



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



In the matter of:)	
)	
)	ADP Case No. 14-00999
)	
Applicant for Public Trust Position)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

03/20/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant's payments to resolve a \$2,578 judgment debt are not enough to overcome the concerns about her financial judgment raised by approximately \$17,155 in delinquent debt. Eligibility for a public trust position is denied.

Statement of the Case

On April 29, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing the trustworthiness concerns under Guideline F, Financial Considerations, and explaining why it could not grant her eligibility for a public trust position. The DOD CAF took action under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987) as amended; and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR allegations on May 21, 2014. She indicated that a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge was not necessary unless considered “urgent” by the DOD. Applicant subsequently requested a hearing. (Tr. 6.) On October 1, 2014, Department Counsel indicated that the case was ready to proceed to a hearing. On October 2, 2014, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. On October 27, 2014, I scheduled a hearing for November 19, 2014. On October 30, 2014, I moved up the start-time one hour at Applicant’s request.

At the hearing, four Government exhibits (GEs 1-4) were admitted into evidence. A chart, prepared by Department Counsel as a supplement to his oral closing argument, was accepted into the record as a hearing exhibit (HE 1). Applicant submitted seven exhibits (AEs A-G), which were entered into evidence without any objections. Applicant and a witness testified, as reflected in a transcript (Tr.) received on November 28, 2014.

At Applicant’s request, I held the record open until December 10, 2014, for her to submit additional documentary evidence. On December 9, 2014, Applicant submitted a budget action plan. Department Counsel filed no objections by the December 17, 2014 deadline for comment, so the document was admitted into evidence as AE H.

Summary of SOR Allegations

The SOR alleges under Guideline F that as of April 29, 2014, Applicant owed delinquent debt totaling \$17,155 on ten accounts (SOR 1.a-1.g and 1.i-1.k).¹ When Applicant answered the SOR, she admitted that the debts alleged were listed as unpaid on her credit report. However, she had retained the services of a debt resolution law firm to contest the debt balances because of payments by her or her medical insurer (SOR 1.a, 1.c, 1.e, and 1.k); debts removed from her credit record or unlisted by one or more credit reporting agencies (SOR 1.b, 1.d, 1.g, 1.i, and 1.j); and fraud (SOR 1.f).

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 41-year-old college graduate with a master’s degree in information systems earned online. (GEs 1, 4; Tr. 24.) In September 2012, Applicant began working as a contract employee for a healthcare claims company. In mid-October 2013, Applicant converted to a full-time position of associate provider installation representative with the healthcare company. Applicant had worked for her employer previously, as an intake coordinator in a special investigations unit from August 2002 to April 2007. When she became a direct hire in 2013, she received credit for her prior service. (GE 1; AEs A, C; Tr. 25.)

¹ The SOR does not include a 1.h allegation.

Applicant and her spouse married in August 2009. They have a son, who was born in December 2010. Their household includes Applicant's daughter from a previous relationship, who is now eight years old. Applicant receives no child support for her daughter, despite a court order of paternal support at \$65 weekly. (Tr. 54-55.)

Applicant and her family live with Applicant's aunt and uncle, to whom Applicant pays \$775 per month in rent. Applicant has lived at the residence since June 2000, except for six months in 2008, when she lived with her father in an apartment. (GEs 1, 4; Tr. 27, 30-31.) Applicant signed a lease, agreeing to pay \$1,300 per month in rent. Her father was supposed to cover half of the rent, but he was unreliable. Applicant had to cover the full cost of the rent some months. According to Applicant, her landlord failed to make needed repairs, and he lacked fire insurance on the property. After she reported her landlord to the health department, she was served with a notice of eviction, which gave her 90 days to vacate the premises. Applicant stopped paying the rent when she received the notice of eviction. She asserts that she moved out shortly after receiving the eviction notice, but the landlord took her to housing court for unpaid rent and damages to the apartment. (GE 4.) In November 2008, the landlord obtained a \$2,578 judgment (SOR 1.a) against her. (GE 3; Tr. 31.)

