



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



In the matter of:)
)
-----) ADP Case No. 14-02523
)
Applicant for Public Trust Position)

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

05/29/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges six charged-off debts totaling \$27,857, misuse of the prescription drugs Vicodin and Xanax, and use of marijuana in May 2013. She has an established payment plan addressing her delinquent debts, and she has a track record of paying her current debts and expenses. She ended her drug abuse on June 7, 2013. Financial considerations and drug involvement concerns are mitigated. Eligibility for a public trust position is granted.

Statement of the Case

On November 21, 2013, Applicant signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (GE 1) On October 22, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, and modified; DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleges trustworthiness concerns under Guidelines F (financial considerations) and H (drug involvement). (HE 2) The SOR detailed reasons why the

DOD CAF was unable to find that it is clearly consistent with national security to grant or continue Applicant's eligibility to occupy a public trust position, which entails access to sensitive information. (HE 2) The DOD CAF recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked. (HE 2)

On November 20, 2014, Applicant responded to the SOR. (HE 3) On March 9, 2015, Department Counsel was prepared to proceed. On March 19, 2015, DOHA assigned the case to me. On April 10, 2015, DOHA issued a notice of the hearing, setting the hearing for May 12, 2015. (HE 1) The hearing was held as scheduled. Department Counsel offered 6 exhibits into evidence, and Applicant offered 11 exhibits into evidence. (Tr. 15-21; GE 1-6; AE A-K) There were no objections, and I admitted all proffered exhibits into evidence. (Tr. 17, 21-22; GE 1-6; AE A-K) On May 19, 2015, I received the transcript of the hearing.

Findings of Fact¹

In her Answer to the SOR, Applicant admitted the SOR allegations and provided mitigating information. (HE 3) Her admissions are accepted as findings of fact.

Applicant is a 48-year-old senior systems analyst, who has been working for a DOD contractor for 13 ½ years. (Tr. 6, 23) In 2013, she took leave from her employment for three months to attend cosmetology school. (Tr. 23; AE D-E) She has never served in the military. (Tr. 7; GE 1) In 1988, she married, and she has two children, who are 24 and 26 years old. (Tr. 7) In 1984, she graduated from high school. She is a registered dental assistant, is certified in Cisco Networking, and has a certificate and license in cosmetology. (Tr. 5; AE D-E) She has conscientiously protected sensitive information. (Tr. 59) Her employer's evaluations indicate she has provided excellent services and contributed to accomplishment of her employer's goals. (AE G-K)

Financial Considerations

In 2013, Applicant took leave from her employment because she was depressed and anxious. (Tr. 26) Her employment was very stressful for her, and she was considering a change in careers to cosmetology. She went on disability leave from her employment. (Tr. 26) Applicant's mental state contributed to her financial problems.

Applicant's SOR alleges six charged-off debts, totaling \$27,857. Her history of delinquent debt is documented in her November 21, 2013 SF 86, three credit reports, SOR response, and hearing record.

Applicant included all of her SOR debts in a debt consolidation and payment plan. (Tr. 24; AE F) In October 2013, Applicant made her initial payment of \$1,352 and

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

thereafter she made monthly payments of \$922. (Tr. 25-29; AE F) She and her husband are half way through their three-year payment plan. (Tr. 25-31; AE F) All of her other accounts, including her mortgage and credit cards, are current. (Tr. 27) She and her husband have about \$140,000 in their 401(k) accounts. (Tr. 29-30, 62) They are able to maintain their budget and pay their debts and obligations. (Tr. 62)

Drug Involvement

Applicant disclosed on her November 21, 2013 SF 86 that she received a prescription for Vicodin after undergoing knee surgery in 2010. (Tr. 51-53) From 2011 to June 2013, she abused Vicodin. (Tr. 52-53) She took some of her husband's prescription Vicodin. (Tr. 52-53) She used Vicodin on occasion when she was feeling sad or depressed, and her knee did not hurt enough to merit taking this drug. (Tr. 44, 52-53)

In February 2012, Applicant was prescribed Xanax to help her sleep at night and for anxiety. On one occasion on June 7, 2013, she consumed four or five tequila drinks and took four or five Xanax pills because she was concerned and anxious about her sister's surgery for treatment of cancer. (Tr. 54-57; GE 1) Her husband became concerned, called an ambulance, and she was taken to a hospital emergency room. (Tr. 32) Her blood alcohol content (BAC) was a little over .10 percent. (Tr. 65) The hospital assessed her medical condition, did not pump her stomach, and released her three or four hours later. (Tr. 32, 65-66)

Applicant explained that she misused Vicodin and Xanax because she was depressed and anxious. Her mother-in-law passed away, and her father moved in with Applicant. He was very ill for several months, and then he passed away in November 2011. Applicant's sister was diagnosed with stage four ovarian cancer. (Tr. 55-56) Family illnesses and death caused her depression and anxiety. Applicant believed the abuse of prescription drugs was related to her situational anxiety and depression which have been reduced with the passage of time, therapy, and a change in her employment. (Tr. 40-41, 46)

Applicant has not consumed alcohol or abused prescription drugs since June 2013. (Tr. 31, 63) She attended a chemical drug recovery program (CDRP) through her health care provider four times a week for 12 weeks after June 2013. (Tr. 32-33, 39-40) At CDRP, she received urinalysis tests for drugs once or twice a week. (Tr. 39-40) She successfully completed the CDRP. (AE C) She then went to Narcotics Anonymous (NA) meetings two or three times a week for almost two years, and she continues to attend NA meetings. (Tr. 32-35) Applicant's NA sponsor provided a letter indicating Applicant is sincere and active in her efforts to remain drug free. (AE A) Applicant talks to her NA sponsor almost every day. (Tr. 34) She has not abused prescription drugs or used illegal drugs since June 2013. (Tr. 35) Her current work is less stressful than in 2013. (Tr. 43) Her husband keeps his Vicodin, prescribed for his back, locked in a safe, and she does not have access to it. (Tr. 44, 64) She believed that her therapy, support from her NA sponsor, change in her work, and attendance at NA meetings enabled her to

cope with her anxiety and depression. (Tr. 41-44) Since June 2013, she has not been around anyone who uses illegal drugs. (Tr. 45)

Applicant experimented with illegal drugs when she was in her early 20s. (Tr. 38) In May 2013, she used marijuana on one occasion. (Tr. 46, 58) Applicant attributed her one-time marijuana use to the same reasons she abused prescription drugs. (Tr. 58) Applicant sincerely apologized and expressed remorse for her abuse of drugs. (Tr. 50) She has never held a security clearance or a public trust position. (Tr. 58)

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 [public trust position].” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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 the interests of national security.” Regulation ¶ C6.1.1.1. 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. See Regulation ¶ C8.2.1.

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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 protect or 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s suitability for a public trust position. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her access to sensitive information.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance [or trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

The protection of the national security and sensitive records is of paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Financial Considerations

AG ¶ 18 articulates the trustworthiness concern relating to financial problems:

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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two disqualifying conditions that could raise a trustworthiness concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” 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 [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in her SF 86, credit reports, SOR response, and hearing record. Applicant's SOR alleges, and the record establishes, six charged-off debts totaling \$27,857. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) 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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;² and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

²The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's eligibility [for a public trust position], there is a strong presumption against the grant or maintenance of a [public trust position]. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising [trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [public trust position] decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 20(a) through 20(d) are applicable. Applicant suffered from situational grief, depression, and anxiety, and she took leave from her employment, which adversely affected her income. Applicant had six charged-off debts totaling \$27,857.

Applicant included all of her SOR debts in a debt consolidation and payment plan. In October 2013, Applicant made her initial payment of \$1,352 and thereafter she made monthly payments of \$922. She and her husband are midway through their three-year payment plan. She established and maintained contact with her creditors through a debt consolidation company.³ All of her other accounts, including her mortgage and credit cards, are current. She and her husband have about \$140,000 in their 401(k) accounts. They are able to maintain their budget and pay their debts and obligations.

The Appeal Board explained that having delinquent debts is not necessarily a bar to having access to classified or sensitive information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009).

³Even 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.

Applicant's illness and leave from her employment are circumstances largely beyond her control. She understands what she must do to establish and maintain her financial responsibility.⁴ She has a reasonable plan to resolve her debts, and she has taken actions to effectuate her plan. There are clear indications the problem is being resolved and is under control. Her efforts are sufficient to mitigate financial considerations trustworthiness concerns.

Drug Involvement

AG ¶ 24 articulates the trustworthiness concern about drug involvement as follows, “[u]se of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.”

Two drug involvement disqualifying conditions in AG ¶¶ 25(a) and 25(c) could raise a trustworthiness concern and may be disqualifying in this case: “any drug abuse,”⁵ and “illegal drug possession.” These two disqualifying conditions apply because Applicant possessed and used marijuana, and she abused Vicodin and Xanax.⁶ AG ¶¶ 25(a) and 25(c) apply and consideration of the applicability of mitigating conditions is required.

AG ¶ 26 provides four potentially applicable drug involvement mitigating conditions:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

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

⁵AG ¶ 24(b) defines “drug abuse” as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”

⁶AG ¶ 24(a) defines “drugs” as substances that alter mood and behavior, including:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances.

Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule (Sch.) I controlled substance. See Drug Enforcement Administration listing at http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_11.htm. See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I). Vicodin or hydrocodone is a Sch. II controlled substance. Xanax is a Sch. IV controlled substance. Xanax (alprazolam) is a benzodiazepine medication used to treat anxiety and panic disorders. <http://www.drugs.com/xanax.html>.

- (b) a demonstrated intent not to abuse any drugs in the future, such as:
- (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used;
 - (3) an appropriate period of abstinence; and
 - (4) a signed statement of intent with automatic revocation of clearance for any violation.
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) can mitigate trustworthiness concerns when drug offenses are not recent. There are no “bright line” rules for determining when such conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant’s last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.”⁷

⁷ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge’s decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant’s last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant’s efforts at alcohol rehabilitation.”) (citation format corrections added).

Applicant used marijuana on one occasion in May 2013. Her marijuana use in her 20s is of limited relevance because it was so long ago. Applicant has resolved not to use marijuana and not to abuse prescription drugs in the future. She has refrained from abuse of prescription drugs since June 2013. She recognized the adverse impact of drug abuse. She understands that possession of marijuana and abuse of prescription drugs violates federal law. Applicant's statement that she intends to continue to abstain from illegal drug possession as well as use and abuse of prescription drugs is sincere and credible. AG ¶ 26(a) applies.⁸

AG ¶ 26(b) applies. Applicant demonstrated her intent not to abuse any drugs through her: disassociation from drug-using associates and contacts; avoiding the environment where drugs were used; and an almost two years of abstinence. Her husband's prescription drugs are locked in a safe, and she does not have any prescription drugs such as Vicodin or Xanax.

AG ¶ 26(c) applies. Applicant's abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and her abuse has since ended. She was prescribed Vicodin for knee pain and Xanax for her depression and anxiety. Her mental and emotional issues were situational and temporary. Her grief and depression were related to the deaths of parents, her sister's cancer, and stress at work. She changed her employment to less stressful work, and with the passage of time, therapy, and NA attendance, her grief abated in its stress and severity.

In conclusion, Applicant ended her drug abuse on June 7, 2013, almost two years ago. The motivations to stop using illegal drugs are evident. She understands the adverse consequences from drug abuse.⁹ She expressed remorse for her drug abuse; she completed CDRP; she has attended numerous NA meetings; and she credibly and sincerely stated that she will not abuse illegal drugs in the future. She has shown or demonstrated a sufficient track record of no drug abuse to eliminate drug involvement as a bar to his access to classified information. Drug involvement concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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

⁸In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

⁹Approval of a security clearance, potential criminal liability for possession of drugs and adverse health, employment, and personal effects resulting from drug use are among the strong motivations for remaining drug free.

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.

The ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines F and H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 48-year-old senior systems analyst, who has been working for a DOD contractor for 13 ½ years. She is a registered dental assistant, is certified in Cisco Networking, and has a certificate and license in cosmetology. She has conscientiously protected her employer's sensitive information. Her employer's evaluations indicate she has provided excellent services and contributed to accomplishment of her employer's goals. She is sufficiently mature to understand and comply with her public trust responsibilities. There is every indication that she is loyal to the United States, the DOD, and her employer.

Applicant is credited with admitting responsibility for her delinquent debts and her prescription drug abuse on her SF 86. All of her charged-off SOR debts are in her established payment plan. Her situational mental and emotional illness contributed to her financial problems. These are all circumstances largely beyond her control. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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

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

Applicant understands what she needs to do to establish and maintain her financial responsibility. She has placed all of her delinquent debts into a payment plan. Her other debts are current. She took reasonable actions under her particular financial circumstances to address her delinquent debts. Her overall history shows a “meaningful track record” of debt repayment. I am confident she will continue to maintain her financial responsibility.

Applicant has taken the necessary actions to establish her rehabilitation from drug abuse. She changed her employment, reducing her stress and anxiety. She completed CRDP and is active in NA. She ended her drug abuse on June 7, 2013. She expressed remorse for her drug abuse and credibly stated she would not abuse drugs in the future.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations and drug involvement concerns are mitigated. Eligibility for a public trust position is granted.

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
Subparagraphs 1.a to 1.f:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge