



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-01245

Appearances

For Government: Christopher Morin, Esquire, Department Counsel
For Applicant: *Pro se*

03/31/2014

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On August 13, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On December 16, 2013, the Department of Defense (DOD) Consolidated Adjudications Facility (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 *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

¹ GE 1 ((SF 86), dated August 13, 2013).

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.

Applicant received the SOR on January 6, 2014. In a sworn statement, dated January 15, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 11, 2014. The case was assigned to me on February 14, 2014. A Notice of Hearing was issued on February 18, 2014, and amended on February 24, 2014. I convened the hearing, as scheduled, on February 27, 2014.

During the hearing, 5 Government exhibits (GE 1 through GE 5) and 28 Applicant exhibits (AE A through AE AB) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on March 7, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She submitted ten additional documents, which were marked as exhibits (AE AC through AE AL) and admitted into evidence without objection. The record closed on March 10, 2014.

Findings of Fact

In her Answer to the SOR, Applicant admitted nearly all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.c., and 1.f. through 1.q.). Applicant's answers and explanations 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 42-year-old employee of a defense contractor, for which, since February 2012, she has served as a facilities coordinator lead. She was previously a mail services clerk in Iraq, customer service representative, billing agent, and administrative specialist.² Applicant was unemployed from February 2007 until May 2007, and again from December 2011 until February 2012.³ She never served in the U.S. military.⁴ It is unclear if Applicant ever held a security clearance for she acknowledged that an investigation was conducted in early 2011, but there is no evidence that one was granted to her.⁵ She does not currently have a security clearance.⁶ Applicant received a bachelor's degree in July 2007 and a master's degree in business administration in March 2009.⁷ She was married August 1990, separated in

² GE 1, *supra* note 1, at 13-20.

³ GE 1, *supra* note 1, at 14-15, 19-20.

⁴ GE 1, *supra* note 1, at 21.

⁵ GE 1, *supra* note 1, at 34; Tr. at 37.

⁶ Tr. at 7, 39-40.

⁷ GE 1, *supra* note 1, at 12-13; Tr. at 6.

1994, and divorced in August 2007.⁸ Applicant has two children from that relationship (a daughter born in 1989 and a son born in 1991), as well as a son (born in 1996) from a different relationship that ended in 2009.⁹

Financial Considerations

There was nothing unusual about Applicant's finances until about 2007, when a series of events occurred, including losing her job, remaining unemployed for several months, obtaining only part-time employment, getting a divorce, terminating her relationship with her frequently unemployed cohabitant, raising three small school-age children, and not receiving child support from either her ex-husband or the father of her other child.¹⁰ Her annual income was immediately reduced from \$40,000 in 2006 to under \$20,000 in 2007.¹¹ Neither she nor her husband wanted to pay for the divorce, so they remained separated for a number of years. Finally, once her financial situation enabled her to do so, she went ahead and paid for it herself.¹² As of September 2013, her ex-husband owed her \$71,955.93 in child support,¹³ and the father of her other child owed her \$25,384.74 in child support.¹⁴ Applicant had some debts before 2007, but she managed to keep them current while she was employed. With her unemployment, she was forced to make some unspecified necessary financial "adjustments and sacrifices," and eventually exhausted her 401(k) assets to support her family. She sought financial counseling from a local homeless coalition on a number of occasions between 2007 and 2010, but her debts were simply too high for her income.¹⁵ Accounts became delinquent, placed for collection, or were charged off. Two judgments were entered, tax liens were filed, and a house was foreclosed. Applicant eventually approached her creditors and, when she had the necessary funds available, attempted to set up repayment plans where possible.

The SOR identified 17 delinquent debts totaling \$17,149 that had been placed for collection, charged off, went to foreclosure, or went to judgments and became tax liens, as generally reflected by a September 2013 credit report.¹⁶ Some accounts listed in the credit report have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit report, in some instances duplicating other accounts listed, either under the same creditor name or under a

⁸ GE 1, *supra* note 1, at 24.

⁹ GE 1, *supra* note 1, at 26-27, 29, 31-32.

¹⁰ Tr. at 31-33, 78-79.

¹¹ Tr. at 79.

¹² Tr. at 29.

¹³ AE A (Family Court History, dated September 4, 2013); Tr. at 33.

¹⁴ AE B (Family Court History, dated September 4, 2013); Tr. at 33.

¹⁵ Applicant's Response to the SOR, at 2; Tr. at 66-67.

¹⁶ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 4, 2013).

different creditor name. Several accounts are listed with only partial account numbers. Those debts listed in the SOR and their respective current status, according to the credit report, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

The debts listed in the SOR can be divided into four separate categories: (1) those which have already been resolved, either through settlement or by payment in full; (2) those that are currently being paid under a repayment agreement; (3) those for which repayment plans and settlements have been discussed, but which payments have not yet commenced; and (4) various other accounts where the status is unclear.

The largest number of accounts listed in the SOR fall within the first category - those which have already been resolved, either through settlement or by payment in full. In 2009, there was a judgment entered and a state tax lien filed for \$408, resulting from a miscalculation of education credits for the tax period 2007 (SOR ¶ 1.b.);¹⁷ there was a medical account for professional services in the amount of \$258 that was erroneously reported to the credit reporting agency as delinquent (SOR ¶ 1.e.). Applicant disputed the adverse listing because her insurance explanation of benefits clearly states the patient responsibility is zero.¹⁸ There was a free cable service account that was part of an employment package that, unannounced, went into a charge status once Applicant left the employer. The unpaid balance was \$242 (SOR ¶ 1.f.).¹⁹ There was a medical account for professional services in the amount of \$100 (SOR ¶ 1.g.) that was settled for \$80 and paid off in November 2013;²⁰ there was a medical account for professional services in the amount of \$145 (SOR ¶ 1.h.) that was settled for \$116 and paid off in November 2013;²¹ there was a medical account for professional services in the amount of \$29 (SOR ¶ 1.i.) that was settled for \$23.20 and paid off in November 2013;²² there was a medical account for professional services in the amount of \$38.34 (SOR ¶ 1.j.) that was settled for \$30.67 and paid off in November 2013;²³ there was an account with a discount tire distributor with a high credit of \$974.66 that was sold to a debt purchaser (SOR ¶ 1.k.)²⁴ which offered Applicant a settlement for the reduced amount of \$584.78 in 2011.²⁵ A third-party collection agent indicated the account was settled in full.²⁶ There

¹⁷ Tr. at 45-46; GE 4 (Judgment and Lien Filing, dated August 16, 2009); GE 3, *supra* note 16, at 5; AE E (Tax Lien Satisfaction, dated February 5, 2010). Despite having been satisfied in February 2010, the September 2013 credit report continued to erroneously report an unpaid balance on the lien.

¹⁸ Tr. at 49-50; GE 3, *supra* note 16, at 9; AE R (Explanation of Benefits, dated November 17, 2011).

¹⁹ Tr. at 51-52; GE 3, *supra* note 16, at 10; AE H (Account Inquiry, dated January 9, 2014).

²⁰ Tr. at 52-53; GE 3, *supra* note 16, at 11; AE L (Letter, dated January 8, 2014).

²¹ Tr. at 52-53; GE 3, *supra* note 16, at 11; AE M (Letter, dated January 8, 2014).

²² Tr. at 52-53; GE 3, *supra* note 16, at 12; AE N (Letter, dated January 8, 2014).

²³ Tr. at 52-53; GE 3, *supra* note 16, at 12; AE O (Letter, dated January 8, 2014).

²⁴ GE 3, *supra* note 16, at 12.

²⁵ AE X (Letter, dated November 10, 2011); AE AD (Letter, dated November 10, 2011). It should be noted that the two exhibits are actually duplicates.

was a telephone and internet account in the amount of \$257 (SOR ¶ 1.m.) that was settled for \$128.65 and paid off in January 2014;²⁷ and there was a medical account in the amount of \$158 for professional services provided to Applicant's son while Applicant was in Iraq (SOR ¶ 1.n.)²⁸ and her family member with the power of attorney failed to inform the hospital that Applicant had insurance coverage. By the time Applicant learned about the account, the statute of limitations for submitting insurance claims had purportedly expired, and Applicant was required to make the payments directly to the hospital.²⁹ The account was settled for \$75 plus a \$6 processing fee, and Applicant made her payment on January 8, 2014.³⁰ The creditor has refused to furnish her with any documentation indicating the account has been satisfied.³¹

The second category - those accounts that are currently being paid under a repayment agreement, includes the following: in 2012, there was a judgment entered and a state tax lien filed for \$1,479, resulting from a cancellation of Applicant's overseas tax exemption when the base in Iraq at which she was serving closed and she was returned to the United States before she had been overseas long enough to qualify for the exemption (SOR ¶ 1.a.).³² She entered into a repayment plan in November 2012 – over a year before the SOR was issued – and has been making monthly payments of \$50 since that time.³³ As of January 2014, the balance has been reduced to \$853.44;³⁴ in 2012, there was a miscalculation of her 2011 overseas income withholding, resulting in a tax deficiency owed to the Internal Revenue Service (IRS) in the amount of \$1,135 (SOR ¶ 1.c.).³⁵ In August 2012, Applicant approached the IRS and a repayment plan was established, under which she agreed to a monthly direct debit installment payment of \$50.³⁶ Commencing September 2012, she made a payment of \$153, and each month

²⁶ AE AC (Letter, dated March 3, 2014). The collection agent did not indicate when the account was settled in full, and Applicant contends the action occurred in 2011.

²⁷ Tr. at 56-57; GE 3, *supra* note 16, at 13; AE I (Letter, dated January 9, 2014).

²⁸ Tr. at 57-58; GE 3, *supra* note 16, at 13.

²⁹ Tr. at 57-58.

³⁰ Tr. at 57-58; AE J (Email, dated January 15, 2014); AE K (ACH or Credit Card Authorization Form, dated January 14, 2014).

³¹ AE J, *supra* note 30.

³² Tr. at 41-44; GE 5 (Judgment and Lien Filing, dated November 1, 2012); GE 3, *supra* note 16, at 5; AE E (Tax Lien Satisfaction, dated February 5, 2010).

³³ Tr. at 44; AE Q (Electronic Payment System Summary, dated February 21, 2014; AE D (Electronic Payment System Summary, dated January 6, 2014; AE C (E-mail, dated January 6, 2014, with attached Screen Shot).

³⁴ AE C, *supra* note 33. Despite having made payments since November 2012, the September 2013 credit report continued to erroneously report that no payments had been made on the lien. See GE 3, *supra* note 16, at 5.

³⁵ Tr. at 47-48.

³⁶ AE F (Letter, dated October 12, 2012).

thereafter, made \$50 payments.³⁷ As of January 2014, the balance has been reduced to \$998.72, including penalty and interest.³⁸ There was vehicle loan account for a car that Applicant purchased for about \$27,064 and later transferred the registration to her brother, who promised to take over the loan payments. He failed to do so, and the vehicle, with a past-due balance of \$4,824 (SOR ¶ 1.o.), was charged off and sold to a debt purchaser.³⁹ The vehicle was repossessed while Applicant was in Iraq, but her brother never informed her of either the delinquency or the repossession.⁴⁰ A third-party collection agent offered Applicant a settlement in the amount of \$1,549.95 in March 2014,⁴¹ and Applicant authorized that collection agent to automatically deduct \$309.99 per month from her bank account for five months, beginning on March 7, 2014.⁴²

The third category - those accounts for which repayment plans and settlements may have been discussed, but payments under those plans may not have yet commenced, includes the following: there is a department store account with an outstanding balance of \$1,041.83 (SOR ¶ 1.q.)⁴³ which was settled for \$521 with the understanding that automatic monthly payments of \$43 would be withdrawn from Applicant's bank account commencing April 2, 2014.⁴⁴

The fourth category - various other accounts where the status is unclear, includes the following: there is a medical account for professional services in the amount of \$75 (SOR ¶ 1.d.) for which the collection agent is unable or unwilling to furnish Applicant any documentation.⁴⁵ Applicant informally disputed the account and contends that at the time of the service, she had medical insurance and was deployed. She believes the account is a duplicate of another account, but without further information, she is unable to substantiate her belief. The collection agent offered her only two payment options; send a check in the mail or make a payment over the telephone.⁴⁶ The parties are at an impasse, and the account has not been resolved. There was a department store account with a high credit of \$395 and outstanding balance of \$523.00 that was past due \$101 when it was charged off (SOR ¶ 1.l.).⁴⁷ Applicant contacted the creditor and was informed that \$523.49 was charged off in

³⁷ AE G (Payment Details, dated August 13, 2013).

³⁸ AE P (Letter, dated January 15, 2014).

³⁹ Tr. at 58-59; GE 3, *supra* note 16, at 14.

⁴⁰ Tr. at 59.

⁴¹ AE AH (Letter, dated March 6, 2014).

⁴² AE AH, *supra* note 41; AE AG (Email, dated March 6, 2014).

⁴³ Tr. at 64-65; GE 3, *supra* note 16, at 17.

⁴⁴ AE AL (Settlement Payment Reminder, dated March 4, 2014).

⁴⁵ GE 3, *supra* note 16, at 9; Applicant's Response to the SOR, at 3.

⁴⁶ Applicant's Response to the SOR, at 3; Tr. at 49.

⁴⁷ GE 3, *supra* note 16, at 12.

2010, and because of the statute of limitations, no further collection efforts or repayment arrangements could be made.⁴⁸ Although Applicant indicated a willingness to resolve the account, it is unclear as to what steps she will take to do so. The account has not been resolved. There is a bank credit card with a high credit and unpaid balance of \$5,463 that was \$1,221 past due and charged off (SOR ¶ 1.p.).⁴⁹ Applicant contended that before the account was charged off, she had a repayment arrangement in place with a collection agent and was making monthly payments of \$100 when the actual account balance was \$7,685.19.⁵⁰ She has not submitted any documentation to support her contentions. Applicant subsequently submitted documentation related to another credit card with the same bank, but the account number reflected in the documentation differs from the one listed in the credit report.⁵¹ There is no evidence that the two accounts are the same, or that the SOR account has been resolved.

Applicant reduced her expenses in several areas, including rent (by sharing an apartment with a roommate), phone bill, and recalculated and reduced student loan payments. Once an account is paid off, she intends to apply the newly available funds to her remaining accounts.⁵² At the end of each month, she estimates that she has between \$200 and \$300 remaining available for discretionary savings or expenditures.⁵³

Character References

The quality safety and continuance improvement manager, a retired Army sergeant major, has worked with Applicant and believes she is a “great asset and trusted employee.” He has personally assisted her since 2012 in straightening out her finances. He would trust Applicant with the nation’s secrets.⁵⁴ Applicant’s manager has rated her work performance for two years, and he is very supportive of her application. Applicant has been described as extremely pleasant and helpful, with excellent motivation, drive, and abilities. “Her willingness to continually go beyond what is required marks her as a role model for others to emulate. She is a very positive employee who is a real joy to work with.”⁵⁵

⁴⁸ AE AF (Letter, dated March 3, 2014).

⁴⁹ GE 3, *supra* note 16, at 16.

⁵⁰ Tr. at 61-63.

⁵¹ AE AI (Fax Cover Sheet, dated March 4, 2014, with handwritten notation); AE AJ (Letter, dated January 16, 2014); AE AK (Letter, dated March 6, 2014); GE 3, *supra* note 16, at 16.

⁵² Tr. at 68-69.

⁵³ Tr. at 69.

⁵⁴ AE AB (Character Reference, dated February 26, 2014).

⁵⁵ AE Z (Manager Assessment, dated February 4, 2014).

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.”⁵⁶ 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.”⁵⁷

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.”⁵⁸ 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.⁵⁹

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

⁵⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵⁷ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵⁸ “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).

⁵⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.”⁶⁰

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.”⁶¹ 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. In 2007, Applicant found herself with little assets to continue making her routine monthly payments. Various accounts became delinquent and were placed for collection or charged off. Two judgments were eventually entered, and tax liens were filed. One house was lost to foreclosure. AG ¶¶ 19(a) and 19(c) apply.

⁶⁰ *Egan*, 484 U.S. at 531.

⁶¹ See Exec. Or. 10865 § 7.

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*.⁶² In addition, 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 to resolve the issue*, AG ¶ 20(e) may apply.

AG ¶¶ 20(b), 20(c), and 20(d) apply. AG ¶ 20(a) partially applies. AG ¶ 20(e) does not apply. The nature, frequency, and relative recency of Applicant's continuing financial difficulties since 2007 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant's financial problems were not caused by frivolous or irresponsible spending, and she did not spend beyond her means. Instead, her financial problems were largely beyond Applicant's control. Commencing in 2007, Applicant started experiencing some financial difficulties when a series of events occurred, including losing her job, remaining unemployed for several months, obtaining only part-time employment, getting a divorce, terminating her relationship with her frequently unemployed cohabitant, raising three small school-age children, and not receiving child support from either her ex-husband or the father of her other child. Because of her unemployment, her annual income was immediately reduced from \$40,000 in 2006 to under \$20,000 in 2007. As of September 2013, her ex-husband owed her \$71,955.93 in child support, and the father of her other child owed her \$25,384.74 in child support. With her unemployment, she was forced to make some unspecified necessary financial "adjustments and sacrifices," and eventually exhausted her 401(k) assets to support her

⁶² 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)).

family. She sought financial counseling from a local homeless coalition on a number of occasions between 2007 and 2010, but her debts were simply too high for her income.

Applicant acted responsibly by addressing nearly all of her delinquent accounts, and working with her creditors.⁶³ Of the 17 SOR-debts, the vast majority of those debts have already been resolved, either through settlement or by payment in full. Other debts are in repayment plans, and Applicant has either commenced making the required payments, or is about to do so. The status of three accounts remains unclear, but it appears that Applicant is still attempting to resolve them. With her current job, there are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting her, do not cast doubt on her current reliability, trustworthiness, or good judgment.⁶⁴

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.⁶⁵

There is some evidence against mitigating Applicant's conduct. Her handling of her finances permitted a number of accounts to become delinquent. As a result,

⁶³ "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.

⁶⁴ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁶⁵ 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).

accounts were placed for collection or charged off. One property went to foreclosure, and two judgments resulted in tax liens.

The mitigating evidence under the whole-person concept is more substantial. Applicant's financial problems were not caused by frivolous or irresponsible spending, and she did not spend beyond her means. Rather, her problems were largely beyond Applicant's control. Her financial difficulties were generated when she lost her job, remained unemployed for several months, obtained only part-time employment, got a divorce after a lengthy separation, terminated her relationship with her frequently unemployed cohabitant, raised three small school-age children, and did not receive child support from either her ex-husband or the father of her other child. If Applicant had received the \$97,340.67 in child support her ex-husband and the father of her other child owed her, she would not be in debt, and none of her accounts would have become delinquent. All but 3 of the 17 SOR-debts have been paid off, settled, or otherwise resolved, or are in the process of being resolved. There are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting her do not cast doubt on her current reliability, trustworthiness, or good judgment. The entire situation occurred under such circumstances that it is unlikely to recur.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁶⁶

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 a "meaningful track record" of debt reduction and elimination efforts. Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I

⁶⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

conclude Applicant has mitigated the security concerns arising from her financial considerations. 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge