



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



In the matter of: )  
)  
) ISCR Case No. 15-01741  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: Margaret L. Steele, Esq.

07/20/2016

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and her spouse became delinquent on some credit-card accounts while she was being treated for a serious medical illness in 2008 and 2009. Their federal income tax return for 2010 was not filed until 2014. She has been repaying one delinquent credit debt at \$150 per month since September 2014 to reduce its balance to \$9,935. She is making no payments on another \$5,642 in her delinquent debt. Yet, neither she nor her spouse has relied on consumer credit in over four years, and their monthly obligations are being paid on time. Clearance is granted.

**Statement of the Case**

On September 26, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On October 26, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 15, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for her. On January 18, 2016, I scheduled a hearing for February 9, 2016.

I convened the hearing as scheduled. Four Government exhibits<sup>1</sup> (GEs 1-4) and 12 Applicant exhibits (AEs A-L) were admitted into evidence without objection. A chart prepared by Department Counsel as a supplement to his oral closing argument was marked as a hearing exhibit (HE 1) for the record but was not admitted as an evidentiary exhibit. Applicant and her spouse testified, as reflected in a transcript (Tr.) received on February 18, 2016.

I held the record open for one month for post-hearing documentary submissions from Applicant. On March 22, 2016, Applicant submitted AE M, which was admitted without objection.

### **Summary of SOR Allegations**

The SOR alleges under Guideline F that, as of September 26, 2015, Applicant's wages were being garnished to satisfy a \$2,321 credit card judgment from 2012 (SOR ¶ 1.a) and a credit card debt (SOR ¶ 1.g); that Applicant owed a collection debt of \$17,713 (SOR ¶ 1.b) and charged-off debts of \$11,085 (SOR ¶ 1.c), \$4,142 (SOR ¶ 1.d), and \$1,989 (SOR ¶ 1.e); and that Applicant failed to timely file returns and pay her federal and state income taxes for tax year 2010 (SOR ¶ 1.f).

When she answered the SOR, Applicant indicated that the debt in SOR ¶ 1.e was the same debt as the judgment debt in SOR ¶ 1.a, and that the credit card debt in SOR ¶ 1.g was a duplicate listing of the debt in SOR ¶ 1.c. Applicant asserted that she was making payments on the judgment in SOR ¶ 1.a and the credit card debt in SOR ¶ 1.c. Applicant admitted owing the \$4,142 charged-off balance as alleged in SOR ¶ 1.d, which is the deficiency balance on a loan for a vehicle that was voluntarily surrendered. About the federal and state income tax returns and tax liabilities, Applicant indicated that the returns were filed and taxes paid in June 2014.

### **Findings of Fact**

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

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<sup>1</sup> GE 2, a credit report dated August 25, 2015, appears to be missing information. Most recent account is a car loan opened in February 2014, but it is not included in the trade entries, which are numbered 6 through 11. (GE 2.)

Applicant is a 42-year-old high school graduate with some community college credits. (GE 1; Tr. 73.) She has worked for a defense contractor since July 2014 and held an interim security clearance for about 1.5 years until the SOR was issued. (GE 4; Tr. 67, 74, 121.) Applicant has been married since September 1998. She and her spouse have three children ages 19, 15, 13. (GE 1; Tr. 22.) Applicant did not work outside the home when her children were young. In June 2005, she began working as a secretary at a local hospital, initially 24 hours per week on second shift. (GE 1; Tr. 76.) Over the years, she was able to work additional shifts on weekends and holidays. (Tr. 76.)

Applicant and her spouse bought their home in October 1999. In July 2003, they refinanced their home loan through a mortgage of \$120,000. In September 2004, they opened a joint credit line of \$25,000. (GE 3.) In June 2007, they refinanced the loan on their home with a mortgage from a credit union of \$222,000. (GE 3; AE M.) When asked at her hearing to explain why the significant reliance on the equity in their home at that time, Applicant responded that she and her spouse bought a camper outright for \$21,000 that they sold 2.5 years later because they could not afford it. (Tr. 134-136.) She later admitted that they had a large amount of credit-card debt on which they were paying the monthly minimum, and that they paid off one of her credit cards on which she owed approximately \$18,000. (Tr. 138-139.) When asked about a credit card that showed a zero balance with a high credit of \$17,609, Applicant surmised that she may as well have paid off that debt as well. (Tr. 140.) Mortgage settlement records submitted after Applicant's hearing show that in the refinancing, they paid off \$49,634 in credit card debt, including that debt. (AE M.) They put a new roof on their home at the time (Tr. 143), but Applicant's spouse did the work himself to save money. (Tr. 180.) Applicant's spouse recalls that the camper was purchased for his business and was not part of the decision to refinance their mortgage. (Tr. 168.)

In February 2007, Applicant underwent medical tests at her local hospital that led to the diagnosis and specialized care of a rare disorder. Treatment for this disorder was at two non-network teaching hospitals located in another state. Between May 2007 and March 2009, Applicant had medical testing or treatment on ten separate occasions at one or the other of the non-network hospitals, including a four-day hospitalization in September 2008. (AE A; Tr. 19-30, 78.) She was out of work for three to four weeks after that hospitalization. (Tr. 79.) From June 2010 to July 2013, Applicant had annual follow-up visits at one of the hospitals. (AEs A-C.) She has not returned to the non-network hospital since then. She was due for a follow-up visit in July 2014 but had just started her job with the defense contractor and lacked insurance coverage for her first 90 days. (Tr. 80-81.) Applicant also had treatment at her local hospital from April 2008 to July 2008 and from May 2009 to August 2009, culminating in surgery, for various medical issues. (AE D.) She was on medical leave for almost three weeks following her surgery in August 2009. (Tr. 78.) Applicant and her spouse relied on consumer credit to cover food, routine bills, transportation costs, and her spouse's lodging when she was being treated at the non-network hospitals. (Tr. 36-37, 45, 89, 172.) Applicant gave her medical bills priority, fearing that if she did not pay her \$3,500 to \$3,800 in out-of-pocket medical costs, she would not receive treatment. (Tr. 33, 82, 146, 162-163.)

Applicant worked at the hospital 24 hours a week, but she had to take medical leave on occasion. (Tr. 22, 77.) Applicant's spouse, who is self-employed in the heating and cooling business, accompanied her to her medical appointments. (Tr. 23.) He lost time at work and income while he was with Applicant for her care. (Tr. 144, 160.) His net profit from his business was \$12,000, and Applicant's wage earnings totaled \$18,225 in 2008. She received short-term disability pay after her hospitalization in 2009, but by the time she received the income, they were already behind on some bills. (Tr. 144.) To make ends meet, Applicant withdrew funds of \$25,000 from an old 401(k) in 2008 (Tr. 87-88), which resulted in an additional tax liability of \$1,645. One credit card lender issued a 1099-C cancelling \$2,941 of debt. (AE E.)

In 2009, Applicant's spouse had his own fishing business that netted gross profit of \$28,100. His heating and cooling business was not doing well at the time, and he had to provide for his family. (Tr. 171.) With Applicant's wage earnings of \$17,608 (\$17,146 from her job at the hospital and \$462 earned at a public school) their adjusted gross income totaled \$52,488 in 2009. (AE F.)

The instability in household income while Applicant was dealing with her medical issues led Applicant and her spouse to fall behind in their payments on the debts in the SOR. The debts delinquency and payment histories follow:

SOR ¶ 1.a (duplicated in SOR ¶ 1.e)

In September 2012, a \$2,227 credit-card judgment was entered against Applicant. In late December 2012, the judgment creditor filed to attach Applicant's wages at \$35 per week to collect an unpaid balance of \$2,321. (AE G.) Applicant's wages were garnished at \$67.74 every two weeks starting in February 2014 for the judgment until July 2014. Before she left her job at the hospital to work for the defense contractor, she inquired of the hospital's payroll department about transferring the garnishment and was apparently told that she would be contacted about it. Three or four months into her new job with a defense contractor, Applicant contacted the firm that handles payroll for her current employer and was told that they needed paperwork from the court. (AE H; Tr. 41-44, 57-58.) As of February 2016, the garnishment had not been restarted, and Applicant had made no further payments on the debt, even though she testified that she would like to satisfy the debt. (Tr. 59, 97.) Applicant figured that the firm collecting the debt would find her since she lives at the same residence. (Tr. 98.) In hindsight, Applicant understands that she should have been more proactive about resolving this debt. (Tr. 146.)

SOR ¶ 1.b

Around June 2008, the creditor closed an account on which Applicant was an authorized user because of nonpayment since January 2008. The account had a \$17,713 outstanding balance and was \$2,815 past due. The debt is solely her spouse's legal liability and was incurred for his business and some household expenses. (Tr. 48, 165, 176.)

SOR ¶ 1.c (duplicated in SOR ¶ 1.g)

In October 2008, the credit lender charged off Applicant's account for \$11,085. (GE 3.) As of October 2010, the unpaid principal on the credit-card debt in SOR ¶ 1.c was \$7,561. In July 2012, the creditor filed for a judgment against Applicant to collect principal, interests, and costs totaling \$12,485. (AE I.) On July 29, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant expressed her belief that she made the payments as required to settle the credit card in SOR ¶ 1.c, and that the remaining balance was charged off. (GE 4.) Creditor records instead reveal that Applicant has been making payments of \$150 per month since mid-September 2014, which have been applied to interest. As of February 2016, the total balance was \$9,935. (AE I; Tr. 48-50.)

SOR ¶ 1.d

In October 2008, Applicant and her spouse began to fall behind in their \$650 monthly payments for an automobile leased in July 2005. (GEs 2, 3; Tr. 54-55.) Their account was 60 days delinquent four times and 90 days delinquent once in 2009 before the car was repossessed in the summer of 2010, and their account was charged off for \$4,442. As of August 2010, the account had an outstanding balance of \$4,142, which covers the deficiency balance on the lease and repossession fees. (GEs 2, 3; Tr. 55-56, 107.) Applicant and her spouse were billed for the debt, but they have not been contacted recently by the creditor for the balance. (Tr. 55, 108.) About the car lease (SOR ¶ 1.d), Applicant explained in July 2014 that she fell behind two months in her lease payments and that after the lessor repossessed the vehicle, she paid \$1,800 to settle the debt. (GE 4.) Applicant did not realize that the debt was still on her credit record until she obtained her credit report after she completed her security clearance application. (Tr. 110.) Applicant maintains that she would have no problem making payments toward the debt if she is contacted, but she currently has no plans in place to resolve the debt. (Tr. 108-109.)

In 2008 or 2009, Applicant and her spouse were advised by their attorney to file for bankruptcy, and they met with a bankruptcy attorney. (Tr. 39, 121-122.) At the referral of the bankruptcy attorney, they contacted a credit counseling agency, but did not pursue it because "it was commonsense stuff." (Tr. 124.) They chose to take responsibility for repaying their debt and chose not to file for bankruptcy. (Tr. 39, 163-164.)

Around September or October 2010, a few months after the leased vehicle was repossessed, Applicant and her spouse purchased a used vehicle for \$9,000. They borrowed \$6,000 from her sister to buy the car. As of March 2016, they had repaid \$5,000 of the personal loan. They do not have a set repayment agreement with her sister but instead repay her when they can afford to do so. (Tr. 152-153.)

As of June 2014, Applicant and her spouse were current on their mortgage payments. They had a history of late payments on their mortgage, including being 90 days past due 28 times around 2010 and 2011 when he was self-employed in commercial fishing. (Tr. 178.) Applicant's spouse earned approximately \$49,000 from fishing in 2010.

(Tr. 183.) During the spring of 2012, they were seriously past due on their mortgage loan, but with the assistance of their lender, they obtained a loan modification in which their delinquency was added to the end of their loan.<sup>2</sup> (GE 3; Tr. 133.)

On June 20, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) for her current employment. In response to an inquiry concerning whether she had failed to file or pay Federal, state, or other taxes when required by law or ordinance, Applicant indicated that she had failed to file state and federal tax returns on time for 2010 (SOR ¶ 1.f). However, the delinquent returns were filed in June 2014. About any delinquency involving routine accounts in the past seven days, Applicant disclosed that her wages were being garnished to collect the credit card debts in SOR ¶ 1.c (duplicated in SOR ¶ 1.g)<sup>3</sup> and SOR ¶ 1.a (duplicated in SOR ¶ 1.e); and that she had resolved a credit-card debt for \$3,000 in 2009 and the car lease in SOR ¶ 1.d in July 2010. (GE 1.)

Applicant started her defense contractor employment on July 28, 2014 (GE 4; Tr. 66), at a salary of approximately \$30,000 annually (AE L; Tr. 105), while continuing to work one to two shifts per month at the hospital. During her July 29, 2014, subject interview, she volunteered that she owes about \$3,316 in federal income taxes and \$585 in state income taxes for tax year 2010. With fines and penalties, the debt totaled \$6,000, although Applicant testified at her hearing that one of their refunds for a later tax year was intercepted and applied to reduce the debt. (Tr. 114.) Applicant and her spouse did not file a timely return for that year because they could not afford to pay the taxes at the time (SOR ¶ 1.f). She indicated in July 2014 that the returns had recently been filed in June 2014 and she expected that their tax returns for 2013 would cover the tax liability. (GE 4.) Applicant now recalls that the returns for tax years 2010 were filed in either June or August 2014, and that their tax debt was paid shortly after she started her employment with the defense contractor, likely because her husband had a “big job.” (Tr. 112-113.) Applicant’s spouse testified that they finally filed their delinquent returns for 2010 in 2014 because he was concerned that he could lose his mechanic’s license. (Tr. 183.)

In August 2015, the elder of Applicant’s two daughters started college. Applicant and her spouse pay \$1,219 each month for her tuition. (AE J; Tr. 64, 105.) Applicant’s and her spouse’s household net income totals approximately \$6,000. They have budgeted for \$550 monthly car payments. Her credit report of July 1, 2014, shows that Applicant and her spouse opened an automobile loan in February 2014 for \$27,514, to be repaid at \$543 per month for 72 months. (GE 3.) After paying their monthly expenses, including their mortgage at \$1,547 per month, \$50 in medical co-pays, \$1,219 in tuition for their daughter, and \$150 toward the debt in SOR ¶ 1.c (duplicated in SOR 1.g), their budget shows about \$523 in discretionary income each month for emergencies, clothing, children’s activities, and other

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<sup>2</sup> Applicant testified that they modified their mortgage maybe 2.5 years ago, before she started working for the defense contractor. (Tr. 133.)

<sup>3</sup> Applicant testified that she mistakenly recalled that the debt in SOR ¶ 1.c was being garnished. She was making payments on her own toward that debt on terms agreed upon with the collection firm. (Tr. 46.) However, the evidence shows that she had yet to make a payment as of her interview, although she was in the process of working out a repayment plan. (Tr. 101.)

miscellaneous expenses. (AE J.) However, Applicant testified that they “scratch to get that \$1,200 [in tuition] every month.” (Tr. 155.)

Applicant has not been late in paying their mortgage, the car loan opened in 2014, or their utilities in the past year. (Tr. 118.) Applicant and her spouse no longer have any open credit cards. (Tr. 124.) Available credit reports (GEs 2, 3) show no credit cards opened by Applicant since 2006, and no new accounts since the car loan in February 2014. They have not used any credit cards since 2011. (Tr. 125, 163.)

Applicant has little more than \$20,000 combined in retirement assets from her previous employment at the hospital and her present employment. She just started contributing to her 401(k) with the defense contractor. She has not considered borrowing from her 401(k) to pay her old delinquencies. She is not sure whether she can take a loan against her 403(d) with the hospital. (Tr. 117-118.)

Applicant has not been disciplined in her previous or present employments. (Tr. 121, 150.) A design supervisor familiar with Applicant’s work during her first 18 months with their employer provided a character reference on her behalf. He found her to be an excellent employee who interfaced well with her co-workers. She was always punctual and willing to learn and accept new responsibilities. (A K.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. 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 making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” 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 security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns about financial considerations are set forth 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.

Applicant and her spouse overextended themselves financially even before she was diagnosed and treated for medical issues in 2008 and 2009. In June 2007, they paid off \$49,634 in current credit card debt through a mortgage refinancing, but in doing so, they doubled their monthly mortgage obligation. With their finances already strained by their high mortgage, they relied in part on credit cards to cover household expenses and costs incurred while she was being treated at two non-network hospitals. Applicant cashed in \$25,000 in 401(k) assets to make ends meet in 2008. Even so, she stopped paying some credit card accounts. A credit lender (SOR ¶ 1.c) charged off \$11,085 in October 2008. Another credit-card account went to judgment for \$2,321 in 2012, as alleged in SOR ¶ 1.a. Applicant and her spouse had a leased vehicle repossessed in the summer of 2010, and they are jointly liable for a \$4,142 balance, as alleged in SOR ¶ 1.d. 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 the delinquencies in SOR ¶¶ 1.a, 1.c, and 1.d. Applicant does not dispute that she and her spouse did not file their federal and state income tax return or pay the taxes owed for 2010 until 2014. AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,” is also implicated.

AG ¶ 20(e) applies to the alleged balances in SOR ¶¶ 1.e and 1.g, which were not established as additional debts. About SOR ¶ 1.g, Applicant mistakenly indicated during her OPM interview that her wages were being garnished to collect her debt owed in SOR ¶ 1.c. The \$1,989 charge-off alleged in SOR ¶ 1.e is most likely the same debt as the judgment in SOR ¶ 1.a. Credit reports in evidence do not show that she had more than one account with that creditor. AG ¶ 20(e) provides:

(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 dispute or provides evidence of actions to resolve the issue.

As an authorized user, Applicant is not legally liable for the \$17,713 collection balance alleged in SOR ¶ 1.b, so that debt cannot be considered as disqualifying when assessing Applicant's security eligibility. Yet, Applicant's spouse admitted responsibility for the debt. As a practical matter, the funds to resolve that debt will have to come from Applicant's household income, so the debt can be considered in assessing whether she is in a position to resolve the delinquencies in SOR ¶¶ 1.a, 1.c, and 1.d, which she is legally obligated to repay.<sup>4</sup>

Concerning those delinquent debts and the tax issues for 2010, four mitigating conditions under AG ¶ 20 have some applicability. They are as follows:

(a) the behavior happened so long ago, was so infrequent, or occurred 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; and

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

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<sup>4</sup> The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

AG ¶ 20(a) is partially implicated in that debts at issue became delinquent some time ago. The credit-card delinquency in SOR ¶ 1.a was incurred sometime before the judgment award in September 2012. Applicant's largest debt (SOR ¶ 1.c) is a charge-off from October 2008. Applicant and her spouse stopped paying on the automobile lease in SOR ¶ 1.d in May 2010. Applicant's tax return and payment for 2010 were due in 2011, so the tax issues were not recent as well. Applicant stopped paying on the credit-card account in SOR ¶ 1.c when she was having medical issues. Even so, it is difficult to conclude that all her financial problems occurred under such circumstances not likely to recur. As evidenced by the payoff of \$49,634 in credit-card debt through the refinancing of their mortgage in 2007, Applicant and her spouse were struggling financially to pay their debts even before her diagnosis. They continued to struggle financially after her medical crisis had passed. They may well have had some medical bills from her August 2009 surgery and related medical care that took priority over their car lease payments in the spring of 2010. The nexus becomes more attenuated with respect to their failure to file their tax returns for 2010 on time, however.

Applicant presented considerable evidence of her medical condition and treatment in 2008 and 2009. The financial impact of her unexpected medical illness was largely \$3,500 to \$3,800 in non-covered medical expenses; lost income for Applicant's spouse when he accompanied Applicant for her medical care; and some unspecified food, lodging, and transportation costs when she was treated at the non-network hospitals. Applicant's medical illness is a situation contemplated within AG ¶ 20(b), which provides:

(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.

The credit card in SOR ¶ 1.c became seriously past due in 2008, when Applicant gave priority to paying her medical bills out of fear, realistic or not, that she would not be treated if medical expenses went unpaid. Bills for her medical care in 2009 may well have compromised their ability to remain current on their car lease in 2010. Their failure to file timely tax returns for 2010 in 2011 is instead likely attributable to insufficient income. Applicant testified that they did not file their federal and state income tax returns timely because they owed taxes on her spouse's self-employment income. Of their \$55,140 in total income in 2009, Applicant's spouse netted \$37,532. Applicant's spouse testified that his business was not doing well in 2010 (Tr. 178), but also that he earned approximately \$49,000 from fishing in 2010. (Tr. 183.) There does not appear to have been an appreciable increase in Applicant's income before late July 2014, when she began working full-time for her current employer.

Yet, Applicant did not act fully responsibly toward her creditors after she started working for a defense contractor. In her favor, she has been repaying the credit-card debt in SOR ¶ 1.c since September 2014 at \$150 per month. Payment records available through January 2016 confirm no missed payments. Applicant and her spouse testified, with no evidence to the contrary, that their tax debts for 2010 were paid in 2014. However, with

respect to the judgment debt in SOR ¶ 1.a, and the defaulted car lease in SOR ¶ 1.d, she or her spouse made some efforts to resolve the debts, but none recently. Her wages were garnished to collect the judgment from February 2014 through July 2014, but the garnishment stopped when she left her job at the hospital. She responsibly inquired about the possible transfer of the garnishment to the defense contractor and was told not to worry because action would be taken at some point. After a few months passed, Applicant contacted payroll for her current employer and was told that nothing could be done without paperwork from the court. Applicant has taken no steps since the fall of 2014 to contact the court or collection firm to re-start the garnishment or otherwise resolve the judgment. As for the car lease, her spouse contacted the lessor in 2010 “to make amends.” (Tr. 172.) The creditor would not work with him, but neither he nor Applicant has followed up in the last five years.

Applicant’s record of consistent payments toward her credit-card delinquency in SOR ¶ 1.c, and the belated filing of their tax returns and payment of taxes, albeit in part through IRS interception of a tax refund, implicate both AG ¶ 20(c) and AG ¶ 20(d). The good-faith efforts made by Applicant to have the garnishment transferred and by her spouse to address the car debt are noted, but the absence of any recent follow through precludes me from fully applying AG ¶ 20(c) or AG ¶ 20(d) to the judgment debt in SOR ¶ 1.a or the car debt in SOR ¶ 1.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).<sup>5</sup> The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant and her spouse may not have been delinquent on credit cards in 2007, but their overall credit-card debt exceeded what they could reasonably afford on their incomes even before her medical issues in 2008 and 2009. The mortgage refinancing in June 2007 alleviated the burden of some \$49,634 in credit card debt, but their mortgage payment went from about \$800 to almost \$1,600 a month. The mortgage placed them in a precarious position to deal with the financial impact of Applicant’s unexpected medical needs.

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<sup>5</sup> 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 is individually liable for the remaining balances owed on the judgment (approximately \$1,500) and the credit-card account in SOR 1.c (\$9,935 as of early February 2016), and jointly liable with her spouse for \$4,142 on the auto lease following repossession of the vehicle. Applicant has a track record of consistent payments for 18 months toward the credit-card debt in SOR ¶ 1.c. She has made no payments since July 2014 on the judgment or since 2010 on the car lease. The DOHA Appeal Board has held that an applicant is not required to establish that she has paid each debt in the SOR, or even that the first debts paid be those in the SOR. However, an applicant needs to show that she has a plan to resolve her debts and that she has taken significant steps to implement her plan. See ISCR 07-06482 (App. Bd. May 21, 2008). Certainly, Applicant would have a stronger case in mitigation had she a plan in place to resolve the judgment. Her inattention to that debt for the past 18 or so months raises some concern. At the same time, her consistent payments toward the debt in SOR ¶ 1.c, along with her decision to not file for bankruptcy because she wants to pay her debts, weigh in her favor in assessing whether she can be counted on to resolve the judgment in the future. Applicant and her spouse have taken steps to stabilize their household finances. They purchase only what they can afford and are not relying on consumer credit. Applicant has not opened any new credit cards since 2006 or relied on credit cards for purchases since 2011. She and her spouse are currently living within their means. They are paying their modified mortgage and their other monthly expenses on time, even with the burden of tuition payments at \$1,219 per month for their daughter's college since August 2015. Their investment in their daughter's future is not a frivolous expense. Their late filing of their tax returns for 2010 was an aberration that has not been repeated.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). At the same time, her financial situation cannot be viewed in isolation from the difficult life circumstances that negatively impacted her finances and understandably took priority. Applicant is not seen as likely to jeopardize the employment that has helped to stabilize her family's finances. She has an unblemished record at work with a defense contractor. She is likely to continue to address her delinquent debts through legal means. For the reasons noted above, I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance 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: FOR APPLICANT

Subparagraphs 1.a-1.g: 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.

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Elizabeth M. Matchinski  
Administrative Judge