



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-16870
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

November 28, 2008

Decision

HARVEY, Mark W., Administrative Judge:

Applicant’s statement of reasons (SOR) alleged nine delinquent debts, totaling \$5,510. One debt was unsubstantiated. Three debts were included in her 2005 bankruptcy. Three debts were not established. She admitted responsibility for two debts, had the funds to pay them and promised to pay them. However, she did not pay those two debts, totaling about \$1,156. Applicant failed to mitigate financial considerations security concerns. Clearance is denied.

Statement of the Case

On February 9, 2007, Applicant submitted an Electronic Questionnaires for Investigation Processing (e-QIP) or Security Clearance Application (SF 86) (Government Exhibit (GE) 1). On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her,¹ pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20,

¹Government Exhibit (GE) 9 (Statement of Reasons (SOR), dated June 30, 2008). GE 9 is the source for the facts in the remainder of this paragraph unless stated otherwise.

1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised. The revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On July 25, 2008, Applicant responded to the SOR allegations, and requested a hearing (GE 10). On August 25, 2008, the case was assigned to me. At the hearing held on October 15, 2008, Department Counsel offered six exhibits (GEs 1-6) (Transcript (Tr.) 14-15, 66), and Applicant offered 26 exhibits (Applicant's Exhibits (AE A-Z) (Tr. 16-17). There were no objections, and I admitted GE 1-6 and AE A-Z (Tr. 15, 17, 67-68). Additionally, I admitted two Hearing Notices (GE 7, 8), the SOR (GE 9), Applicant's response to the SOR (GE 10), and post-hearing emails (GE 11, 12). At the hearing, I agreed to hold the record open until October 25, 2008, to permit Applicant to provide additional documentation (Tr. 27-29). I received additional documentation on October 23 and 24, 2008. I received the transcript on October 25, 2008. Applicant requested a 30-day delay to gather additional documentation (AE AA, GE 11). Department counsel objected to additional delay (GE 11). I approved a delay until November 21, 2008 (GE 11). On November 26, 2008, Applicant said no documentation was being provided (GE 12). I closed the record on November 28, 2008.

Findings of Fact²

In her SOR response, Applicant admitted her 2005 chapter 7 bankruptcy and her responsibility for the debts in SOR ¶¶ 1.b to 1.g and 1.i (GE 9, 10). She denied the debts listed in SOR ¶¶ 1.h and 1.j (GE 10). She said, "I was able to readjust my budget so I can start making payments on my [SOR] debts. . . . I am trying to see if I [can] set up a payment plan to pay off these debts." (GE 10). Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 34-year-old research assistant for a defense contractor.³ She has worked for her current employer since January 2007. In 1993, Applicant received her high school diploma. She first received her clearance when she was in the delayed entry program prior to her entry on active duty (Tr. 20). She previously held a Secret

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³GE 1 (2007 security clearance application) is the source for the facts in this paragraph, unless stated otherwise.

clearance from 1993 to the present (Tr. 19-20). She served on active duty in the Navy from November 1994 to January 1998. She served on active duty in the Army from May 2000 to November 2001. She received an Honorable Discharge from the Army (AE W, Y). She performed sensitive duty in the Army Inspector General's office in 2001 (AE X). She married in 1995 and divorced in August 1999 (Tr. 21). She married in May 2001 (Tr. 85). Her children were born in 1997, 2004 and 2005 (Tr. 18-19). She does not have a police record, a felony or military conviction, and did not use illegal drugs in a sensitive position or in the last seven years. She disclosed on her 2007 SF 86 that in November 2005, her unsecured debts of about \$28,926 were discharged in bankruptcy.

Applicant's SOR alleged nine delinquent debts, totaling \$5,510. She admitted responsibility for two SOR debts totaling \$1,156. Three debts were included in her 2005 bankruptcy (SOR ¶¶ 1.d to 1.f). One debt was not substantiated (SOR ¶ 1.g). Five debts remain for investigation and resolution and total \$3,259 (SOR ¶¶ 1.h to 1.j). Their current status is summarized in the table below:

SOR PARAGRAPH AND TYPE OF DEBT	AMOUNT	STATUS
¶ 1.a Chapter 7 Bankruptcy	\$28,926	Debts discharged on November 14, 2005
¶ 1.b Medical debt	\$903	Admitted responsibility for delinquent debt (AE Z)
¶ 1.c Medical debt	\$253	Admitted responsibility for delinquent debt (AE Z)
¶¶ 1.d & 1.e Medical Debt	\$60	Included in bankruptcy (GE 3, Schedule F, page 4 of 9, Tr. 32)
¶ 1.f Medical Judgment	\$1,681	Included in bankruptcy (GE 3, Schedule F, page 7 of 9, Tr. 32)
¶ 1.g Collection Agency debt	\$450	Not substantiated (AE T at 3, Tr. 33)
¶ 1.h Best Buy	\$205	Validity being investigated. Last act on account in October 2006-returned check (GE 2, 34)
¶ 1.i Medical debt	\$567	Possible identity theft (Tr. 34). Last act on account June 2006 (GE 2)
¶ 1.j collection agency debt	\$1,331	Validity being investigated. Date opened in December 2005 (GE 2)

Applicant had a difficult divorce in August 1999 (Tr. 21). Some of her delinquent debts resulted from her divorce, and from her current husband's divorce (Tr. 21, 29). For example, Applicant's name was on an apartment lease and her former husband "trashed" the apartment (Tr. 30). Other SOR debts resulted from medical bills and a repossessed vehicle (Tr. 22). As a result of Applicant's divorce, her medical insurance lapsed resulting in responsibility for some medical bills (Tr. 22). Applicant and her current spouse discharged their debts in a bankruptcy in August 2005 (Tr. 39, SOR ¶ 1.a, GE 10). The bankruptcy discharged \$25,463 in unsecured debt (GE 3, Schedule F at 9).

Applicant's response to DOHA interrogatories admitted that the debts in SOR ¶¶ 1.b, 1.c, 1.d and 1.e were her delinquent medical debts, claimed the debts in SOR ¶¶ 1.g and 1.h were discharged by her bankruptcy, and asserted she could not locate information about SOR ¶¶ 1.i and 1.j (GE 3). The DOHA interrogatories did not address the debt in SOR ¶ 1.f (GE 3). Attached to her response to the DOHA interrogatories were her 2007 bankruptcy schedules, which showed discharge of the debts in SOR ¶¶ 1.d, 1.e and 1.f. The bankruptcy schedules did not show discharge of the debts in SOR ¶¶ 1.g and 1.h.

Applicant included a credit report dated April 29, 2008 in her response to her DOHA interrogatories, which showed the account in SOR ¶ 1.g (\$450) was opened in January 2006, and became delinquent in February 2006 (GE 3). The credit limit was \$300. Of course, her statement in her response to the DOHA interrogatories about this account being part of her 2005 bankruptcy is clearly erroneous.⁴ Similarly, Applicant's credit report dated April 29, 2008, showed the account in SOR ¶ 1.h (\$205) resulted from a returned check in July 2006 (GE 3). Her statement about this account being part of her 2005 bankruptcy is clearly erroneous. The April 29, 2008, credit report did not list delinquent accounts for the creditors listed in SOR ¶¶ 1.g and 1.h (GE 3).

Applicant admitted responsibility for two medical bills in SOR ¶¶ 1.b and 1.c for \$903 and \$253, respectively (Tr. 30-32, 69, GE 3, 10). She did not have medical insurance, and remembered the medical services she received (Tr. 31, 32). She did not receive the bills from the doctor (Tr. 40). When she learned of the debt in SOR ¶ 1.b, she called the doctor's office, but she said they were unable or unwilling to provide information about the collection agency (Tr. 40). The debt in SOR ¶ 1.c arose from her daughter's visit to an emergency room (Tr. 41). The debt in SOR ¶ 1.i is a medical debt for \$567, and Applicant promised to track that debt down within ten days and resolve it (Tr. 86-87). She said she was unable to locate the collection agency holding the debts, and her doctor refused to accept payment because he had assigned the debt (Tr. 31). She promised to pay these two debts within ten days of her hearing (Tr. 70). On October 23, 2008, Applicant said in a letter that she was unable to pay the debts in SOR ¶¶ 1.b and 1.c because the creditors did not accept payment because the debts were disputed and she wanted thirty days to pay the two debts (AE AA). I granted a delay until November 22, 2008, however, she did not provide any evidence that she had paid these two debts (GE 12).

⁴ In Applicant's response to Department Counsel's questions at her hearing about why she did not contest the validity of the debt in SOR ¶ 1.g sooner because it is specifically listed in her April 29, 2008, credit report, which she submitted with her response to DOHA interrogatories (Tr. 50, GE 3). First Applicant said she did not review the April 29, 2008, credit report before she submitted it (Tr. 50). She said she just printed her April 29, 2008, credit report out and turned it in (Tr. 51). Then she said she did not understand it or read it (Tr. 51). However, she noted in her response to DOHA interrogatories that she could not find information about the debt in SOR ¶ 1.j (GE 3), and in her SOR response she said she could not find information about the debt in SOR ¶ 1.j in her credit report (indicating she did review the credit report before she submitted it).

Potential Identity Theft

Applicant's husband wrote letters to their creditors asking the creditors to substantiate the SOR debts (Tr. 26, 56, AE L, M, N, P, Q, S). The letters include the statement, "I do not recall having opened an account" with the particular firm. It also threatens a lawsuit if the creditor telephones Applicant, or if the information in credit reports is erroneous. It does not offer to pay for substantiated debts. She said she did not read the letters before they were sent (Tr. 56-57). Her husband obtained the language for the letters from a book about handling creditors and debt (Tr. 57). The creditor in SOR ¶ 1.g replied to her letter and said she was not responsible for the debt (Tr. 27, 33, 41, 58, AE T).

The name on Applicant's credit report included an incorrect spelling for her name, as well as a multiple incorrect or incomplete addresses and an incorrect social security number (Tr. 24-26, 59-60, 63-65, 68, AE V). On September 4, 2008, and October 8, 2008, Applicant wrote the credit report company asking for removal of the incorrect information from her credit report (AE V). The report itself notes a "mismatch" and "security alert" (Tr. 24). Her response to the potential identity theft was to file a police report around October 1, 2008 (Tr. 26, 51). She filed the police report because one creditor sent her a letter advising her to file a police report regarding the identity theft (Tr. 52-53, AE T). She did not retain a copy of the police report (Tr. 27).⁵ She said if she was responsible for the debts she would "gladly" pay them off (Tr. 26).

At her hearing, Applicant said she thought the debts in SOR ¶¶ 1.i and 1.j for \$567 and \$1,331 were the product of identity theft (Tr. 34-35, 42). In her Office of Personnel Management (OPM) security interview⁶ and in her SOR response, she admitted responsibility for the debt in SOR ¶ 1.i (GE 10, Tr. 43) and denied responsibility for the debt in SOR ¶ 1.j (GE 10). She told the OPM investigator in March 2007 the account in SOR ¶ 1.i became delinquent just after she was divorced (in 1999) (Tr. 43). She explained the discrepancy, "I didn't know. I was stupid. This was a wake-up call. I had no idea." (Tr. 35). She found out about the identify theft after she provided her SOR response (Tr. 35). She wrote the creditors about the debts (Tr. 35-36). If the debts are hers, she has the funds and she promised to pay the debts (Tr. 36).

The debt in SOR ¶ 1.h for \$205 resulted from a returned check (Tr. 34). She contended her former husband paid the check using a bank that he no longer uses (Tr. 34, 41). He was not able to get information showing his check was cashed because his account was closed (Tr. 41). In her SOR response she said and at her hearing she

⁵ Applicant said a copy of the police report would be provided within ten days of the hearing (Tr. 99). Later in the hearing, Applicant's counsel was given until October 30, 2008, to submit documentation (Tr. 102). Upon request, I approved a delay for post-hearing submissions to November 22, 2008; however, the police report was never provided (GE 11). I do not consider Applicant's failure to provide the police report as a negative reflection on Applicant's worthiness to hold a security clearance.

⁶ She said she was unable to remember most of her March 2007 OPM interview (Tr. 44-47).

consistently maintained the debt in SOR ¶ 1.h was a paid debt (GE 10, Tr. 34). However, she did not provide corroboration that the debt was paid (Tr. 34).