In April 2007, Applicant left her job with the healthcare claims processor. The company was reorganizing, and Applicant thought she was going to be laid off. Applicant began working that same month as a dispatch associate in technical support for a cable company. Applicant resigned from that job in March 2008 because she needed a more consistent work schedule to care for her daughter and to pursue her graduate studies online. From March 2008 to December 2009, Applicant was placed by a staffing agency in customer service assignments at several law firms. (GEs 1-4.)

In late April 2009, Applicant started her own real estate investment business with a partner and with her father as their project manager. Applicant spent about five hours a week, in the evenings and weekends, on her business plan. (GE 4.)

From December 2009 to February 2012, Applicant was employed full time, initially at \$12 an hour, as a claims administrator for a company engaged in the manufacture of mailing and office equipment. (Tr. 74.) Applicant continued to work in the evenings and on weekends on her business plan for her real estate investing company. Applicant fell seriously behind on some of her financial obligations, as set forth in the following table:

Debt in SOR	Delinquency history	Payment status
1.a. \$2,578 judgment debt	\$2,578 judgment awarded former landlord in Nov. 2008. (GEs 1-4.)	Claims paid at least half of the judgment (GE 4; Tr. 31); paid \$935 Dec. 17, 2008-Jun. 26, 2009 ² (AE G); satisfied May 2014. (AE E.)

² AE G contains duplicate receipts for some payments.

1.b. \$4,549 collection debt	Last activity Jan. 2010, \$2,740 for collection Aug. 2011; \$4,549 balance as of Oct. 2013; \$4,753 balance as of Jan. 2014; \$4,965 balance as of Aug. 2014. (GEs 2,3; AE E.)	Disputes debt but still on credit report; had not attempted to validate debt as of Nov. 2014; no payments. (AE E; Tr. 34.)
1.c. \$735 medical debt in collection	Last activity Mar. 2011, \$735 for collection May 2011, unpaid as of Aug. 2014. (GEs 2, 3; AE E.)	Filed dispute with credit reporting agencies as of Sep. 2014 (AE E) but no longer disputes; listed as valid debt on Nov. 2014 action plan; no payments. (AE H; Tr. 34-35.)
1.d. \$379 collection debt	Credit card account opened Jun. 2008, last activity Apr. 2010; \$379 charged off Oct. 2011, unpaid as of Jun. 2014. (GEs 2, 3; AE E.)	Claimed fraudulent debt (Tr. 35) but included as valid debt on Nov. 2014 action plan; no payments. (AEs E, H.)
1.e. \$5,984 charged-off debt	Six-year auto loan opened for \$17,503 Feb. 2008, to be repaid at \$353 monthly; now held by lender in SOR 1.c; 13 times late 90-119 days; vehicle repossessed; \$5,984 charged off Aug. 2013, unpaid as of Aug. 2014. (GEs 2-4; AE E; Tr. 37.)	Filed dispute with credit reporting agencies as of Sep. 2014 (AE E); no recent contact with creditor. (Tr. 37-38.)
1.f. \$1,551 debt in collection	\$1,551 checking account debt for collection Dec. 2011; unpaid as of Sep. 2014. (GE 3; AE E.)	Filed dispute with credit reporting agencies as of Sep. 2014 (AE E) but admits overdrafts in the past (Tr. 38); listed as valid debt on Nov. 2014 action plan; no payments. ³ (AE H; Tr. 38.)
1.g. \$527 medical debt in collection	\$527 medical debt in collection as of Sep. 2011. (GE 3.)	Not on credit record as of Apr. 2014 (GE 2), Sep. 2014 (AE E); admits could be valid. (Tr. 38-39.)
1.i. \$459 collection debt	Last activity Nov. 2011; \$459 for collection Apr. 2013 (GE 3); \$283 balance as of Nov. 2014. (Tr. 39.)	No longer on credit report as of Sep. 2014 (AEs E, F); admits \$283 in collection; no payments. (Tr. 39.)

³ Applicant testified to her belief that there was some online fraud; that there were “some check issues going on there that [she] told them about. However, she “never had the opportunity to escalate the issue.” (Tr. 87-88.)

1.j. \$134 mail-order DVD debt in collection	\$134 for collection Nov. 2012; unpaid as of Aug. 2014. (GE 3; AE E.)	Filed dispute with credit reporting agencies as of Sep. 2014 (AE E) but listed as valid debt on Nov. 2014 action plan; no payments. (AE H.)
1.k. \$55 medical debt in collection	\$55 for collection Mar. 2012; unpaid as of Aug. 2014. (GE 3.)	Filed dispute with credit reporting agencies as of Sep. 2014 (AE E) but listed as valid debt on Nov. 2014 action plan; no payments. (AE H; Tr. 40.)

In February 2012, Applicant voluntarily resigned from her job. By then, her hourly wage had increased to \$17.50 an hour (Tr. 75), but the company was downsizing, and Applicant feared that she would lose her job. Over the next six months or so, she concentrated on building her real estate investment business. In September 2012, Applicant began working for her present employer under a contract with another company. (GEs 1, 4.) The temporary agency paid her \$18 an hour. (Tr. 75.)

By August 2013, Applicant was considering buying her own home and opening a mortgage account. She obtained her credit report, which showed several debts that she either did not recognize or wanted to dispute. She hired a law firm at \$100 a month to monitor her credit and dispute some of the accounts on her credit record. (GE 4; Tr. 80-81, 83.)

In October 2013, Applicant was hired by the healthcare company as a full-time associate provider install representative at \$19 an hour. (Tr. 76.) On October 25, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). In response to the financial record inquiries concerning any delinquency involving enforcement, Applicant listed the judgment (SOR 1.a) awarded her former landlord. She asserted that she had paid half of the \$2,543 judgment and was disputing the \$1,272 remaining balance. In response to any delinquency involving routine accounts, Applicant listed the car loan in SOR 1.e. She gave financial hardship and inaccurate account information as the reasons for the delinquency. As for any steps to satisfy the debt, Applicant reported that the vehicle has been repossessed and sold, and that she was disputing the \$4,500 deficiency balance. Applicant did not list any other delinquency involving routine accounts. (GE 1.)

On December 9, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) in part about her finances. Applicant disputed that she owed any back rent to her former landlord, notwithstanding the judgment award (SOR 1.a), because she had vacated the residence shortly after she received the eviction notice and did not damage the premises. Applicant asserted that she paid only half of the judgment because she does not consider it a valid debt. She had hired a law firm to dispute her liability for the balance. Applicant indicated that she would pay the debt if found

responsible. About the deficiency balance of her automobile loan, Applicant explained that she made timely payments until her loan was transferred to the creditor identified in SOR 1.e. Due to financial hardship, she contacted the creditor about modifying her loan terms, but she could not afford the program offered. The vehicle was voluntarily repossessed and sold at an auction, which she believed should have eliminated any remaining debt. The law firm was disputing that debt for her. She claimed no recall of any other debts on her record and confirmed her negative response on the e-QIP to whether she had any bills or debts turned over to a collection agency in the last seven years; any accounts suspended, charged off, or cancelled in the last seven years; and any debts currently over 120 days delinquent. Applicant was then confronted about the debts in the SOR, most of which were not disclosed on her e-QIP (SOR 1.b, 1.d, 1.f, 1.g, 1.i., 1.j, and 1.k). Applicant did not recognize the debts as valid, although she had seen them on her credit record. She did not list them on her e-QIP because she was disputing them. Applicant characterized her financial situation as tight, but she was managing to pay her debts. She denied any current use of credit cards. (GE 4.)

In January 2014, Applicant opened a low-limit credit card account with a retailer. As of March 2014, she had a balance of \$114 on the account, which was rated as current. (GE 2.) On March 7, 2014, Applicant consolidated her student loan debt into two loans of \$77,636.55 and \$88,632.51. Applicant requested an income-based repayment plan for her federal student loans. On October 3, 2014, her request was approved for one year. Under the plan, Applicant is required to make monthly payments of \$12.08 starting October 24, 2014, toward the outstanding principal totaling \$171,210.84. (AE D; Tr. 59.)

In April 2014, Applicant opened an automobile loan of \$18,389. She was making her \$339 monthly payments on time as of August 2014. (AE E.)

As of April 2014, Equifax Information Services was reporting outstanding collection balances of \$4,753 (SOR 1.b) and \$735 (SOR 1.c), and charged-off balances of \$379 (SOR 1.d) and \$5,984 (SOR 1.e) on Applicant's credit record. The other debts in the SOR were not being reported by Equifax, apart from the judgment debt (SOR 1.a), which had a reported payment status of "pending" as of September 2013. (GE 2.)

In September 2014, a mortgage company obtained a consolidated report of Applicant's credit. Applicant reportedly satisfied the judgment in May 2014. Other past-due debts remained unresolved, as reflected in the above table. Additionally, a membership debt with an amusement park was placed for collection for \$363 in July 2014. Applicant was making timely payments on the low-limit retail charge account opened in January 2014. (AE E.)

Around October 2014, Applicant sent verification letters to the three credit bureaus about the accounts that she was continuing to dispute. (Tr. 42.) On November 18, 2014, with the help of a counselor affiliated with a community housing program,⁴ Applicant prepared an action plan to address her finances going forward. She listed debt of

⁴ As of her trustworthiness hearing, Applicant had applied for a loan from a community development organization. (Tr. 51.)

\$192,108: \$170,623 in student loan debt; her new car loan balance of \$17,974; the \$1,551 checking account debt in collection (SOR 1.f); \$736 in medical debt (SOR 1.c) in collection; \$379 in credit card collection debt (SOR 1.d); amusement park collection debt of \$363; \$202 on the retail charge account opened in January 2014; \$134 in collection debt for DVD services (SOR 1.j); \$91 in electric utility debt; and medical collection debt of \$55 (SOR 1.k). She listed monthly payments of \$12.08 toward her student loans, \$339 for her car, and \$35 on her retail charge card. Her plan is to pay off remaining collection accounts, keep her credit card balances low, and pay on her student loans while preparing for increases in her monthly payment in the future. Applicant is required to comply with this plan for the housing corporation to assist her with a down payment on a home. Applicant signed the action plan on December 1, 2014. (GE H.)

Applicant received an income tax refund of \$7,000 to \$8,000 in 2014 for tax year 2013. She spent \$500 of the money as a down payment for a car because they needed a second vehicle. The remainder reportedly went for food, clothing for her children, and other necessities. (Tr. 48.)

Applicant earns \$19 an hour in her present position. (Tr. 27.) Applicant has earned no significant revenue from her real estate investment business. (Tr. 51.) According to a monthly spending plan prepared for the housing program, Applicant has \$156.94 in monthly net income after paying her fixed monthly expenses of \$1,414.⁵ Listed monthly expenses included \$12.08 toward her student loans, \$358 on her car loan, and \$25 on her retail charge account opened in January 2014, and flexible expenses of \$360 (groceries at \$200 and gasoline at \$160). (AE H.) She did not account for any payments toward the collection accounts listed on her action plan. (AE H.) She plans to use her anticipated income tax refund for tax year 2014 for repaying her old debts because she wants to obtain a mortgage. (Tr. 49.) She indicated in closing at her trustworthiness hearing that she could pay the \$55 medical debt. (Tr. 102.) No evidence of payment was presented by the December 10, 2014 deadline for additional exhibits.

Applicant's spouse works as a machinist at \$14 an hour. (Tr. 29. 78.) He was unemployed for two months after being laid off in February 2013 from a job where he had been earning \$17.50 an hour. (Tr. 46-47.) When he was out of work for the two months, he took care of their son. They lost a state subsidy for childcare expenses that covered about \$480 of their \$800 in monthly daycare costs. (Tr. 76.) Applicant had to cover "back charges" for daycare to keep her son in the program. (Tr. 54-56, 77.) Applicant and her spouse split their expenses equally. He pays his child support by automatic deductions from his pay. (Tr. 43-44.)

At her trustworthiness hearing, Applicant attributed her failure to make payments on her delinquent debts to her focus on her education and to being a single parent with

⁵ Applicant's fixed expenses consist of \$775 for rent, \$50 for electric utility service, \$130 for cell phone service, \$119 for cable service, \$210 for auto insurance, \$50 for life insurance, and \$80 for child care (AE H), which is for an afterschool program. (Tr. 30.) Applicant did not include the \$100 she was paying to the law firm to monitor her credit.

substantial daycare expenses before she married. (Tr. 45.) When asked why she had not made any payments after her marriage, especially given her full-time employment for the past two years, Applicant responded, “Unfortunately, I could not, because of just life happening. . . If the money is not there, I cannot pay it.” (Tr. 46.)

Applicant’s former supervisor in the special investigations unit of the healthcare company attests to Applicant being a dedicated and hardworking employee. (AE A.) Another employee of the healthcare company, who now works in a different department from Applicant, met Applicant at work in 2002. She described Applicant as a hard worker committed to her job. (Tr. 92.) Applicant told this co-worker that she has credit issues, although Applicant did not provide details about her credit history. (Tr. 95.) This co-worker has never heard any complaints about Applicant’s work performance. (Tr. 96.)

For several years, Applicant contributed her time outside of work to a nonprofit association. As an administrator for special events, Applicant was able to multi-task with a high degree of efficiency and professionalism. (AE B.)

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) The standard that must be met for assignment to sensitive duties is 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 national security. (See Regulation ¶ C8.2.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an Applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), 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 reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

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. The government reposes a high degree of trust and confidence in 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 information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns about financial considerations are 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 evidence establishes the financial considerations concerns. Applicant stopped paying rent on an apartment when she received an eviction notice. She denies that she owed rent or damaged the apartment, but her former landlord obtained a judgment against her in November 2008. The court judgment is sufficient to establish the debt in SOR 1.a. In addition, Applicant surrendered an automobile because she could not afford the payments. Her credit record shows that she was chronically late in her payments, and that a \$5,984 balance was charged off in August 2013. Applicant assumes that since the vehicle was sold at an auction, she owes nothing on her loan. There is no evidence that the bank is actively pursuing collection. Even so, her record of delinquent payments raises Guideline F concerns.

When Applicant was interviewed by an OPM investigator in December 2013, she denied recognition of the other past-due accounts on her credit record. She explained that a law firm was working to remove items from her credit record, which she believed were of questionable validity. When Applicant answered the SOR in May 2014, she disputed either the validity or balances of the debts alleged. Yet, as shown on her action plan prepared in November 2014, the debts in SOR 1.c, 1.d, 1.j, and 1.k are no longer in dispute. Although Applicant is continuing to challenge the debt in SOR 1.b, her credit record shows the

account as \$4,965 past due as of August 2014.⁶ At her trustworthiness hearing, Applicant admitted that the \$55 medical debt in SOR 1.k could be legitimate. Additionally, she recently confirmed a past-due balance of \$283 on the account in SOR 1.i. (Tr. 38-39.) Disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply because of Applicant’s record of financial delinquency.

AG ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s current, reliability, or good judgment,” cannot reasonably apply. The judgment was issued against Applicant some time ago. However, while she made some payments between December 2008 and June 2009 toward the judgment, it was not satisfied until May 2014. Several accounts charged off or placed for collection in 2011 had not been satisfied as of November 2014. Furthermore, she allowed a \$363 debt for an amusement park membership to go to collection in July 2014. While that recent delinquency cannot provide a separate basis for disqualification, it is evidence of ongoing questionable financial judgment that makes it difficult to find that the financial problems are not likely to recur.⁷

Applicant attributed her financial problems to financial hardship, an increase in health insurance costs, and, in the case of the judgment, to possible retribution by a former landlord for reporting him to the health department. AG ¶ 20(b) is triggered when debts are incurred outside of one’s control:

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.

⁶ In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted).

⁷ In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the unalleged debt only for these purposes.

Some of Applicant's debt is medical, so it is not discretionary. She also had daycare expenses as a single parent, which could explain some of her late payments on her car loan in SOR 1.e. She had no significant periods of unemployment until February 2012, when she resigned voluntarily from her position in a company's claims department. For the next six months, she focused on developing her real estate investing business, which has yet to result in any significant revenue for her. Applicant currently earns only \$19 an hour from her work with the healthcare company. Her spouse was unemployed for two months after a job layoff in February 2013, and he now earns about \$3 less an hour than in his previous job. To the extent that low income explains Applicant's lack of payments on her old debts, the amusement park collection debt is a new delinquency that weighs against her in determining whether she has acted responsibly toward her creditors. She received an income tax refund of \$7,000 to \$8,000 for 2013. She knew as of December 2013 that the DOD was concerned about the collection accounts on her record, and yet she had not paid even the \$55 medical debt as of her November 2014 hearing. AG ¶ 20(b) does not completely mitigate the concerns about her financial judgment.

AG ¶ 20(c), "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," and AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," have limited applicability. Applicant presented evidence of some payments on the judgment between December 2008 and June 2009. Her September 2014 credit report shows the judgment as satisfied in May 2014. She paid \$100 a month to a law firm for over a year, which is a good-faith effort to address her debts. While it may take time to verify debts with creditors, it is unclear what the law firm has accomplished on her behalf. In October 2014, Applicant sent verification letters to the credit bureaus herself. Applicant is receiving some budget help through a community housing assistance corporation. However, while the first goal of her action plan is to pay off her outstanding collection debts, she has no sustained record of debt payments. More progress is needed toward resolving her delinquencies to apply fully either AG ¶ 20(c) or AG ¶ 20(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁸

Applicant has a record of financial difficulties that is inconsistent with the judgment, trustworthiness, and reliability that must be required of persons holding a sensitive position.

⁸ The factors under AG ¶ 2(a) are as follows:

- (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.

Applicant did not prove that the bank debt of \$1,551 was caused by fraudulent online banking activity. She admitted that she had overdrawn an account with the bank. Bank overdrafts call into question whether she can be counted on to live within her means. The recent amusement park fee delinquency raises doubt her spending priorities, particularly when she has made no efforts to repay the medical debts in collection. One of the medical debts is only \$55. Applicant owes \$170,623 in student loan debt that is being repaid at only \$12.08 per month under an income-based repayment program. The student loans are not viewed negatively because they are not in delinquent status, but the small repayment is indication of her tight financial situation.

In making the whole-person assessment required under the Directive, the DOHA Appeal Board has held that an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has apparently paid \$100 a month to a law firm for more than one year. Presumably, the law firm would have made more progress than has been shown, although Applicant also testified that the law firm provides only those services that she authorizes. Around October 2014, Applicant sent verification letters to the credit bureaus herself. Applicant's action plan is a good start, but it is not a substitute for demonstrated payments on her delinquent debts. Her need for continued full-time employment to support her family and address her debts is acknowledged, but the decision about whether to grant her a position of public trust is based on national security interests. After considering all the facts and circumstances in light of the financial considerations guideline, I conclude that it is not clearly consistent with national security to grant Applicant access to sensitive information at this time.

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:	For 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.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge