



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



In the matter of: )  
 )  
 --- ) ISCR Case No. 12-09849  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: Elsa Nylander, Personal Representative

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 May 23, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> On July 8, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, pursuant to 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 *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

<sup>1</sup> GE 1 (e-QIP, dated May 23, 2012).

September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive 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.

Applicant received the SOR on July 23, 2015. In a sworn statement, dated August 11, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on September 10, 2015. The case was assigned to me on September 18, 2015. A Notice of Hearing was issued on September 28, 2015, and I convened the hearing as scheduled on October 26, 2015.

During the hearing, six Government exhibits (GE 1 through GE 6) and eight Applicant exhibits (AE A through AE H) were admitted into evidence without objection.<sup>2</sup> Applicant testified. The transcript (Tr.) was received on November 3, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She submitted additional documents which were marked as AE I through AE U and admitted into evidence without objection. The record closed on November 9, 2015.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.h.). Applicant's comments and admissions 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 59-year-old employee of a defense contractor. She has been a facility security specialist with her current employer since November 1999. Her educational background was not reported. She has never served with the U.S. military.<sup>3</sup> She has held a secret security clearance since April 2003.<sup>4</sup> Applicant was married in April 1979.<sup>5</sup> She has a daughter and two sons, born in 1981, 1983, and 1985, respectively.<sup>6</sup>

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<sup>2</sup> While there were no objections formally interposed by either party, Applicant did express some reservations pertaining to one sentence appearing in GE 2 (Personal Subject Interview, dated June 6, 2012), at 5. Department Counsel acquiesced to those reservations and deleted the sentence from consideration. See Tr. at 21-22.

<sup>3</sup> GE 1, *supra* note 1, at 13.

<sup>4</sup> GE 1, *supra* note 1, at 37.

<sup>5</sup> GE 1, *supra* note 1, at 14-15.

<sup>6</sup> GE 1, *supra* note 1, at 17-19.

## Financial Considerations<sup>7</sup>

Applicant has a lengthy history of avoiding the payment of her bills. On October 30, 2000, she and her husband filed a voluntary petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code listing \$165,542 in liabilities, including secured claims worth \$107,592 for two vehicles, a credit card judgment, and a mortgage. She sought the discharge of \$57,950 in unsecured nonpriority claims for debts from credit cards, medical providers, and department stores. Discharge was granted on February 15, 2001 (SOR ¶ 1.h.).<sup>8</sup> At the time Applicant filed for bankruptcy, she reported an average monthly income for herself of \$1,205.54, and unemployment compensation for her husband of \$900.<sup>9</sup> She subsequently explained that her husband routinely made between \$30,000 and \$40,000 per year while self-employed, but that he did not have a steady income from 1997 to 2000. They did not have income sufficient to continue paying their bills, so they chose bankruptcy to start over.<sup>10</sup> She did not explain any specifics as to the nature of his employment background, health, or efforts to obtain lasting employment.

Following the bankruptcy discharge, Applicant's finances were unremarkable and she was free from consumer debt. Applicant's husband obtained employment, but when his department was cut in 2003, he again became unemployed for an unspecified period. A designer and draftsman by trade, he obtained a general contractor's license in 2004 and began building custom homes for the next five years. The housing market was booming and, according to Applicant, they were financially sound and living comfortably, but not extravagantly. They ran up some credit cards, but they were always able to pay them off. They took cruises to various Caribbean Islands in April 2004, October 2004, October 2005, and October 2006. They purchased a 2005 truck in May 2005 for \$28,876; a boat in September 2007 for \$21,878 and a used 2004 utility vehicle in October 2007 for \$12,200.<sup>11</sup>

Things changed dramatically in 2008 when "the bottom fell out" and the housing market crashed. Applicant's husband purportedly went without work for months or years at a time. He was still unemployed and looking for work as of June 2012. In the spring of 2013 he obtained a job, but because of a lack of work, he subsequently lost it after a few months. When the hearing was held in October 2015, he was still unemployed. As a result of their reduced income, Applicant started using her credit cards to pay for

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<sup>7</sup> General source information pertaining to the financial issues discussed below can be found in the following exhibits: GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 25, 2012); GE 6 (Equifax Credit Report, dated October 22, 2014); GE 5 (Equifax Credit Report, dated April 24, 2015); AE H (TransUnion Credit Report, dated October 19, 2015); GE 2, *supra* note 2; GE 1, *supra* note 1; Applicant's Answer to the SOR, dated August 11, 2015. More recent information can be found in the exhibits furnished and individually identified.

<sup>8</sup> GE 3 (Voluntary Petition, filed October 30, 2000).

<sup>9</sup> GE 3 (Voluntary Petition, Schedule I – Current Income of Individual Debtor(s), undated).

<sup>10</sup> Applicant's Answer to the SOR, *supra* note 7, at 4; Tr. at 40.

<sup>11</sup> GE 2, *supra* note 2, at 1-2, 4; Tr. at 43-44; AE N (Certificate of Title, dated June 6, 2005); AE O (Certificate of Title, dated November 29, 2007).

necessities. With insufficient money to continue making her normal monthly payments, accounts became delinquent and were placed for collection. Some accounts were charged off, one residence, built by her husband in 2005, was lost to foreclosure in 2009, one boat was repossessed in 2011, and taxes were unpaid in 2011, 2013, and 2014. Nevertheless, Applicant and her family continued to reside in the foreclosed residence for several years without making a single mortgage or rent payment. As her own income increased, and her husband periodically earned some income, she was still unable to resolve her delinquent debts because she was barely able to cover her current monthly expenses. However, in 2011, Applicant's adjusted gross income was \$62,714.<sup>12</sup> Her husband withdrew funds from his 401(k) retirement account, and augmented by family loans, Applicant and her husband were able to purchase a small piece of real property, and her husband built a new family residence free of any mortgage.<sup>13</sup>

When Applicant filed her bankruptcy petition in 2000, she reported her normal monthly expenses were \$2,846, with zero payments for her debts.<sup>14</sup> In November 2015, when she completed her Personal Financial Statement, she reported her normal monthly expenses were \$2,294, again with zero payments for her delinquent debts.<sup>15</sup> In addition to her normal monthly expenses, in her Personal Financial Statement, Applicant reported a net monthly income of \$3,440; and a monthly remainder of \$1,146 available for discretionary saving or spending. She also reported \$4,465 in bank savings, but failed to list her 401(k) retirement account.<sup>16</sup>

In addition to Applicant's bankruptcy, the SOR identified seven purportedly continuing delinquent accounts totaling approximately \$251,021. Those debts and their respective current status, according to the above-cited credit reports, Applicant's comments to the OPM investigator, in the e-QIP, and in her Answer to the SOR, are described as follows:

SOR ¶ 1.a.: This is a bank credit card with a credit limit of \$10,000 and a high credit of \$11,819 that was past due and charged off before it was sold to a debt purchaser. Applicant contended that the unpaid balance was actually approximately \$7,500, but she offered no documentation to support her contention. Applicant has made no effort to contact the creditor or debt purchaser in an effort to resolve the account, and the account has been removed from her latest credit report because the state statute of limitations had expired in October 2015.<sup>17</sup>

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<sup>12</sup> AE I (Form 1040 (2011), undated).

<sup>13</sup> GE 2, *supra* note 2, at 5; AE J (Letter, dated November 5, 2015); Tr. at 47-48.

<sup>14</sup> GE 3 (Voluntary Petition, Schedule J – Current Expenditures of Individual Debtor(s), undated).

<sup>15</sup> AE K (Personal Financial Statement, dated November 4, 2015).

<sup>16</sup> AE K, *supra* note 14; see AE R (Retirement Plan, dated November 6, 2015).

<sup>17</sup> Applicant's Answer to the SOR, *supra* note 7, at 3; Tr. at 52; AE H, *supra* note 7; AE G (Applicant's Account Status Update, undated).

SOR ¶ 1.b.: This is a bank credit card with a credit limit of \$6,000 and an unpaid and past-due balance of \$7,276 that was sold to a debt purchaser. Applicant contended that the unpaid balance was actually approximately \$2,800, but she offered no documentation to support her contention. Applicant has made no effort to contact the creditor or debt purchaser in an effort to resolve the account, and the account has been removed from her latest credit report because the state statute of limitations had expired in August 2015.<sup>18</sup>

SOR ¶ 1.c.: This is a bank credit card with a high credit of \$17,140 and an unpaid and past-due balance of \$25,682 that was sold to a debt purchaser. Applicant contended that unpaid balance was actually approximately \$9,146, but she offered no documentation to support her contention. Applicant has made no effort to contact the creditor or debt purchaser in an effort to resolve the account, and the account has been removed from her latest credit report because the state statute of limitations had expired in October 2015.<sup>19</sup>

SOR ¶ 1.d.: This is a recreational boat loan with a high credit of \$21,878 and an unpaid and past-due balance of \$9,874. The boat was repossessed and sold. Applicant claimed the \$9,874 was the remaining balance after the boat was sold, but she offered no documentation to support her claim. Applicant has made no effort to contact the creditor in an effort to resolve the account because it is scheduled to be removed from her credit report because the state statute of limitations will expire in May 2018.<sup>20</sup>

SOR ¶ 1.e.: This is a bank home equity line of credit to make improvements to their residence as well as build another residence with a credit limit of \$185,000 and an unpaid balance of \$184,784 that was charged off. Applicant contended that she was issued a Form 1099-C, *Cancellation of Debt*, and that she is no longer liable for the debt because it was canceled under the Mortgage Forgiveness Debt Relief Act of 2007 (MFDRA). While she submitted a Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, attached to her Form 1040 (2011), neither document is signed, and she failed to submit a copy of the Form 1099-C.<sup>21</sup>

There are substantial questions regarding the eligibility and accuracy of the application for debt relief. As stated by the Internal Revenue Service (IRS), the canceled debt must be for the qualified principal residence, including any loan or mortgage taken out to buy, build, or substantially improve the main residence, and must be secured by the main home. Furthermore, an individual can have only one main home at a time.<sup>22</sup>

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<sup>18</sup> Applicant's Answer to the SOR, *supra* note 7, at 3; Tr. at 54; AE H, *supra* note 7; AE G, *supra* note 17.

<sup>19</sup> Applicant's Answer to the SOR, *supra* note 7, at 3; Tr. at 54-55; AE H, *supra* note 7; AE G, *supra* note 17.

<sup>20</sup> Applicant's Answer to the SOR, *supra* note 7, at 3; Tr. at 36; AE G, *supra* note 17.

<sup>21</sup> Applicant's Answer to the SOR, *supra* note 7, at 3; Tr. at 55; AE I, *supra* note 12; AE G, *supra* note 17.

<sup>22</sup> See IRS Publication 4681, *Canceled Debts, Foreclosures, Repossessions, and Abandonments (for Individuals) For Use in preparing 2011 Returns*, dated January 24, 2012.

Since a portion of the line of credit was to improve Applicant's main residence, under the cited law, only that portion of that debt can be legally cancelled. The remaining portion of the line of credit was to build another residence. Applicant failed to submit any documentation from the creditor or from the IRS to confirm that the entire debt, or any portion thereof, was actually canceled under the MFDRA. She has apparently also made no effort to contact the creditor in an effort to resolve the account, and the account was scheduled to be removed from her credit report in November 2015.<sup>23</sup>

SOR ¶ 1.f.: This is a credit card with a credit limit of \$5,592 and a high credit and unpaid balance of \$6,194 that was charged off. Applicant has made no effort to contact the creditor or debt purchaser in an effort to resolve the account, and the account has been removed from her latest credit report because the state statute of limitations had expired in April 2015.<sup>24</sup>

The common themes pertaining to the debts alleged in SOR ¶¶ 1.a. through 1.f. are threefold: (1) Applicant made no effort to contact the creditors, (2) she has made no payments, and (3) her perceived view of protections afforded her because of the state law statute of limitations:<sup>25</sup>

creditors are not allowed to continue to try to collect unpaid debt after 5 years from the last payment. We are not toying with the idea of reopening these wounds and making agreements to make payments towards these debts. Should we start trying to make payments and in the event either of us loses our job again, we will be starting this whole process over again. I am not willing to go through this again as much as I despise what has happened. Jobs have been a struggle for us throughout the years, Projects come and go and so does the steady job. I have nothing guaranteeing me or my husband that we will have a job tomorrow. The lack of income has been extremely stressful and I am grateful for the jobs we both have currently but I know there is no guarantee of tomorrow. I have begun to reestablish my credit in the last few months and my credit report will change drastically by the end of the year with only one outstanding debt remaining.

SOR ¶ 1.g.: This is a debt for delinquent income taxes in the amount of \$3,776 owed to the IRS for the tax year 2011. Applicant contended that the increased tax was incurred when she withdrew funds from her 401(k) retirement account, but she failed to submit documentation indicating how much was withdrawn, when it was withdrawn, or for what purpose it was withdrawn. Instead, she offered evidence that she has had three separate loans from that account, and that one loan for \$4,200 has been paid off, and there are two existing active loans, for \$8,400 and \$9,600, that as of November 6, 2015,

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<sup>23</sup> Applicant's Answer to the SOR, *supra* note 7, at 3; Tr. at 35; AE H, *supra* note 7, at 4.

<sup>24</sup> Applicant's Answer to the SOR, *supra* note 7, at 4; Tr. at 56; AE H, *supra* note 7; AE G, *supra* note 17.

<sup>25</sup> Applicant's Answer to the SOR, *supra* note 7, at 1.

are being paid biweekly in the amounts of \$71.78 and \$82.04.<sup>26</sup> The IRS Installment Agreement reflects unpaid taxes for the tax years 2011, 2013, and 2014, totaling a remaining balance of \$2,829.26, and a separate monthly payment of \$100.<sup>27</sup>

In March 2015, despite the existence of delinquent debts and her claimed inability to make payments towards those debts, Applicant purchased a 2015 car with a loan for \$19,294. Her monthly payments are \$299. The remaining loan balance, as of October 31, 2015, was \$17,734.73.<sup>28</sup> There is no evidence that Applicant ever sought the services of a financial advisor, or that Applicant ever received financial counseling, except during her bankruptcy.<sup>29</sup> There is a paucity of evidence to indicate that her financial problems are now under control.

## Work Performance and Character References

Applicant's manager of corporate security served as her personal representative. Her comments in Applicant's most recent performance review, which closed in July 2015, report that Applicant generally exceeded expectations. She noted that Applicant "is consistently accountable to her assigned tasks, and takes appropriate actions to prioritize and ensure accurate and timely completion of activities."<sup>30</sup> The senior security manager, who has known Applicant since 2007, characterized her as reliable to a fault, honest, trustworthy, and hard-working. She also described Applicant's financial issues: "[Applicant] and her husband picked up the pieces on their own and did not use or rely on government subsidies. As a result of their personal hard work and sweat equity they were able to build a new family home and have been rebuilding their credit diligently ever since."<sup>31</sup> Other colleagues, friends, and her sister are also very supportive, and they commented on Applicant's patriotic and community efforts in assisting families, wounded veterans, and her son's fellow Marines stationed in Iraq.<sup>32</sup>

## 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."<sup>33</sup> As Commander in Chief,

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<sup>26</sup> AE R, *supra* note 16; AE Q (Earnings Statements, various dates).

<sup>27</sup> AE L (Installment Agreement Voucher, dated October 28, 2015); AE M (Cancelled Checks, various dates); AE G, *supra* note 17.

<sup>28</sup> AE H, *supra* note 7, at 11; AE P (Payment Statement, dated October 31, 2015).

<sup>29</sup> Tr. at 45, 65, 67.

<sup>30</sup> AE A (Performance Review 2015, dated September 21, 2015), at 9.

<sup>31</sup> AE D (Character Reference, dated September 25, 2015).

<sup>32</sup> AE C (Character Reference, dated September 22, 2015); AE E (Character Reference, dated October 20, 2015); AE F (Character Reference, dated October 17, 2015).

<sup>33</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”<sup>34</sup>

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.”<sup>35</sup> 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.<sup>36</sup>

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.

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<sup>34</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>35</sup> “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 (4<sup>th</sup> Cir. 1994).

<sup>36</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).



Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>37</sup>

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.”<sup>38</sup> 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 has had a long-standing problem with her finances which started at some point before October 2000 (perhaps as early as 1997) when she filed for bankruptcy. The discharge of her debts in February 2001 resolved those financial problems until 2008 when they arose again. With insufficient funds to continue monthly payments accounts became delinquent and were placed for collection. Taxes went unpaid; a house was foreclosed upon; a boat was repossessed. She owes the IRS and several other creditors a substantial sum of delinquent debt. 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

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<sup>37</sup> *Egan*, 484 U.S. at 531.

<sup>38</sup> See Exec. Or. 10865 § 7.

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."<sup>39</sup>

AG ¶¶ 20(a), 20(c), and 20(d) do not apply. AG ¶ 20(b) minimally applies. The nature, frequency, and recency of Applicant's continuing financial delinquencies make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant attributed her failure to pay her income tax for the tax year 2011 to the penalties and interest for the withdrawal of funds from a 401(k) retirement account. She failed to explain why there were also unpaid income taxes for the tax years 2013 and 2014. She attributed her financial problems to her husband's periodic unemployment status over the years and the housing market crash in 2008. She contends their spending habits subsequent to their bankruptcy discharge were not contributing factors to those financial problems.

They apparently failed to save much of their income when there was full family employment, because they ran up some credit cards, but were always able to pay them off; took cruises to various Caribbean Islands in April 2004, October 2004, October 2005, and October 2006; purchased a 2005 truck in May 2005 for \$28,876; a boat in September 2007 for \$21,878; and a used 2004 utility vehicle in October 2007 for \$12,200. They built a house in 2010. They purchased a 2015 car with a loan for \$19,294 in March 2015. The common description was to purchase items with credit, but then not to pay the debts that resulted from the purchases. Applicant has an installment agreement with the IRS, and she is making monthly income tax payments to them for the tax year 2011. Applicant had previously indicated a desire to resolve her delinquent

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<sup>39</sup> 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 [or statute of limitations]) 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)).

debts, but claimed she was unable to do so because of a lack of funds.<sup>40</sup> She lost contact with her creditors and made no efforts to pay them. Even when family income improved and there were funds available, no payments were made, and zero “good-faith” efforts were taken to do so. Things changed when Applicant learned about the state statute of limitations. Although she has bank savings and a 401(k), in addition to a monthly remainder of nearly \$1,200, Applicant now refuses to take any action to pay her creditors, and she does not intend to reopen her financial wounds and be responsible for those long-standing delinquent debts. She expressed confidence that since the creditors could no longer collect from her because the statute of limitations had run, and her credit reports either have stopped or will stop reporting her accounts as delinquent, she has no further obligation to pay those debts.<sup>41</sup>

There is no evidence to indicate that Applicant ever received financial counseling except during her bankruptcy. Considering Applicant’s continuing history of spending, accompanied by her consistent avoidance of paying her debts, either through bankruptcy or the statute of limitations, the overwhelming evidence leads to the conclusion that Applicant’s financial problems are not under control. Applicant has not acted responsibly by failing to positively address her delinquent accounts during periods when she and her husband were either fully or partially employed, and by failing to make limited, if any, efforts of working with her creditors.<sup>42</sup> Applicant’s actions under the circumstances confronting her cast doubt on her current reliability, trustworthiness, and good judgment.<sup>43</sup>

## **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):

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<sup>40</sup> The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

<sup>41</sup> The statute of limitations clearly and unequivocally ends an Applicant’s legal responsibility to pay the creditor after the passage of a certain amount of time, as specified in state law. In a series of decisions the Appeal Board has rejected the statute of limitations for debts generated through contracts, which is the law in all 50 states, as automatically mitigating financial considerations concerns under AG ¶ 20(d). See ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008).

<sup>42</sup> “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 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.

<sup>43</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

(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.<sup>44</sup>

There is some evidence in favor of mitigating Applicant's conduct. She has been a facility security specialist with her current employer since November 1999, and has held a secret security clearance since April 2003. She is well-thought of by supervisors, colleagues, friends, and family. She is active in patriotic and community affairs in assisting families, wounded veterans, and her son's fellow Marines stationed in Iraq. There is no evidence of criminal conduct, substance abuse, mishandling of protected information, or misuse of information technology systems.

The disqualifying evidence is more substantial. Applicant has had a long-standing problem with her finances which started before October 2000 when she filed for bankruptcy. The discharge of her debts in February 2001 resolved those financial problems until 2008 when they arose again. Accounts became delinquent and were placed for collection. Taxes went unpaid; a house was foreclosed upon; a boat was repossessed. She still owes the IRS and several other creditors a substantial sum of delinquent debt. Despite those delinquent debts, as recently as March 2015, she purchased another automobile. She has earned and saved funds sufficient to start paying some of her creditors, but she has chosen not to do so.

Applicant lost contact with her creditors and made no efforts to pay them. Now, she refuses to take any action to pay those creditors and has expressed confidence that because the statute of limitations had run, and her credit reports either have stopped or will stop reporting her accounts as delinquent, she has no further obligation to pay those debts. There is a continuing history of spending, accompanied by Applicant's consistent avoidance of paying her debts, either through bankruptcy or the statute of limitations. Applicant's actions under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment.

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<sup>44</sup> 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).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>45</sup>

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.

Applicant has demonstrated an essentially negative track record of voluntary debt reduction and elimination efforts, generally ignoring her delinquent debts. 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 concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

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<sup>45</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

## **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.

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ROBERT ROBINSON GALES  
Administrative Judge