Applicant did not own any credit cards (Tr. 42). Her husband does have credit cards (Tr. 84-85). She was not familiar with the names of the account holders for the disputed debts and concluded the accounts must be the product of identity theft (Tr. 42). Applicant currently earns \$60,000 and her husband earns \$73,000 annually (Tr. 23). Their incomes are adequate to meet their expenses and pay their debts (Tr. 23).

Applicant's credit report, dated April 29, 2008, shows she borrowed \$14,639 in April 2006 for an automobile loan (GE 3). She makes her \$334 monthly payment as agreed on her automobile loan, which currently has a balance of about \$9,000 (GE 3, AE Z). However, her September 23, 2008, credit report showed her automobile loan as 30 days past due and the amount past due of \$139 (AE Z). A collection account with a balance of \$840 was reported as an overdraft in July 2008 (AE Z). Her 2008 credit report did not show any mortgages, other vehicle loans, installment loans or open credit card accounts. It listed her credit score as very poor and lower than 95% of the population (AE Z).

As of the date of her hearing, Applicant has no payment plans with any SOR creditors (Tr. 61). She received credit counseling in mid-September 2008 (Tr. 62-63, AE AB). SOR ¶ 1.k indicates her personal financial statement dated April 29, 2008, shows a negative \$115 monthly remaining to address her SOR debts. Applicant's budget dated July 25, 2008, shows monthly income after deductions of \$7,498, expenses of \$5,707, payments to creditors of \$1,500 with a positive remainder of \$291 (AE K). It lists two large debts totaling \$28,000.

A budget dated October 22, 2008, shows monthly net income of \$7,767, expenses of \$6,707, including payments to creditors of \$905 (AE AB). Under the October 22, 2008, budget Applicant said she had \$1,060 a month left over of discretionary income, presumably to address her delinquent debts (AE AB). The following table compares the five largest expenses on the two budgets Applicant submitted on July 25, 2008 and October 22, 2008.

LARGEST MONTHLY EXPENSES	BUDGET DATED JUL. 25, 2008 (AE K)	BUDGET DATED OCT. 22, 2008 (AE AB)	DIFFERENCE
Rent	\$1,600	\$1,600	None
Groceries	\$1,000	\$475	\$525
Day Care	\$1,300	\$1,200	\$100
Car Expense	\$797	\$580	\$217
Utilities	\$650	\$505	\$145
Total	\$5,347	\$4,360	\$987

Recommendations and Character Materials

Applicant provided letters from supervisors, her sister, her mother, co-workers and friends describing her as dependable, friendly, honest, intelligent, mature, organized, efficient, competent, trustworthy and professional with excellent communication skills (AE A, B, C, D, E, F, G, H, I, J). Some references have known her for many years and others have only known her a few months. Applicant has worked for high-level Department of Defense officials in the past and her performance was exemplary (AE C, E, F, I). Applicant is loyal, has high energy, and is a great mother and loving wife (AE A, B, G). There was no evidence presented contradicting these positive character traits and very positive recommendations.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised 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 an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict

guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. 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 security suitability. 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 security clearance.” 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 determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude one relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security 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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, “Applicant’s credit report was sufficient to establish the Government’s prima facie case that Applicant had . . . SOR delinquent debts that are of security concern.” Applicant’s history of delinquent debt is documented in her credit reports (GE 2, 4, 5), her response to DOHA interrogatories (GE 3), and her SOR response (GE 10). She used a Chapter 7 bankruptcy in 2005 to discharge \$28,926 of delinquent debt. She consistently admitted

that she owed the debts listed SOR ¶¶ 1.b and 1.c. The issue of delinquent debt owed to the creditors in SOR ¶¶ 1.h, 1.i and 1.j remains for resolution. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). “Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 07-00852 at 3 (App. Bd. May 27, 2008) (citing *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990)). Because the government has raised financial considerations security concerns, the burden now shifts to Applicant to establish any appropriate mitigating conditions. Directive ¶ E3.1.15.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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; 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.

