



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



In the matter of:)
)
 ---) ISCR Case No. 12-06953
)
 Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

06/28/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On March 5, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On an unspecified date, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a set of interrogatories. She responded to those interrogatories on February 18, 2014.² On January 21, 2015, the DOD CAF issued a Statement of Reasons (SOR) to her, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the

¹ GE 1 (e-QIP, dated March 5, 2012).

² GE 2 (Applicant's Answers to the Interrogatories, dated February 18, 2014).

Adjudicative Guidelines for Determining Eligibility For Access to Classified Information (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. On February 2, 2015, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on June 5, 2015. The case was initially assigned to another administrative judge on June 15, 2015. A Notice of Hearing was issued on July 8, 2015, scheduling the hearing for July 23, 2015. However, because Applicant's daughter was scheduled for surgery on that date, upon Applicant's request, the hearing was postponed. The case was reassigned to me on October 5, 2015. A Notice of Hearing was issued on October 28, 2015. I convened the hearing as scheduled on November 18, 2015.

During the hearing, four Government exhibits (GE 1 through GE 4) and nine Applicant exhibits (AE A through AE I) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on November 30, 2015. I kept the record open to enable Applicant to supplement it with specifically identified documentation that she claimed she had at home, and on June 21, 2016, she took advantage of that opportunity and submitted two additional exhibits (AE J and AE K) which were admitted into evidence without objection. The record closed on June 21, 2016.

Findings of Fact

In her Answer to the SOR, Applicant admitted with brief explanations a majority of the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.a., 1.d., 1.e., 1.g. through 1.i, 1.k. through 1.r., 1.t., 1.v., 1.bb., 1.dd., 1.hh., 1.jj., and 1.ll.). She denied the remaining allegations, also with brief explanations. Applicant's answers are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 57-year-old employee of a defense contractor. She has been a project manager for janitorial services since April 2009.³ She held a number of diverse positions with other employers over the years, including that of school kitchen and dietary substitute, school bus aide, assembly parts inspector, cashier, cook, and lead cleaner. Applicant completed the 11th grade, but dropped out of school to care for her

³ GE 1, *supra* note 1, at 11; Tr. at 25-26.

mother, and she received a General Educational Development (GED) diploma in 1997.⁴ She has never served with the U.S. military.⁵ She has never held a security clearance.⁶ Applicant was married in June 1981 and divorced in May 2001. She married her current husband in March 2003.⁷ She has four daughters, born in March 1977, September 1978, June 1981, and March 1983.⁸

Financial Considerations⁹

It is unclear when Applicant's initial financial difficulties arose, but it appears that several factors contributed to them over a multi-year period: she was divorced in 2001; her ex-husband failed to support her or their children; she had severe health problems with a delayed diagnosis from late 2000 until approximately 2003; she has not had any health insurance since 2000; she had several low-wage jobs with annual salaries of between \$9,000 and \$10,000; she was unemployed from May 2000 until February 2003; and her niece, as well as her nephew, took financial advantage of her.¹⁰

In May 2003, upon realizing the extent of her medical bills, Applicant filed for bankruptcy protection under Chapter 13 of the U.S. Bankruptcy Code. Although her credit report indicated that payments were made, and the bankruptcy was dismissed in September 2003, Applicant stated it was dismissed because the Trustee had resigned. She subsequently refiled the bankruptcy in November 2004. The credit report indicated that payments were again made, and the bankruptcy was dismissed in December 2005, but Applicant contended that she made monthly payments of approximately \$400 for a period of approximately seven years, satisfying all of those delinquent accounts.¹¹

In 2007, Applicant became eligible for Social Security Disability benefits. The \$1,000 monthly benefit was directly deposited into her daughter's account. As Applicant started to improve, she started searching for work. In 2009, when she checked with the Social Security Administration (SSA) to determine how much she could earn without losing her benefits. She was given a figure between \$11,000 and \$12,000. When Applicant was initially hired by her current employer, her hourly salary was \$11, based on a 40-hour work week. She was below the SSA maximum. Shortly thereafter

⁴ GE 1, *supra* note 1, at 10-11; GE 2 (Personal Subject Interview, dated April 24, 2012), at 1; Tr. at 5, 22-23.

⁵ GE 1, *supra* note 1, at 20.

⁶ GE 1, *supra* note 1, at 33. Although Applicant does not possess a security clearance, she supervises eight employees, all but two of them currently hold one. Tr. at 25-26.

⁷ GE 1, *supra* note 1, at 22; GE 2 (Personal Subject Interview), *supra* note 4, at 3.

⁸ GE 2 (Personal Subject Interview), *supra* note 4, at 9.

⁹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 29, 2012); GE 4 (Equifax Credit Report, dated April 23, 2014); GE 2, *supra* note 2; GE 2 (Personal Subject Interview), *supra* note 4. More recent information can be found in the exhibits furnished and individually identified.

¹⁰ GE 2 (Personal Subject Interview), *supra* note 4, at 2-5, 7, 9; Tr. at 29.

¹¹ Tr. at 83-87; GE 3, *supra* note 9, at 6.

however, a manager was fired, and Applicant was expected to work overtime. Her augmented salary resulted in her exceeding the SSA maximum. About one year later, it was determined that Applicant was no longer eligible for her benefit, and that, in fact, she owed the SSA a refund of benefits received after she became ineligible. The overpayment was \$18,238.10.¹²

As a result of the expenses caused by the above factors, Applicant found it difficult to continue making routine monthly payments on her accounts. Medical accounts and a variety of other accounts became delinquent. Two judgments were filed. In March 2014 – ten months before the SOR was issued – Applicant turned her attention to her financial morass. She purportedly contacted her creditors, disputed some accounts as not being hers, eventually entered into some repayment agreements, and paid other accounts. At some point, Applicant engaged the professional services of a law firm to assist her in repairing her credit and having some disputed accounts removed from her credit reports.¹³

The SOR identified 38 purportedly continuing delinquent accounts, totaling approximately \$35,000, which had been placed for collection, charged off, or filed as judgments. Of the 38 accounts, 17 are medical accounts which are identified by complete or partial account numbers, but the identity of the actual medical providers/creditors remains unknown. Applicant's SOR-related accounts generally fall within several different categories pertaining to their resolution status: (a) those for which payment arrangements have been agreed to, and payments were either made or are being made, and for which that status is supported by documentation; (b) those for which payment arrangements have purportedly been agreed to and payments were either made or are purportedly being made, and for which that status is not supported by documentation; and (c) those for which no action has yet been taken.

Those accounts for which payment arrangements have been agreed to, and payments were either made or are being made, and for which that status is supported by some documentation, are the following:

(SOR ¶ 1.a.): This is the SSA overpayment of \$18,238.10 that was being resolved in several different ways. Applicant's 2013 income tax refund in the amount of \$1,341.37 was applied in March 2014;¹⁴ a remittance in the amount of \$696.21 was made in August 2014;¹⁵ and Applicant had purportedly made monthly payments of \$100 for at least four months, and made a \$50 payment in June 2015.¹⁶ In her February 2014

¹² AE D (SSA Overpayment Record, undated; Tr. at 31-37.

¹³ Tr. at 75-76.

¹⁴ AE F (Account Transcript, dated November 18, 2015), at 2AE F (Account Transcript, dated November 18, 2015), at 2; Tr. at 38.

¹⁵ AE D (Transaction Record, undated).

¹⁶ Applicant's Answer to the SOR, dated February 2, 2015, at 1; Tr. at 37-41. Applicant explained that she temporarily stopped making the monthly payments when her daughter had surgery for two aneurysms and she had to care for her and assist her grandson in leaving for college.

answers to the interrogatories, she contended she was on a repayment plan and was paying \$50 per month. She also stated that she had presented documentation supporting her contentions.¹⁷ Undated documentation (issued after August 2014) reflected a current debt balance of \$15,550.52,¹⁸ and during the hearing Applicant estimated the current balance to be \$12,000.¹⁹ Applicant's recent Personal Financial Statement, submitted in June 2016, does not reflect any continuing payments to SSA.²⁰ There is no evidence of recent continuing efforts to resolve this account over the past 12 months.

(SOR ¶ 1.o.): This is an unspecified loan with a high credit of \$180 that was past due \$252 when it was charged off. Applicant paid the entire balance in June 2014.²¹ The account has been resolved. (SOR ¶ 1.w.): This is an unspecified loan with a high credit of \$39 that was past due and charged off. Applicant paid the entire balance in June 2014.²² The account has been resolved. (SOR ¶ 1.x.): This is an unspecified loan that was unpaid when the creditor obtained a judgment in the amount of \$617. Applicant paid the entire balance in May 2014.²³ The account has been resolved.

Those accounts for which payment arrangements have purportedly been agreed to and payments were either made or are purportedly being made, and for which that status is not supported by documentation, despite Applicant's assurances that such documentation would be submitted, are the following:

(SOR ¶ 1.b.): This is an apartment lease opened by Applicant's niece, using Applicant's identification, with an unpaid balance of \$2,897 that Applicant initially disputed, but subsequently agreed to payments on the reduced balance of \$750;²⁴ (SOR ¶ 1.d.): This is a bank account with an outstanding balance of \$738 that was charged off. Applicant said she had a repayment agreement in place and the week before the hearing, she made her first monthly payment of \$30;²⁵ (SOR ¶ 1.e.): This is a payday loan with an outstanding balance of \$618 that Applicant initially disputed, but she eventually agreed to a repayment plan. The week before the hearing, she made her first monthly payment of \$15;²⁶ (SOR ¶ 1.f.): This is an unspecified account with a past-

¹⁷ GE 2, *supra* note 2, at 4.

¹⁸ AE D, *supra* note 15.

¹⁹ Tr. at 37, 39-40.

²⁰ AE J (Personal Financial Statement, dated June 20, 2016).

²¹ AE A (Pay Out Receipt, dated June 4, 2014).

²² AE B (Letter, dated October 30, 2015).

²³ AE C (Handwritten Acknowledgment on View Contact, dated March 20, 2014).

²⁴ GE 2, *supra* note 2, at 2; Tr. at 42-43.

²⁵ GE 2, *supra* note 2, at 2; Tr. at 47-48; Applicant's Answer to the SOR, *supra* note 16, at 2.

²⁶ Tr. at 48-49.

due balance of \$600 that Applicant initially contended she had made repayment arrangements, but later disavowed any knowledge of the account;²⁷ (SOR ¶¶ 1.g., 1.h., and 1.i.): These are medical bills with respective outstanding balances of \$484, \$441, and \$406, that Applicant initially disputed, then claimed she paid two of them in full, but now contends she will be paying \$15 per month.²⁸ It is unclear if she intends to pay that amount per account or if that is the cumulative balance; (SOR ¶ 1.j.): This is for a loan with a high credit of \$416 and a past-due balance of \$325. Applicant said she had a repayment agreement in place, later said she had paid the account, but eventually explained that she was confused because she only had one loan with that particular creditor.²⁹

(SOR ¶¶ 1.k., 1.l., 1.m., 1.n., 1.p., 1.q., 1.t., 1.v., and 1.bb.): These are medical bills with respective outstanding balances of \$295, \$295, \$279, \$279, \$187, \$170, \$143, \$103, and \$64, that Applicant initially disputed, then claimed she paid them in full;³⁰ (SOR ¶ 1.s.): This is a cellular telephone account with a past-due balance of \$153 that Applicant initially disputed because it was not her account but later said she had paid it in full.³¹ (SOR ¶¶ 1.z. and 1.aa.): These are telephone accounts with respective outstanding balances of \$482 and \$163. Applicant acknowledged that she opened the larger account for a niece. She initially contended that she had paid both accounts in full, but later claimed that she did not recognize the smaller account;³² (SOR ¶ 1.dd.): This is a medical bill with a past-due balance of \$187 that Applicant contended she had paid in full;³³ (SOR ¶ 1.ee.): This is a bank-issued credit card with a past-due balance of \$584 that Applicant contended she had paid in full in 2015;³⁴ (SOR ¶ 1.gg.): This is an automobile insurance account with an unpaid balance of \$114 that Applicant stated that it was not her bill, but later she contended that she had paid it;³⁵ and (SOR ¶¶ 1.jj. and 1.ll.): These are medical accounts with respective outstanding balances of \$64 and \$109 that Applicant contended she had paid, claiming she had a repayment agreement covering the smaller account under which she was paying \$10 every two weeks.³⁶

²⁷ GE 2, *supra* note 2, at 5; Tr. at 49-50.

²⁸ GE 2, *supra* note 2, at 3; Tr. at 51-54; Applicant's Answer to the SOR, *supra* note 16, at 2.

²⁹ GE 2, *supra* note 2, at 4; Applicant's Answer to the SOR, *supra* note 16, at 2; Tr. at 57-58.

³⁰ GE 2, *supra* note 2, at 2-7; Applicant's Answer to the SOR, *supra* note 16, at 2-4. Applicant also contended that she would be making a monthly payment of \$10 toward the account in SOR ¶ 1.k.

³¹ GE 2, *supra* note 2, at 5. Applicant also erroneously contended that the account was a medical bill. See Tr. at 60.

³² GE 2, *supra* note 2, at 6; Tr. at 62-63.

³³ GE 2, *supra* note 2, at 7.

³⁴ GE 2, *supra* note 2, at 8; Tr. at 65-66.

³⁵ GE 2, *supra* note 2, at 10; Applicant's Answer to the SOR, *supra* note 16, at 4; Tr. at 66-67.

³⁶ Applicant's Answer to the SOR, *supra* note 16, at 5; Tr. at 68-69.

Those accounts for which no action has yet been taken, either because Applicant does not recognize the account or the creditor, or she disputes the account or its balance, or she simply has not taken any steps to address them, are as follows:

(SOR ¶ 1.c.): This is telephone account with a past-due balance of \$883; (SOR ¶¶ 1.r. and 1.hh.): These are medical bills with respective outstanding balances of \$168 and \$492; (SOR ¶ 1.u.): This is an unspecified account with a past-due balance of \$120; (SOR ¶ 1.y.) is an unspecified account with an unpaid balance of \$265 that went to judgment; (SOR ¶ 1.cc.): This is a cable television account with a past-due balance of \$1,289; (SOR ¶ 1.ff.): This is a checking account with a past-due balance of \$1,255; (SOR ¶ 1.ii.): This is a wastewater account with an unpaid balance of \$329; and (SOR ¶ 1.kk.): This is a telephone account with an unpaid balance of \$610.

In 2014, Applicant's adjusted gross income was \$69,073, up from the \$48,188 reported for 2013.³⁷ In June 2016, Applicant submitted a Personal Financial Statement setting forth her family monthly net income of \$7,604; and her monthly household and debt expenses of \$2,064 (including the only debt payment identified as her mortgage payment of \$674).³⁸ Those figures should leave her approximately \$5,540 per month available for discretionary saving or spending.

Although Applicant indicated she would submit documentation pertaining to each of the accounts that she contended were either paid or were in repayment plans, either with cancelled checks, bank statements, or receipts from creditors; and documentation reflecting her supposedly continuing relationship with the credit-repair law firm that was representing her, she failed to do so even though the record was kept open and extended to enable her to submit such documentation. Also, she was advised to obtain free financial counseling. There is no evidence that she ever did follow up on that suggestion. Under the circumstances, without the necessary documentation covering the debts, it remains difficult to determine her true account resolution efforts, and if Applicant's finances are under control, or if she is still experiencing financial difficulties. Because of the age of the most recent credit report (April 2014) in evidence, it is impossible to determine if she has other delinquent accounts.

Work Performance and Character References

A sustainment training manager for a government contractor in whose facility Applicant performs some of her duties characterized Applicant in favorable terms. He has never had any reason to believe she could not be trusted to protect classified data even if it came under her control inadvertently.³⁹ Two of Applicant's co-workers are also very supportive. They refer to her as a highly professional, trustworthy individual who is

³⁷ AE F, *supra* note 14; AE G (Account Transcript, dated November 18, 2015).

³⁸ AE J, *supra* note 20.

³⁹ AE H (Character Reference, dated July 28, 2015).

an upstanding member of the community. She is considered fair and honest with everyone.⁴⁰

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.”⁴¹ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁴²

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁴³ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁴⁴

⁴⁰ AE I (Character Reference, dated July 22, 2015); AE K (Character Reference, dated June 20, 2016).

⁴¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴² Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁴³ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

⁴⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁴⁵

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.”⁴⁶ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), a “history of not meeting financial obligations” may raise security concerns. Applicant’s financial problems arose over a multi-year period, perhaps as early as 2000. There are 38 purportedly continuing delinquent accounts,

⁴⁵ *Egan*, 484 U.S. at 531.

⁴⁶ See Exec. Or. 10865 § 7.

totaling approximately \$35,000, which had been placed for collection, charged off, or filed as judgments. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “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, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”⁴⁷ Under AG ¶ 20(e) it is potentially mitigating if “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.”

AG ¶ 20(b) partially applies. AG ¶ 20(d) minimally applies. AG ¶¶ 20(a), 20(c), and 20(e) do not apply. The nature, frequency, and recency of Applicant’s continuing multi-year period of financial difficulties since 2000 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” Likewise, her claimed professional relationship with a credit-repair law firm, not to offer financial counseling, but instead to dispute a number of her delinquent accounts for unspecified reasons, is insufficient to raise AG ¶ 20(e), especially in the absence of any documentation to fully describe the relationship. Applicant attributed her initial financial problems to a number of factors: she was divorced in 2001; her ex-husband failed to support her or their children; she had severe health problems with a delayed diagnosis from late 2000 until approximately 2003; she has not had any health insurance since 2000; she had several low-wage jobs with annual salaries of between \$9,000 and \$10,000; she was unemployed from May 2000 until February 2003; her niece, as well as her nephew, took financial advantage of her; and she was overpaid Social Security benefits.

⁴⁷ 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)).

Applicant contended that in 2003 and 2004 she started resolving her delinquent accounts after filing for bankruptcy protection under Chapter 13 of the U.S. Bankruptcy Code. The most recent bankruptcy petition was dismissed in December 2005. Yet, Applicant contended that she made monthly payments of approximately \$400 for a period of approximately seven years, and that she satisfied all of those existing delinquent accounts. She did not submit any documentation to support her contentions. The SOR-related delinquent accounts, including the judgments, are more recent accounts. Applicant failed to explain why additional accounts became delinquent after 2004, and she failed to identify any conditions or factors that were largely beyond her control that may have caused the new financial difficulties. She received an overpayment of \$18,238.10 from the SSA, but is unable to indicate how those funds were used, or explain why they were not used to pay her delinquent debts.

Applicant has been employed since 2003. In 2013, she had an adjusted gross income of \$48,188. In 2014, it rose to \$69,073. In June 2016, she has a monthly remainder of \$5,540 available for discretionary saving or spending. Yet, she is not paying any of her delinquent accounts, despite claiming to have a number of repayment agreements in place with her creditors.

Despite Applicant's contentions that she contacted, or would contact, creditors or collection agents to establish repayment plans, or that payments were actually made, with four exceptions (SOR ¶¶ 1.a., 1.o., 1.w., and 1.x.), no meaningful documentation was submitted by Applicant to support her contentions. She supplied documentation indicating three accounts had been paid off in 2014 and that some payments had been made with respect to the SSA overpayment. But there is no evidence of continuing payments on that account. Applicant's failure to furnish documented proof of the resolution of the remaining delinquent accounts, despite exhortations to do so, enables me to conclude that she made insufficient good-faith efforts to resolve them.

Security clearance adjudications are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The adjudicative guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. In this instance, there are vaguely described plans to resolve financial problems, either by disputing debts or entering into repayment arrangements, but there is little documentation to support the existence of repayment arrangements or debt payments. There are purported actions taken and some relatively insignificant payments made to some creditors, but, with the exception of those insignificant payments, there is little documentation to support the existence of most Applicant's actions or payments. Applicant has not acted responsibly by failing to address her delinquent accounts.⁴⁸ Applicant's relative inaction under the circumstances

⁴⁸ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when

confronting her cast substantial doubt on her current reliability, trustworthiness, and good judgment.⁴⁹

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(a):

- (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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁵⁰

There is some evidence in favor of mitigating Applicant's conduct. She is hard-working and has been with her current employer since April 2009. She is a well-thought of individual, both as an employee, co-worker, and friend. She is a caring mother, grandmother, wife, and aunt. During the period from 2000 until 2003, Applicant encountered several issues that contributed to her financial problems. Approximately a decade later, new delinquencies appeared. However, well before the SOR was issued, Applicant took some steps in an effort to resolve 4 of the 38 debts eventually listed in the SOR. She contended she had either successfully disputed or paid off, or is making payments, on a number of her delinquent accounts.

The disqualifying evidence under the whole-person concept is more substantial. Applicant repeatedly declared that she had successfully disputed some accounts, paid off others, or was either working on repayment arrangements or making payments under such agreements. She claimed to have documentation to confirm the

dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁴⁹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁵⁰ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

establishment of repayment plans or payments made. Despite repeated exhortations to submit such documentation, with the exception of four accounts, she failed to do so. With respect to that fourth account, the SSA overpayment, Applicant's documentation indicated that an income tax refund was applied to the debt and a remittance was made in August 2014. Although she claimed to have made continuing payments of \$50 or \$100 per month, with her most recent payment being made in June 2015, once again, she failed to submit documentation reflecting those payments. Furthermore, Applicant's June 2016 Personal Financial Statement reflects no continuing payments for any of her SOR-related debts, including the SSA debt. The absence of appropriate documentation in general, and the presence of no continuing payments in the Personal Financial Statement, lead me to conclude that the repayment arrangements and payments do not exist. Applicant's actions under the circumstances confronting her do cast doubt on her current reliability, trustworthiness, or good judgment.

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

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] 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 [or her] 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.⁵¹

Applicant has failed to demonstrate a "meaningful track record" of voluntary debt reduction and elimination efforts, in only resolving 3 out of the 38 debts listed in the SOR. Without supporting documentation, I cannot credit her with any other significant efforts to resolve the remaining 35 delinquent accounts.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

⁵¹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR and 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.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p. – 1.v:	Against Applicant
Subparagraphs 1.w. – 1.x:	For Applicant
Subparagraphs 1.y. – 1.ll:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge