. (GE 4 at 7) The \$5,500 account was transferred, and is not included in the following table. (GE 4 at 7) This credit report also shows nine student loans in current status with a previous history of being at least 180 days past due. (GE 4)

Date Opened	High Credit	Balance	Status	Exhibit
(1) May 2011	\$9,000	\$12,517	charged off	GE 4 at 2
(2) August 2011	\$3,600	\$4,713	charged off	GE 4 at 2
(3) July 2012	\$1,752	\$2,910	charged off	GE 4 at 3
Subtotal of three charged-off debts	\$14,352	\$20,140	charged off	GE 4 at 2-3
(4) August 2008	\$3,500	\$4,765	current	GE 4 at 6
(5) September 2009	\$4,500	\$6,009	current	GE 4 at 5
(6) September 2010	\$2,000	\$3,465	current	GE 4 at 6
(7) September 2010	\$5,500	\$7,053	current	GE 4 at 5
(8) June 2011	\$5,500	\$7,085	current	GE 4 at 4
(9) June 2011	\$2,000	\$3,294	current	GE 4 at 7
(10) July 2012	\$3,500	\$5,464	current	GE 4 at 5
(11) July 2012	\$4,000	\$4,926	current	GE 4 at 6.
(12) October 2013	\$1,500	\$1,784	current	GE 4 at 7
Subtotal of nine current debts	\$32,000	\$43,845	current	GE 4 at 4-7
Total	\$46,352	\$63,985		

Applicant received correspondence from two student-loan entities about her student-loan debts. (Tr. 34, 57) She communicated with the student-loan creditors when she stopped making payments. (Tr. 55) After the three SOR-alleged student loans were charged off, she contacted the creditor and asked to resume payments; however, the creditor said the debt was “written off, so there is no account for you to make payments on.” (Tr. 56, 58-59) After she discussed the three charged-off student-loan debts with the Office of Personnel Management investigator, she emailed the student-loan creditor’s customer service address, and she asked for confirmation that she was not permitted to pay the three debts; however, she did not receive a reply. (Tr. 62) She did not do anything about the three SOR debts after she received the SOR. (Tr. 63) The three charged-off debts were not owed to the Department of Education (DoEd). (GE 4) They are not listed on her current credit report. (GE 6)

Applicant’s December 3, 2021 credit report shows the eight student loans are in “pays account as agreed” status, and all accounts show a last payment date in October 2021. (GE 6) One account shows a \$1,784 payment in March 2021 with a current balance of zero. (GE 6 at 7) The paid-off debt was item (12) in the above table. The following table shows the student-loan accounts on this credit report.

Date Opened	High Credit	Balance	Exhibit
(1) Aug. 29, 2008	\$3,500	\$4,765	GE 6 at 5
(2) Sept. 2, 2009	\$4,500	\$6,009	GE 6 at 5
(3) Sept. 7, 2010	\$2,000	\$3,465	GE 6 at 6
(4) Sept. 7, 2010	\$5,500	\$7,053	GE 6 at 7
(5) June 8, 2011	\$2,000	\$2,294	GE 6 at 6
(6) June 8, 2011	\$5,500	\$7,085	GE 6 at 7
(7) July 2, 2012	\$4,000	\$4,926	GE 6 at 6
(8) July 2, 2012	\$3,500	\$5,464	GE 6 at 5
Total	\$30,500	\$41,061	

Applicant provided an undated account statement showing she borrowed \$9,000 in 2011 and \$2,552 in 2012 for student loans. (AE B) She made the following payments: 2015-six payments totaling \$2,444; 2016-12 payments totaling \$1,200; 2017-two payments totaling \$200; and 2018-one payment totaling \$150. (AE B) She made multiple monthly payments of less than \$50 each. (AE A; AE B) The account statements do not show the current account balance. Her two student-loan account statements show the following payment information.

Payment Date	Payment Amount	Applied to Principal	Applied to Interest	Exhibit
Mar. 15, 2021	\$1,784	\$1,754	\$30	AE A
Payments in 2021	\$1,784			AE A
Mar. 23, 2020	\$86	\$35	\$51	AE A
Mar. 3, 2020	\$90	\$0	\$90	AE A
Mar. 3, 2020	\$45	\$0	\$45	AE A
Feb. 12, 2020	\$92	\$23	\$69	AE A
Feb. 12, 2020	\$16	\$0	\$16	AE A
Jan. 13, 2020	\$46	\$0	\$46	AE A
Nov. 29, 2020	\$73	\$0	\$73	AE A
Nov. 29, 2020	\$39	\$0	\$39	AE A
Payments in 2020	\$487			AE A
Nov. 29, 2019	\$37	\$0	\$37	AE A
Payments in 2019	\$37			AE A
Oct. 18, 2018	\$100	\$0	\$100	AE A
Payments in 2018	\$250			AE A & B
Payments in 2017	\$200			AE B
Payments in 2016	\$1,200			AE B
Payments in 2015	\$2,444			AE B
Nov. 30, 2015	\$6,032	\$5,693	\$339	AE A
Oct. 31, 2015	\$30,528	\$28,616	\$1,912	AE A

Applicant's credit reports reflect three major student-loan creditors, including the DoED (GE 3-6) She provided account statements from two of the three major creditors after her hearing, but not from DoED. (AE A; AE B) She did not provide the current

balances on her accounts. It is not known whether she had an account statement from DoED. Her credit reports show transfers of her student-loan accounts.

In March 2020, as a result of the COVID-19 pandemic, the DoED placed federal student loans in forbearance. The DoED extended the student-loan payment pause through August 31, 2022. The pause includes the following relief measures for eligible loans: a suspension of loan payments; a 0% interest rate; and stopped collections on eligible defaulted loans. See Federal Student Aid website, <https://studentaid.gov/announcements-events/covid-19>.

Applicant's total income is rounded to the nearest thousand and taxes due or refund is rounded to the nearest hundred. (AE C) Her tax returns provided the following information: 2018 total income is \$60,000 and refund is \$1,900; 2019 total income is \$69,000 and refund is \$500; 2020 total income is \$78,000 and taxes owed is \$3,200; 2021 total income is \$82,000 and refund is \$2,400. (AE C)

Applicant's employer has a plan to match some of employee payments to address student loans. (Tr. 40-41) Applicant intends to use this plan and resume her payments after the federal forbearance ends. (Tr. 40-41)

Track Record of Debt Payments

Applicant's earliest credit report of record is dated November 5, 2020. (GE 4) The collections section lists SOR debts ¶¶ 1.a, 1.b, and 1.c. (GE 4 at 2-3) This credit report's collections section also has the following entries: (1) an unpaid medical debt for \$123; (2) a bank debt for \$1,924, which was settled for less than full balance; (3) a department store debt for \$2,275, which was settled for less than full balance; and (4) a bank debt for \$1,475, which was settled for less than full balance. (GE 4 at 3-4) In addition to the student loans addressed previously, she has a bank debt for \$1,495, a credit-card debt for \$5,643, and a store debt for \$1,192. (GE 4 at 11-13) The three non-SOR debts are in a "pays as agreed" status. (GE 4 at 11-13) The remainder of her credit entries have a zero balance. (GE 4)

Applicant's most recent credit report of record is dated December 3, 2021. (GE 6) It does not show any debts in collections. (GE 6 at 1) In addition to the student loans previously discussed, she had a store debt for \$1,448, a bank debt for \$2,422, and a vehicle debt for \$35,260. All three debts are in a "pays as agreed" status. (GE 6 at 4) The remainder of her credit entries have a zero balance. (GE 4)

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 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."

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 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*.

The relevant financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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).

Applicant has a history of negative financial information. She had delinquent medical debts, delinquent student-loan debts, and owes a federal income tax debt of \$800. She filed her 2020 federal income tax return in April 2022.

A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

The three SOR debts were charged off and then dropped from Applicant’s 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 contacted the creditor and asked for a payment plan. The student-loan creditor told her the three SOR debts were charged off, and the creditor could not provide a payment plan.

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].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Over the last five years, Applicant provided proof that she paid her student-loan creditors: 2017 (\$200); 2018 (\$250); 2019 (\$37); 2020 (\$487); and 2021 (\$1,784). She gave higher priority to paying her other debts, including medical and credit card debts. She purchased a used vehicle, and a home for her and her son to live. She financed these purchases and they are in current status.

All of Applicant’s student-loan debts are in “pays as agreed” status even though there is no evidence of student-loan payments after March 15, 2021. Complete reliance on the COVID-19 pandemic-based student loans deferment to establish mitigation for

security clearance purposes is misplaced. Applicant's student loans were delinquent before May 2020. See ISCR Case No. 20-03208 at 2 (App. Bd. July 6, 2021); ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021) (noting student loans totaling about \$20,000 that were delinquent before the COVID-19 federal deferment may be the basis for revocation of access to classified information). Applicant made inconsistent student-loan payments over the last five years. See ISCR Case No. 14-03612 at 3 (Aug. 25, 2015) ("Indeed, even if a credit report states that a debt has been paid, that fact alone does not, in and of itself, resolve concerns arising from the dilatory nature of an applicant's response to his debts or other circumstances that detract from an applicant's judgment and reliability. In this case, the Judge commented on the absence of detailed evidence about how Applicant addressed his finances and reasonably had doubts about his clearance eligibility based on that lack of evidence").

Applicant's history of non-payment of her federal student-loan debts has important security implications. See ISCR Case No. 20-01004 at 3 (App. Bd. June 28, 2021) ("Resolution of a delinquent debt does not preclude further inquiry or examination regarding it. Even if an alleged debt has been paid or canceled, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant's worthiness for a clearance") (citing ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017)).

Two Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b) in cases where there are limited financial resources and circumstances beyond an applicant's control adversely affecting his or her finances. In ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010), the applicant had \$41,871 in delinquent credit-card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant 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 child support payments to her. 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. *Id.* at 3. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4. I note 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 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant was sporadically unemployed and lacked the ability to pay his creditors. The Appeal Board noted "it will be a long time at best before he has paid" all of his creditors. *Id.* at 3. 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 [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan.

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) (citing ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008)). 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 experienced divorce, medical problems for herself, her father, and her son, underemployment, and her former spouse’s failed to pay child support for their son. A fraction of the child support of \$12,500 per year would have been enough to keep her student-loan accounts in current status. These are circumstances largely beyond her control, which adversely affected her finances. 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)).

Applicant presented some important mitigating information. Her credit reports reflect paid debts, debts with a zero balance, or debts in a current paid as agreed status. All three SOR-alleged debts have been dropped from her credit reports. She paid several non-SOR delinquent debts. Her single late filed tax return was an isolated occurrence.

Applicant established mitigation under AG ¶¶ 20(a), 20(b), and 20(d). She showed good faith in her overall handling of her finances. I found her statement at her hearing to be candid and credible. She promised to pay her debts and maintain her financial responsibility. Her delinquent debts are unlikely to recur. There are clear indications her financial problems are under control. Her history of handling her finances does not cast doubt on her current reliability, trustworthiness, or good judgment. Financial considerations security concerns are 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 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 32-year-old senior scheduling manager and production control specialist who has been employed by a DOD contractor for the previous six years. In 2012, she received a bachelor's degree with a major in biology. She completed several post-graduate classes. She was married from 2016 to 2018, and she has custody of her five-year-old son from that marriage. There is no evidence of security violations, arrests, convictions, use of illegal drugs, or abuse of alcohol.

Applicant has achieved significant pay raises for the last three years, which is an indication her employer is satisfied with her performance. In 2018, her pay was \$60,000; in 2019, her pay was \$69,000; in 2020, her pay was \$78,000; and in 2021, her pay was \$82,000.

Applicant has a history of some negative financial information. She had delinquent medical debts as recently as 2020, delinquent student-loan debts as recently as 2020, and currently owes federal income taxes of \$800. She filed her 2020 federal income tax return in April 2022.

The overall record provides persuasive support for continued access to classified information. Her finances were harmed by several circumstances largely beyond her control as discussed *supra*. She showed a track record of consistent payments to address most of her debts. She acted responsibly under the circumstances, and all of her debts are now current or resolved. She understands that she needs to pay her debts, and the conduct required to retain her security clearance.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant understands what she needs to do to maintain her financial responsibility. Her efforts at debt resolution have established a "meaningful track record" of debt re-payment. Security officials can check her credit reports and revoke her security clearance if she shows a lack of financial responsibility. I am confident she will resume her student-loan payments when the federal deferment ends, and she will maintain her financial responsibility.

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)).

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, 1.b, and 1.c: For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge