



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 13-01074

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

06/16/2014

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns regarding financial considerations. Eligibility to occupy an automated data processing (ADP) I/II/III (public trust position) is denied.

Statement of the Case

On May 21, 2013, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Department of Defense (DOD) Consolidated Adjudications Facility – Industry Division (CAF) issued her a set of interrogatories. She responded to the interrogatories on October 10, 2013.² On an unspecified date, the DOD CAF issued her another set of interrogatories. She responded to the interrogatories on October 10, 2013.³ On November 19, 2013, the

¹ GE 1 ((SF 86), dated May 21, 2013).

² GE 2 (Applicant's Answers to Interrogatories, dated October 10, 2013).

³ GE 3 (Applicant's Answers to Interrogatories, dated October 10, 2013).

DOD 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 Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for occupying an ADP I/II/III position to support a contract with the DOD, and recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on November 25, 2013. In a sworn statement, dated December 11, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on March 26, 2014. The case was assigned to me on April 3, 2014. A Notice of Hearing was issued on May 12, 2014, and I convened the hearing, as scheduled, on May 28, 2014.⁴

During the hearing, six Government exhibits (GE 1 through GE 6) and eight Applicant exhibits (AE A through AE G, including some with sub-categories) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on June 5, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She submitted one additional document which was marked as AE H and admitted into evidence without objection. The record closed on June 2, 2014.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations (§ 1.a. through 1.f.) of the SOR. Applicant's 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 31-year-old employee of a defense contractor. She has been serving as a data analyst since June 2013, and she is seeking to retain her eligibility for

⁴ The Directive established that notification as to the date, time, and place of a hearing be furnished to an applicant at least 15 days in advance of the time of the hearing. See, Directive, Encl. 3, § E3.1.8. In this instance, Department Counsel and Applicant were in discussions regarding the potential date, time, and location long before the actual Notice of Hearing was issued. Nevertheless, because the period between the issuance of the Notice and the hearing was approximately 16 days, I inquired of Applicant if the period of notice was sufficient, and Applicant specifically waived the 15-day notice requirement. See, Tr. at 12.

occupying an ADP I/II/III position to support a contract with the DOD. In addition, since July 2013, she has held a part-time position with a county domestic violence shelter.⁵ In November 2013, she requested that her position with the shelter be made permanent with regular hours.⁶ Applicant received an associate's degree in December 2004, and a bachelor of applied science degree in August 2012.⁷ Applicant previously worked in a variety of positions with different employers. She was in the operations department, an operations contractor, a shelter advocate, a user acceptance tester, and a part-time copy center associate. Applicant was unemployed from April 2007 until July 2007.⁸ She has never served with the U.S. military.⁹ She has never been married.¹⁰

Financial Considerations

There was nothing unusual about Applicant's finances until April 2007, when she was fired for calling in sick too often and being late to the office.¹¹ At the time, she was living "at the top of her means, possibly even beyond her means."¹² The absence of a salary resulted in an inability to maintain her monthly payments, and accounts started to become delinquent. After three months of unemployment, Applicant obtained a position with the county domestic violence shelter, paying \$11 per hour.¹³ Her salary did not produce enough money to sufficiently cover her monthly accounts. She tried juggling her finances to attempt to be current, but was unable to do so.

Applicant increased her work hours to generate additional income. She also went back to college to improve her resume in order to obtain a better-paying job that would allow her to pay off her bills.¹⁴ To reduce her expenses, in October 2007, Applicant moved back in with her parents.¹⁵ Despite her efforts, accounts remained or became delinquent and were placed for collection, charged off, or sold to debt purchasers. In February 2011, unable to resolve her delinquent debts, Applicant voluntarily filed a

⁵ Tr. at 31.

⁶ Applicant's Answer to the SOR.

⁷ GE 1, *supra* note 1, at 10-19.

⁸ GE 1, *supra* note 1, at 15; GE 2 (Personal Subject Interview, dated June 18, 2013), at 1. Applicant purportedly told the investigator from the U.S. Office of Personnel Management (OPM) that she had been unemployed on two occasions, including during the period April 2011 until July 2011, but that information was inaccurate. During that period she was employed through a temporary agency. Tr. at 59-60.

⁹ GE 1, *supra* note 1, at 19.

¹⁰ GE 1, *supra* note 1, at 21.

¹¹ GE 1, *supra* note 1, at 16-17; GE 2 (Personal Subject Interview), *supra* note 7, at 1-2.

¹² GE 2 (Personal Subject Interview), *supra* note 7, at 2.

¹³ GE 2 (Personal Subject Interview), *supra* note 7, at 2; Tr. at 36.

¹⁴ Applicant's Answer to the SOR.

¹⁵ GE 2 (Personal Subject Interview), *supra* note 7, at 2; Tr. at 36.

petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.¹⁶ She listed \$8,970 in total assets, including her automobile, \$7,165 in secured claims (primarily her automobile), and \$119,775 in unsecured nonpriority claims.¹⁷ At the time of her filing, Applicant had an average monthly income of \$1,658.46 and average monthly expenses of \$1,800, reflecting a monthly deficit of minus \$141.54.¹⁸ Applicant's unsecured nonpriority claims, except unspecified debts which were excepted from discharge (such as student loans), were discharged in June 2011.¹⁹ As a result of the bankruptcy discharge, with the exception of her student loans, Applicant's financial situation was dramatically improved.

Applicant subsequently incurred various medical bills for professional medical services provided by hospitals and physicians, and while most of the charges were covered by health insurance, Applicant was responsible for various unpaid amounts which she estimated to be \$1,000.²⁰ Several of the medical bills became delinquent and were placed for collection. In December 2013, Applicant indicated she was "working to contact all [of her] debt holders. . . to start settling [her] debts."²¹ On March 2, 2014, Applicant started writing her medical creditors or collection agents seeking to set up repayment arrangements.²² One bill, in the amount of \$125, was for service received in January 2013. Applicant indicated she would offer a monthly payment of \$10 until the bill would be resolved by July 2014.²³ Another bill, in the amount of \$299.66, was also for service received in January 2013. Applicant indicated she would offer a periodic payment of \$100 until the bill would be resolved in late June 2014.²⁴ She has been making payments to various medical providers, or their respective collection agents, since January 2014.²⁵

Commencing in 2006, Applicant obtained several student loans from a variety of lenders. In March 2006, she obtained a \$10,000 student loan from a bank.²⁶ Applicant

¹⁶ GE 2 (Personal Subject Interview), *supra* note 7, at 2; GE 6 (Bankruptcy Petition, filed February 10, 2011).

¹⁷ GE 6, *supra* note 15, at 17-19 (Schedule B – Personal Property), 21 (Schedule D – Creditors Holding Secured Claims), 23-27 (Schedule F – Creditors Holding Unsecured Nonpriority Claims). The total of the liabilities was later reflected as \$126,940. See GE 6, at 3.

¹⁸ GE 6, *supra* note 15, at 30 (Schedule I – Current Income of Individual Debtor), 31-32 (Schedule J – Current Expenditures of Individual Debtor).

¹⁹ GE 6, *supra* note 15, at 3; Tr. at 50.

²⁰ Applicant's Answer to the SOR; AE 4 (Medical Bills and Collection Notices, various dates).

²¹ Applicant's Answer to the SOR.

²² AE C-2 (Letters, dated March 2, 2014).

²³ AE D, *supra* note 19.

²⁴ AE D, *supra* note 19.

²⁵ AE B-1 (Checking Payment History, undated); AE B-4 (Account Records, various dates); AE B-5 (Account Records, various dates).

²⁶ AE E (Note Disclosure Statement, dated March 17, 2006).

defaulted on that loan, and in January 2009, \$13,170.19 was charged off.²⁷ In June 2006, she obtained another \$10,000 student loan from a different bank.²⁸ Applicant defaulted on that loan, and in January 2008, \$13,155.49 was charged off.²⁹ Specific information pertaining to the original lender(s), amount(s), and date(s) of the other student loans was never established.

The SOR identified five purportedly continuing student loan delinquencies as reflected by credit reports from June 2013,³⁰ and September 2013,³¹ totaling approximately \$46,133. Some accounts listed in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in these credit reports, in many instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits. Some accounts reflect no account number. Those debts listed in the SOR and their respective current status, according to the credit reports, other evidence already in the case file, and Applicant's submissions regarding the same, are described below.

(SOR ¶¶ 1.b. – 1.d.) There are three separate student loan accounts with high credits of \$11,049 (loan #0001), \$11,173 (loan #0003), and \$5,586 (loan #0004) with zero past-due balances as well as zero balances, as all three accounts were “transferred to recovery” with government claims filed.³² The identified creditor for the three accounts is not a lender or a loan servicer. It is a debt purchaser. The original lender is not identified. However, because of information regarding the dates the accounts were opened, it appears that loan #0001 pertains to the March 2006 loan and loan #0003 pertains to the June 2006 loan referred to above. As recently as December 2013, a collection attorney had demanded \$9,218.58 identified as the outstanding balance of another student loan that was purportedly generated from a different lender.³³ The three accounts were also transferred or sold to another collection agent or debt purchaser claiming to represent the initial debt purchaser. By June 2013, the account balances had increased to \$17,225, \$17,740, and \$9,167.³⁴ In June 2013, Applicant told the OPM investigator that she would contact the original debt purchaser

²⁷ AE E (Loan Payment History Report, dated April 24, 2014).

²⁸ AE E (Note Disclosure Statement, dated June 27, 2006).

²⁹ AE E (Loan Payment History Report, dated April 24, 2014). Although this document and the one identified in note 27 are named and dated identically, they refer to different loans.

³⁰ GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 5, 2013).

³¹ GE 4 (Equifax Credit Report, dated September 9, 2013).

³² GE 5, *supra* note 30, at 11-12; GE 4, *supra* note 31, at 2-3.

³³ AE E (Letter, dated December 11, 2013).

³⁴ GE 5, *supra* note 30, at 14.

to make repayment arrangements.³⁵ Nearly another year passed when, in March 2014, Applicant requested information regarding the student loans in an effort to set up a repayment plan.³⁶ In April 2014, the new collection agent demanded \$36,148.90.³⁷ In May 2014, a loan servicing company informed Applicant that loan #0001, in the amount of \$13,651.66, had been sold by one debt purchaser to another debt purchaser.³⁸ Applicant has never made any payments on any of the three student loans.³⁹ She never attempted to contact the U.S Department of Education (DOE) to determine the status of the student loans, and after the initial deferment period expired in January 2008, never sought forbearance or deferment on the loans.⁴⁰ The accounts have not been resolved.

(SOR ¶¶ 1.e. – 1.f.) There are two separate student loan accounts with high credits of \$13,200 (loan #91), and \$5,125 (loan #92) with zero past-due balances as well as zero balances.⁴¹ It is unclear if the identified creditor for the two accounts is a lender, loan servicer, collection agent, or a debt purchaser. The original lender is not identified. However, because the dates listed for the opening of the two loans are April 2006 and July 2006,⁴² it appears highly probable that loan #91 is the same loan as that identified above as loan #0001, and loan #92 is the same loan as that identified above as loan #0004. In June 2013, Applicant told the OPM investigator that she would contact the original debt purchaser to make repayment arrangements “in the near future.”⁴³ She claimed she had difficulties locating the identified creditor or obtaining details regarding the loans.⁴⁴ It is unclear if she ever actually contacted the identified creditor, for there is no documentation to indicate any such action on her part. The accounts no longer appear in her September 2013 credit report. Applicant has never made any payments on either of the two student loans.⁴⁵ She never attempted to contact the DOE to determine the status of the student loans. After the initial deferment period expired, she has offered no evidence to indicate if she ever sought forbearance or deferment on the loans. The accounts have not been resolved.

Applicant failed to present documentation from the National Student Loan Data System (NSLDS). Every student loan ever received by her, whether it was direct,

³⁵ GE 2 (Personal Subject Interview), *supra* note 7, at 4.

³⁶ AE C-1 (Two Letters, dated March 2, 2014).

³⁷ AE E (Letter, dated April 25, 2014).

³⁸ AE E (Letter, dated May 23, 2014); GE 5, *supra* note 30, at 11.

³⁹ Applicant’s Answer to the SOR; Tr. at 43, 46-47.

⁴⁰ Tr. at 42-43, 62.

⁴¹ GE 5, *supra* note 30, at 10.

⁴² GE 5, *supra* note 30, at 10.

⁴³ GE 2 (Personal Subject Interview), *supra* note 7, at 3-4.

⁴⁴ Tr. at 48-49.

⁴⁵ Applicant’s Answer to the SOR.

consolidated, subsidized, or unsubsidized, direct Stafford subsidized or unsubsidized, or Federal Family Education Loan (FFEL), would be listed in the system. Those official records from the DOE would indicate if her student loans were in one of the following statuses: deferred, in forbearance, non-defaulted, paid in full through consolidation loan, cancelled, or in repayment. Such information would have been of assistance in guiding her to more meaningful and speedy resolution of the delinquent student loans.

In June 2013, Applicant claimed she was current on all monthly obligations except for her student loans,⁴⁶ a claim that has been proven not to be entirely accurate, considering her delinquent medical bills. In September 2013, she submitted a confusing personal financial statement indicating an annual net income of \$30,540.78; monthly expenses of \$1,742.25; zero debt payments; and an annual net remainder of \$9,633.78 available for discretionary use or savings.⁴⁷ In May 2014, she submitted a revised budget which indicated a net monthly income of \$3,133.46; monthly expenses, including repayments to her mother and her employer, of \$2,132.32; debt payments, primarily for medical debts, of \$531.39; and a monthly net remainder of \$469.75 available for discretionary use or savings.⁴⁸ After her current lease expires in October 2014, Applicant intends to relocate to her parent's home where she will pay a monthly rent of \$500, thereby saving herself approximately \$255 in monthly rent, down from her current rent of \$755.⁴⁹

When she filed for bankruptcy in February 2011, Applicant completed a required online course in credit counseling.⁵⁰ She never sought assistance from the student aid office at her university, and never received any financial counseling dealing with debt management, loan consolidation, or repayment plans.⁵¹

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."⁵² 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. Positions designated as ADP I/II/III are classified as "sensitive positions."⁵³ "The standard that must be met for . . . assignment to sensitive duties is

⁴⁶ GE 2 (Personal Subject Interview), *supra* note 7, at 4.

⁴⁷ GE 3 (Personal Financial Statement, dated September 20, 2013).

⁴⁸ AE H (May 2014 Budget, dated May 29, 2014).

⁴⁹ AE G (Living Arrangement Contract, dated May 27, 2014); Tr. at 51.

⁵⁰ GE 6 (Certificate of Counseling, dated February 7, 2011).

⁵¹ Tr. at 65-66.

⁵² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵³ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security."⁵⁴ DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.⁵⁵

When evaluating an applicant's suitability for a public trust position, 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 a public trust position.

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 common sense 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."⁵⁶ 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.⁵⁷

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive

⁵⁴ *Id.* at ¶ C6.1.1.1.

⁵⁵ *See Id.* at ¶ C8.2.1.

⁵⁶ "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).

⁵⁷ *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.”⁵⁸ 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. Commencing in 2007, Applicant found herself with insufficient funds to continue making her routine monthly payments. Various accounts became delinquent, and they were placed for collection, charged off, or sold. In February 2011, unable to resolve her delinquent debts, she filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, listing \$119,775 in unsecured nonpriority claims. With the exception of her student loans, her debts were discharged in June 2011. New delinquent debts eventually occurred. The student loans went into, and remain in, default. 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*

⁵⁸ Egan, 484 U.S. at 531.

*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.*⁵⁹

AG ¶ 20(b) only minimally applies. Applicant's financial problems commenced in 2007 when she was fired for calling in sick too often and being late to the office. Because she had previously been living at the top of her means, and possibly even beyond her means, her salary loss over a period of three months, resulted in an inability to continue paying her debts. After finally obtaining a new job, her reduced income did not ease her financial difficulties. The financial issues were left unresolved until 2011 when she filed for bankruptcy. Although her non-student loan liabilities were discharged, Applicant eventually developed additional delinquencies, primarily associated with medical services. Although she had an estimated annual remainder of \$9,633.78 in September 2013 available for discretionary use or savings, she failed to explain why she was unable to more quickly resolve her delinquent medical bills or her defaulted student loans. In May 2014, she had a net monthly remainder of \$469.75, but aside from small medical payments, she failed to explain why she had not aggressively taken action to address the defaulted student loans. Applicant failed to act responsibly under the circumstances.⁶⁰

AG ¶ 20(a) does not apply. The nature, frequency, and relative recency of Applicant's financial difficulties since 2007 make it difficult to conclude that it occurred "so long ago" or "was so infrequent," especially since those financial problems are continuing.

AG ¶ 20(c) minimally applies because, with the exception of the online credit counseling she received associated with her bankruptcy, Applicant has never received financial counseling or debt consolidation guidance. Furthermore, aside from the previously discharged debts, and some current small payments to medical providers,

⁵⁹ 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)).

⁶⁰ "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. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

there are no clear indications that her financial problems related to her student loans are being resolved or are under control.

AG ¶ 20(d) very minimally applies because, until 2014, Applicant failed to initiate any effort, much less a “good-faith effort,” to start repaying any of her student loan creditors. She simply ignored them. She never attempted to contact the DOE to determine the status of the student loans. Even after the initial deferment period expired, she never sought forbearance or deferment on the loans. Applicant failed to search the NSLDS or other official records of the DOE to determine if her student loans were deferred, in forbearance, non-defaulted, paid in full through consolidation loan, cancelled, or in repayment. It is acknowledged that one of the problems with student loans is the common practice among student loan servicers in routinely transferring such loans among various loan-servicing companies in an effort to make the system more efficient, an action that creates confusion during the transition period. The practice also creates confusion in the manner in which credit reporting agencies report the status of such loans. Nevertheless, while some obstacles were created by the system, Applicant took no steps to resolve the situation. Over the years, Applicant did not act aggressively, timely, or responsibly to resolve her delinquent student loans. Instead, she generally ignored those debts. In May 2014, Applicant reported a monthly net remainder of \$469.75 available to start paying some of her student loans. She has offered no evidence that she has done so. Some positive movements should have already taken place to resolve some of those delinquent student loans.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance or suitability for a public trust position by considering the totality of the applicant’s conduct and all relevant 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 or suitability for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

There is some evidence in favor of mitigating Applicant’s conduct. When confronted with unemployment and reduced income, Applicant obtained a part-time

position and worked diligently to increase her hours and salary. She tried to reduce her expenses and moved back with her parents until such time as she was able to earn more income. She went back to school to improve her resume in order to obtain a better-paying job. With the exception of her relatively brief period of unemployment, Applicant has generally been employed in either part-time or full-time positions. When she was unable to resolve nearly \$120,000 in consumer debt, she filed for bankruptcy and had her non-student loan debt discharged. She has repeatedly declared her intention of resolving her delinquent accounts once she has the funds to do so.

The disqualifying evidence under the whole-person concept is more substantial than the mitigating evidence. Applicant was, at one point, living beyond her means. She accumulated nearly \$120,000 in consumer debt, and after several years of inability to resolve that debt, she filed for bankruptcy. While the unemployment and reduced earnings were circumstances somewhat beyond her control, with the exception of some minor medical debts, which she later allowed to become delinquent, Applicant did not make any efforts to address her defaulted student loans. She failed to seek guidance from the DOE or her school financial counselor. Instead, Applicant ignored her creditors, even after she had been questioned by the OPM investigator in June 2013. Her long-standing failure to address her student loans, by either seeking deferment or forbearance, or to arrange payment plans, reflects traits which raise concerns about her fitness to hold a security clearance or a public trust position.

I am mindful that any one factor, considered in isolation, might put Applicant's credit history in a sympathetic light. 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.⁶¹ The absence of any meaningful efforts or evidence to reflect actual payments to her student loan creditors is sufficient to raise continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁶²

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,

⁶¹ 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).

⁶² ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 extremely weak track record of making little or no efforts to address her student loans, and generally ignoring them until she is financially able to address them. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial considerations.

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

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 to occupy an ADP I/II/III position to support a contract with the DOD. Eligibility for public trust position is denied.

ROBERT ROBINSON GALES
Administrative Judge