



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 19-02922
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

08/11/2022

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on a car loan, fitness club fees, two utility accounts, and storage unit fees largely due to circumstances outside of her control. Yet more progress is needed towards resolving the past-due debts for which she is legally liable. Concerns about her financial judgment are not fully mitigated. Clearance eligibility is denied.

Statement of the Case

On February 28, 2020, the then 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. The SOR explained why the DCSA CAF 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 April 15, 2020, Applicant submitted a response that was not complete. Processing of her case was apparently delayed due to the COVID-19 pandemic. On September 28, 2021, the DCSA CAF advised Applicant to admit or deny each of the subparagraphs in the SOR. Applicant then submitted an undated response, which was received by the DCSA CAF around November 24, 2021, in which she answered the allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 30, 2022, Department Counsel indicated that the Government was ready to proceed to a hearing. On April 11, 2022, 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 and assignment on April 18, 2021. After some coordination with the parties, on May 17, 2022, I scheduled a video conference hearing for June 15, 2022.

At the hearing convened on June 15, 2022, three Government exhibits (GEs 1-3) were admitted into the record. Applicant objected to proposed GE 4, a summary report of her personal subject interview. The document was not accepted into the record as it lacked the authentication required for admissibility under E3.1.20 of the Directive. Applicant testified, as reflected in a hearing transcript (Tr.) received by DOHA on July 13, 2022.

On the Government's motion and over Applicant's objections, I amended the SOR at the hearing pursuant to ¶ E3.1.17 of the Directive, as set forth below. I held the record for two weeks after the hearing for Applicant to submit documentary evidence and to respond to the new allegation. The June 29, 2022 deadline passed without any documents or response from Applicant.

SOR Amendment

At her hearing, Applicant testified to having withdrawn funds from her retirement account to pay some of her debts. Inquiry into whether she paid the taxes on that withdrawal led to an admission from Applicant that she had not filed her federal income tax returns for tax years 2020 and 2021 because of a lack of funds to pay a tax-return preparer. Pursuant to ¶ E3.1.17, the Government moved to amend the SOR to add a new allegation under Guideline F, as follows:

1.g. You failed to file, as required, federal tax returns for tax years 2020 and 2021. As of the date of this hearing, those returns remain unfiled.

Applicant objected on the basis that the information about her tax returns was outside the scope of her May 2017 SF 86, as she understood the hearing covered her financial situation that existed during the seven years preceding that clearance application. There is no provision in the Directive that limits inquiry to the time period of the current background investigation. The Appeal Board has held that the SOR should be easily amended so that a case is adjudicated on the merits of relevant issues. See, e.g., ISCR

Case No. 19-01014 at 4 (Oct. 5, 2020) (citing 17-02952 at 3-4 (App. Bd. Aug. 3, 2018)). I granted the amendment in accord with E3.1.17, which provides that the SOR may be amended at the hearing “so as to render it in conformity with the evidence admitted.” However, because of due process concerns raised by the lack of advance notification to Applicant that her tax filings would be considered as an issue for her clearance eligibility, I advised the parties that I would consider the tax-filing issue solely for its relevance and materiality to her financial situation. In accord with ¶ E.3.1.17, I gave Applicant two weeks to submit comments and documentation in response to the amendment. No response was received.

Findings of Fact

The amended SOR alleges that, as of February 28, 2020, Applicant owed \$14,391 on a charged-off automobile loan (SOR ¶ 1.a); \$449 on a charged-off account (SOR ¶ 1.b); \$6,104 in collection placed by a utility company (SOR ¶ 1.c); \$1,540 in collection placed by a storage company (SOR ¶ 1.d); \$916 in collection by a utility company (SOR ¶ 1.e); and \$706 in collection placed by a fitness club (SOR ¶ 1.f). Applicant is also alleged to have failed to file her federal income tax returns for tax years 2020 and 2021 by her June 15, 2022 hearing (SOR ¶ 1.g). Applicant admitted the delinquencies, which she explained were incurred largely because of her spouse’s loss of income due to multiple injuries, but indicated that she has paid the fitness club debt. As previously noted, she admitted at her hearing that she has not filed her federal income tax returns for tax years 2020 and 2021 because she cannot afford to pay a tax-return preparer.

I accept and incorporate as factual findings that the SOR debts became delinquent as alleged and that Applicant has not file her income tax returns for the last two years. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 59-year-old media production associate with an associate’s degree earned in June 1984 from a community college. (GE 1; Tr. 29.) She has worked for her current employer, a defense contractor, since July 1985, and is currently on a technical manual team. (GE 1; Tr. 40.) She has held a clearance for most of her employment, and was first granted a DOD secret clearance in approximately 1999. (Tr. 31.)

Applicant and her spouse married in in February 2003, after they had been together for 20 years. (Tr. 30.) Applicant indicated on her May 23, 2017 Questionnaire for National Security Positions (SF 86) that she and her spouse separated in April 2016. They were living apart at the time, but were not legally separated. They have a 35-year-old son and a 33-year-old daughter. (GE 1; Tr. 30.)

In March 1996, Applicant purchased a home that had three separate apartment units. (GE 1.) They converted two of the units into one larger area. (Tr. 39.) No information is in evidence showing the initial mortgage balance. While working for an office installation company, Applicant’s spouse was injured shortly thereafter when a freight elevator malfunctioned, and he was struck in the head. (Tr. 21.) He lost about 30% of his hearing

and was unable to work for several months. (Tr. 22.) He had no medical insurance to cover his medical bills. (Tr. 24.)

When Applicant's spouse was able to return to work, he tried some side jobs with contractors that did not work out due to his hearing loss. (Tr. 22.) Applicant recalls that it was during that time of her spouse's lack of stable employment that she obtained the assistance of a debt-repair company to negotiate with her creditors. She obtained a second mortgage on their home (loan amount not in evidence), and with the funds paid off the debts they had at the time with the assistance of the credit-repair company. (Tr. 50-51.) She had some credit counseling at that time but has had no financial counseling since then. (Tr. 50.)

While helping a friend with a roof repair around June 2005, Applicant's spouse injured himself in a fall. He was hospitalized for two months, although he had medical insurance through Applicant which covered some of his medical debts. (Tr. 24.) When Applicant's spouse was able to return to work, his father got him a job as a longshoreman. Applicant's spouse was not in that job long when a tractor-trailer truck backed him into another trailer. He incurred multiple surgeries and was out of work for 18 months without income before he received worker's compensation. Medical insurance paid some of his medical expenses, but some medical debts went into collections. Applicant took hardship withdrawals from her retirement account at work to pay some of their debts. Even so, her mortgage lender initiated foreclosure proceedings in 2009. Her account was last active in June 2007. (GE 3; Tr. 23-24.) After vacating her foreclosed home in October 2010, Applicant rented her living quarters for the next ten years. (GE 1.)

In late 2013, Applicant had a car accident. Her vehicle, which she had bought in August 2013, was determined by her insurer to be not repairable. Even though she had gap insurance, her lender is holding her liable for a \$449 debt on her loan (SOR ¶ 1.b). During the 2014 to 2015 timeframe, Applicant's financial situation was particularly dire. She defaulted on the car loan for her next vehicle (SOR ¶ 1.a) around the time that her spouse sustained a back injury. He became addicted to his pain medications and was out of work for at least a month while undergoing rehabilitation treatment. While he was in the rehabilitation facility, Applicant could no longer afford the rent-to-own house in which she had been living. She rented a storage unit for her belongings, and she moved into a motel temporarily until she could save up enough money for a new apartment. She stopped paying her rent for the storage unit (SOR ¶ 1.d). (Tr. 33-34.)

When Applicant completed her SF 86 in May 2017, she responded negatively to the SF 86 financial record inquiries, including whether she had any possessions or property repossessed or foreclosed in the last seven years; whether she had defaulted on any loans in the last seven years; and whether any bills or debts had been placed for collection in the last seven years. (GE 1.) As of July 25, 2017, the credit reporting agencies were reporting several delinquencies on her credit report. The delinquency and payment histories of the debts follow.

Charged-off account for \$14,391 (SOR ¶ 1.a)

In January 2014, Applicant obtained a car loan for \$24,437, to be repaid at \$485 per month for 73 months. The loan had a high interest rate. Applicant struggled to make the loan payments. Her April 2019 credit report shows a date of last activity in November 2014. (GE 2.) She surrendered the vehicle in a voluntary repossession when her spouse was in the rehabilitation program. (Tr. 33.) In June 2015, her account was charged off for \$14,391. (GE 3.) She believed she owed nothing on the debt following the repossession until she began receiving demands for payment of the deficiency balance. (Tr. 34.) She contacted the creditor and was told the debt was in collections. She does not know who currently holds the debt. (Tr. 33.) She has made no payments on that debt as of her June 2022 hearing. (Tr. 25, 33.)

Charged-off account for \$449 (SOR ¶ 1.b)

In August 2013, Applicant obtained a car loan for \$18,131, to be repaid at \$139 per month for 73 months. After making only a few payments on her car loan, she was in an accident, and the insurance company totaled her vehicle. She received a settlement from her primary auto insurer, but it did not fully cover the balance of her loan. She had gap insurance, but due to a delay involving an issue with the title between the lender and her gap insurer, she ended up owing \$1,196. Her lender charged off that debt in November 2014. Her July 2017 credit report shows a \$457 balance on the account with a date of last activity in June 2016. (GE 3.) She does not believe that she should pay the debt as she did not have the car and did not legally hold the title. Her lender was supposed to provide the title to the gap insurer by a certain date and did not do so. (Answer; Tr. 25, 35-38.) Applicant disputed her liability for the debt with the creditor bank, but she does not know if she has any paperwork about the debt. She has not contacted her creditor about resolving the debt, which she believes is now around \$1,000. (Tr. 36-37.)

Collection account for \$6,104 (SOR ¶ 1.c)

In November 2014, a utility company placed a \$6,104 balance in collection for unpaid gas charges incurred in the home that was lost to foreclosure. As of June 2017, no progress was reported on reducing the debt. (GE 3.) Applicant has not made any payments on that debt as of June 2022. (Tr. 25, 39.) When she contacted the creditor, she was told the debt had been written off. (Tr. 56.)

Collection account for \$1,540 (SOR ¶ 1.d)

A \$1,540 debt for the storage facility in which she placed her belongings when she moved to the motel was assigned for collection in December 2015, was still outstanding as of July 2017. (GE 3; Tr. 40.) Applicant has not tried to reach out to this creditor in recent years, and she has made no payments on that debt as of June 2022. (Tr. 25, 40.)

Collection account for \$916 (SOR ¶ 1.e)

A utility-services provider had placed a \$916 debt for collection by July 2017. (GE 3.) Applicant believes the debt is from the second gas account at the premises lost to foreclosure in 2010 (Tr. 40), although it is unclear when that debt was incurred. The debt appears only on the July 2017 credit report. There is no activity date or assignment date listed for the debt, and the collection agent is not the same as that holding the larger gas debt in SOR ¶ 1.c. Applicant has made no payments on the debt as of June 2022. (Tr. 25.)

Collection account for \$706 (SOR ¶ 1.f)

Fees assessed for a gym membership went unpaid and were placed for collection in the amount of \$706. As of June 2017, the debt had not been paid. (GE 3.) Available information does not reflect when Applicant incurred the debt. She paid the debt in 2020, after she received the SOR. (Tr. 25, 61.) I held the record open after her hearing for her to submit an email from the gym confirming her payment. No document was submitted.

Applicant's July 2017 (GE 3) and April 2019 (GE 2) credit reports include an account (not alleged) for an automobile that was involuntarily repossessed. The account was opened in January 2016 for \$11,495, with terms of repayment at \$433 per month for three years. As of June 2017, she was reportedly \$5,072 past due on a debt balance of \$12,782. As of April 2018, the account had a zero balance, so the creditor may well have taken the vehicle in full satisfaction of the debt. However, Applicant was not asked about the debt, and it was not alleged. As of April 2019, only the debts in SOR ¶¶ 1.a and 1.b were still on her credit report. (GE 2.)

While working for a roofing company, Applicant's spouse purchased a 2010 model-year truck with a loan of about \$30,000, to be repaid at almost \$640 per month for five years. (Tr. 52-53.) Applicant testified that her spouse has about six months left on the loan (Tr. 53), so it appears that he obtained the loan around early 2018. The loan has a high interest rate because her spouse did not have established credit. She testified that he was told that after the first three payments, he could refinance to lower their monthly payment. They were not successful in refinancing the loan, and it has been a struggle to maintain their payments. (Tr. 45-46.) The truck is used primarily by Applicant. (Tr. 46.)

In March or April 2020, Applicant received the SOR, informing her of the debts of concern to the DOD. She paid the gym debt, but otherwise made no efforts to resolve her past-due accounts. (Tr. 25, 33-40.)

Applicant and her spouse fell behind on other debts during the COVID-19 pandemic due to his lack of steady income. He worked for a temporary agency that assigned projects in the trades until April 2020 when construction jobs were shutdown. He was out of work for a couple of months until June 2020, when he started working in roof repair for a real estate company. In November 2020, with both Applicant and her spouse employed, they were able to purchase their home, although she had to take withdrawals from her retirement account at work to pay down their debt so they could qualify for their mortgage. (Tr. 26-29,

48.) Applicant does not recall exactly how much she withdrew from her retirement account. She took \$5,000 of her retirement funds for the down payment on her house. (Tr. 53.) Applicant did not provide any details about the mortgage loan other than that the monthly payment is about \$1,750. (Tr. 44.) She had been paying rent at \$1,550 per month for the previous four years. (Tr. 58.)

In June 2021, Applicant's spouse lost his job when his employer went into "semi-retirement" and no longer needed his services. He was unemployed for the next ten months. (Tr. 26.) In February 2022, Applicant took a withdrawal of almost \$4,000 from her retirement account at work to pay bills. Some \$3,000 of those funds went toward their electric bill. (Tr. 53-54.) She concentrated on paying her household bills and some credit-card debts incurred during the pandemic. (Tr. 37.)

In April 2022, Applicant's spouse began working 32 hours per week at \$14.70 per hour for a municipality at its transfer station. (Tr. 26-29, 43.) Applicant's annual salary with her defense-contractor employer, after some 35 years with the company, is now close to \$60,000 following a recent raise and a job promotion in May 2022. Her income varies depending on overtime availability. (Tr. 41.) Her take-home pay for the two-week pay period was \$1,275 on April 7, 2022; \$1,782 on May 19, 2022; and \$1,424 on June 2, 2022. (Tr. 42.)

Applicant and her spouse are not presently able to pay all of their bills in full each month by their due dates, although they make their mortgage payment of \$1,750 on time. (Tr. 29, 44.) She and her spouse owe about \$5,000 in total credit-card balances. (Tr. 54.) One of his credit cards is in collections status. Applicant is currently paying \$46 a month on a credit-card account that is not in collections. (Tr. 56.) They live from paycheck to paycheck, and Applicant has to choose between which credit-card account to pay one month and which the next. (Tr. 57.)

Applicant and her spouse use propane for hot water and cooking, which costs them about \$200 to \$300 for the year. They have electric heat, which in the winter costs them almost \$1,000 a month. They currently owe their electricity provider almost \$5,000, and she has been paying \$550 a month under a payment plan to the utility company. Applicant is looking into some state assistance for their electric bill on the basis of hardship. She has been told that she qualifies for temporary assistance. Their cell phones cost them almost \$100 a month for two lines. They pay a similar amount for their Internet service. (Tr. 44-47.)

Applicant and her spouse have not yet filed their federal income tax returns for tax years 2020 and 2021. They reside in a state that does not tax resident income, but Applicant works in a state that taxes income earned in the state by out-of-state residents. That state did not deduct income taxes from the paychecks of workers living in Applicant's state during the pandemic. Applicant does not expect to owe taxes for 2020 and 2021, but she does not have the money to pay a tax preparer to file her returns. (Tr. 49-50.)

Applicant wants to pay her debts. She expects to be able to pay her debts over time, now that her spouse is again employed, and she has overtime available to her until 2023.

(Tr. 51-52.) None of the creditors in the SOR are currently pursuing her for collection. She recalls that, other than the car loan in SOR ¶ 1.a, none of her creditors have pursued her for collection since she moved on vacating her first home following the foreclosure in October 2010. (Tr. 55.) She denies that she would compromise her job to pay her debts. (Tr. 72-73.)

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. . .

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 does not pay financial obligations according to terms. Applicant is not disputing the delinquencies in the SOR, although she does not believe that she should be required to pay the balance left on the car loan (SOR ¶ 1.b) for the vehicle totaled in an accident because she carried gap insurance. She admitted at her hearing that she has not filed her federal income tax returns for tax years 2020 and 2021 because she does not have the funds to pay a tax preparer. The following disqualifying conditions under AG ¶ 19 apply:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

In addition to the SOR debts, Applicant is reported to have defaulted on an \$11,495 debt for an automobile that ended up being involuntarily repossessed. Since the loan was not alleged in the SOR, it cannot be considered for disqualification purposes. The Appeal Board has held that unalleged debts can properly be considered for other purposes, such as assessing an applicant's credibility; evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; considering whether an applicant has demonstrated successful rehabilitation; or providing evidence for the whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). Applicant was not asked about the debt, and the account reportedly had a zero balance as of April 2018. Not enough is known about that debt to consider it in this case.

Applicant bears the burden of mitigating the negative implications for her financial judgment raised by her proven delinquent debts and failure to file her income tax returns by their due dates. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. The following are relevant to the issues 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;
- (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; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) cannot reasonably apply, even though the SOR debts are old. Applicant has made no payments on the delinquencies in SOR ¶¶ 1.a through 1.e. 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).

Applicant testified about her spouse being injured multiple times, although in that regard, her evidence lacks specificity as to the amount of lost income; the extent of medical out-of-pocket costs; and even the dates of occurrence. She provided no documentation to substantiate her testimony. Even so, it appears the loss of spousal income, for periods varying from 18 months to as long as a few years, and other unforeseen circumstances caused significant financial stress for Applicant over the years. In approximately 1996, her spouse was without medical insurance when he was injured in a freight elevator accident. He was largely unemployed for a few years following his accident. Then, around June 2005, he fell off a roof and was hospitalized for two months. While he had health insurance by then, he was again unable to work. In his next job as a longshoreman, he was pinned by a tractor-trailer truck and was without any income for 18 months.

Applicant took withdrawals from her retirement account at work to pay bills, including some medical expenses, before her spouse retroactively received worker's compensation pay. She became seriously delinquent on her heating bill (SOR ¶ 1.c) and mortgage loan. In 2010, she lost her first house to foreclosure because she could not make the mortgage payments and other household expenses on her income. When she vacated that home, she owed a substantial utility delinquency (SOR ¶ 1.c).

In late 2013, Applicant had an unforeseen vehicle accident in which her new car was totaled. The debt in SOR ¶ 1.b resulted from that accident. Her next car was bought in January 2014 with the loan in SOR ¶ 1.a. It appears that she stopped paying on the loan in November 2014. The loan was charged off in June 2015. Her spouse, while repairing roofs out of state, sustained a back injury in 2015. He became addicted to his pain medications and was out of work for at least a month while undergoing rehabilitation treatment. Applicant could no longer afford the rent-to-own house in which she had been living. She rented a storage unit for her belongings, and she moved into a motel until she could save up enough money for a new apartment, but then she defaulted on the payments for the storage unit (SOR ¶ 1.d).

There is little to no detail about Applicant's spouse's income or his work from about 2016 until 2020. At some point during that time, he started working for a temporary agency that assigned work in the trades, but he lost that job in April 2020 when construction work ceased due to the pandemic. He was unemployed until approximately June 2020. He was employed as a roofer for approximately the next ten months, but he lost that job in June 2021 when his employer went into "semi-retirement" and no longer needed his services. He was unemployed for the next ten months when he began working part time at \$14.70 an hour. AG ¶ 20(b) is established in a significant aspect in that circumstances outside of Applicant's control caused or contributed to her financial difficulties at various times over the past 25 years.

Even if Applicant's financial difficulties arose in whole or in part due to circumstances outside of her control, I have to consider whether she has acted in a responsible manner when dealing with her financial difficulties. See ISCR Case No. 05-11366 at 4 n. 9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component of financial responsibility is whether she maintained contact with her creditors and attempted to negotiate partial payments to keep debts current or payment plans for resolution of debt balances. Applicant admits that she has not contacted her creditors about her old debts because she cannot afford to make payments. She cannot reasonably be expected to make payments on her old debts when she is struggling to make the payments on the loan for the truck she is driving and when she is seriously behind on her bills with her current electricity provider. Yet one had to question the soundness of her financial judgment. By taking on mortgage payments of \$1,750 per month in November 2020, Applicant and her spouse increased their living expenses by \$200 a month when their financial situation was already tenuous. She had to borrow against her retirement to pay debts to qualify for the mortgage and to make the down payment for the house. They did not file their income tax return for tax year 2020, reportedly because they did not have the money to pay for tax help, even though they were employed at the time.

AG ¶¶ 20(c) and 20(d) are only applicable to the fitness club debt in SOR ¶ 1.f, which Applicant credibly testified has been paid. The other debts in the SOR have not been resolved, and Applicant presently has no payment plans established for those debts. An applicant is not required to show that he or she has paid off each debt in the SOR, or that the debts in the SOR be paid first. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). That being said, the Appeal Board has also 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)). A promise to pay a debt at some future date is not a substitute for a track record of timely debt payments or otherwise financially responsible behavior. See ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 2008). Applicant has not made enough progress toward resolving her old delinquencies to apply AG ¶ 20(c) or AG ¶ 20(d). Moreover, while she had some financial counseling, it was more than a decade ago, and is of little probative value in light of her ongoing financial difficulties.

Concerning AG ¶ 20(g), Applicant has apparently always overpaid her federal income taxes, and she suspects that would be the case with respect to tax years 2020 and 2021. Nonetheless, without some effort on her part showing that she filed her delinquent tax returns and owes no taxes, AG ¶ 20(g) does not apply.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

(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.

The analysis under Guideline F is 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 longtime defense-contractor employee whose financial situation has been compromised by her spouse's lack of consistent employment over the years due to injury and other unforeseen events. The \$6,104 debt is for unpaid utility charges incurred while she lived in the house that she lost to foreclosure in 2010. The accident that totaled her vehicle in 2013 caused the debt in SOR ¶ 1.b and led her to obtain the car loan in SOR ¶ 1.a. Her subsequent default of that car loan in 2015 was largely due to the loss of household income after her spouse injured his back and became addicted to painkillers. The charged-off balance of \$14,391 was continuing to adversely affect her credit as of April 2019, and the creditor made some effort to collect the debt, although not recently. In the absence of any recent collection efforts by the SOR creditors, the debts may no longer be a source of financial pressure for Applicant.

The Appeal Board has held that the 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 with regard to his fitness or suitability to handle classified information appropriately. See ISCR Case No. 09-02160 (App. Bd. June 21, 2010). It is not intended as punishment for past shortcomings. Applicant asserts that she would never compromise her job to resolve her financial situation, which is still under some stress. She was recently promoted with an increase in salary, which reflects positively on her and her dedication to her employer. Even with that increase, it has taken her 35 years to reach her current annual salary of about \$60,000. She is in a catch-22 situation in that she needs her job to pay her old debts.

Appendix C of Security Executive Agent Directive (SEAD) 4 grants DOHA administrative judge's the discretionary authority to grant initial or continued eligibility for a security clearance *despite the presence of an issue(s) that can be partially but not completely mitigated* with the provision of additional security measures. See, also, Memorandum, Director for Defense Intelligence (Intelligence and Security), dated January 12, 2018, ("Appendix C identifies authorized exceptions that are to be utilized when making adjudicative decisions to grant initial or continued eligibility for access to classified information or to hold a sensitive position. . . Effective immediately, authority to grant clearance eligibility with one of the exceptions enumerated within Appendix C is granted to

any adjudicative, hearing, or appeal official or entity now authorized to grant clearance eligibility when they have jurisdiction to render the eligibility determination.”)

After carefully considering and weighing the financial considerations security concerns, I decline to exercise the discretionary authority under Appendix C at this time. Individuals with security clearance eligibility are held to a standard of good judgment, reliability, and trustworthiness which may require her or him to make choices that are personally difficult or disadvantageous. Applicant was asked on her May 2017 about any delinquent debts, repossessions, or unfiled tax returns. She was current in her tax filings at that point, but knew that she had defaulted on the payments on the car loan in SOR ¶ 1.a. She likely knew that she had defaulted on the fitness club debt as it was in collections status as of June 2017. She was on notice on receipt of the SOR in March or April 2020, if not in May 2017, that unresolved delinquencies were an issue for the DOD. While I recognize that the many financial setbacks Applicant has incurred over the years have an emotional toll, she did not provide enough evidence in mitigation to overcome the financial considerations security concerns.

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Based on the evidence of record, it is not clearly consistent with the interests of national security to grant or continue security clearance eligibility for Applicant at this time. This decision should not be construed as a determination that Applicant cannot in the future attain the reform necessary to establish her security worthiness, especially if she is able to provide a track record of financial stability. Persuasive evidence of Applicant’s security worthiness is lacking at this time.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

In light of all of the circumstances, 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.

Elizabeth M. Matchinski
Administrative Judge