Applicant’s conduct does not warrant application of AG ¶ 20(a). She resolved her delinquent debts using a Chapter 7 bankruptcy in 2005, and then she generated new delinquent debt, showing her financial irresponsibility. Her financial problems are not isolated. The ongoing nature of her delinquent debts is “a continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Moreover, I am not convinced her debts “occurred under such circumstances that it is unlikely to recur and does not cast doubt on the [her] current reliability, trustworthiness, or good judgment.” Although she has been paying most of her debts, and the amount of delinquent or unresolved debt is relatively low, she has failed to pay the debts she owes even though she has the means to pay her debts.

Under AG ¶ 20(b), Applicant's divorce in August 1999 resulted in multiple debts that were eventually discharged by her 2005 bankruptcy. Her post-2005 bankruptcy, medically-related debt and her divorce-related debts are due to forces beyond her control. However, she did not provide sufficient information to establish that she acted responsibly under the circumstances or made sufficient efforts to address her delinquent debts especially those debts which accrued after her 2005 bankruptcy.⁷ She admitted that she has not maintained contact with all of her creditors, and made very limited efforts to pay the two debts in SOR ¶¶ 1.b and 1.c even though she had the financial means to pay these two medical debts.

AG ¶¶ 20(c) and 20(d) have limited application. Applicant received financial counseling. There are some indications that "that the problem is being resolved or is under control" because the amount of delinquent debt is not that large, and there is insufficient evidence to establish that she has new delinquent debt. However, there is also insufficient information to establish that Applicant showed good faith⁸ in the resolution of her delinquent SOR debts because she did not establish that her failure to pay the debts in SOR ¶¶ 1.b and 1.c was reasonable and necessary under the circumstances.

AG ¶ 20(e) mitigates her debts in SOR ¶¶ 1.d, 1.e, 1.f, 1.g, 1.h, 1.i and 1.j. The debts in SOR ¶¶ 1.d, 1.e and 1.f were clearly included in her 2005 Chapter 7 bankruptcy. Department counsel conceded there was sufficient evidence to establish the debts in SOR ¶¶ 1.d, 1.e and 1.f were discharged in her 2005 bankruptcy (Tr. 11-12). The creditor in SOR ¶ 1.g waived collection of any debt owed in SOR ¶ 1.g. Applicant admitted her responsibility for the debts in SOR ¶¶ 1.b to 1.g and 1.i in her

⁷"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

⁸The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

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

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

SOR response. However, as indicated previously the debts in SOR ¶¶ 1.d, 1.e, and 1.f were included in her bankruptcy, undercutting the validity of her admissions and showing how she either lacks financial sophistication or attention to detail. Her husband wrote the creditors in SOR ¶¶ 1.h, 1.i, and 1.j seeking “documented proof to substantiate” that she owed these debts.⁹ Debts are often transferred to other creditors and collection agents. It is reasonable and prudent for debtors to seek proof the debt is valid and has been properly assigned before making payments. I therefore find “For Applicant” with respect to SOR ¶¶ 1.d, 1.e, 1.f, 1.g, 1.h, 1.i and 1.j.

I find “For Applicant” on SOR ¶ 1.a because her bankruptcy in 2005 is a legally authorized method of resolving delinquent debts. It provided her a fresh financial start, and with her ample income she should have been able to avoid financial problems. Her bankruptcy is still relevant under the whole person concept to show her history of delinquent debt and her failure to repay creditors that had their debts discharged. See n.8, *supra*, addressing the issue of bankruptcy in the context of mitigating financial considerations security concern by showing good faith. I find “For Applicant” on SOR ¶ 1.b because her budgets dated July 25, 2008, and October 22, 2008, show a positive balance that she may use to address her delinquent debts (AE K, AB).

I conclude Applicant’s overall conduct in regard to her delinquent debts casts doubt on her current reliability, trustworthiness, and good judgment. She failed to resolve or pay two creditors, who she owed about \$1,156 for medical treatments. She promised to pay these two creditors at her hearing, and did not do so. She did not provide good cause for her failure to pay these debts despite having an opportunity to do so. Based on my evaluation of the record evidence as a whole, I conclude financial considerations with respect to the debts in SOR ¶¶ 1.b and 1.c are not mitigated.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

⁹Her husband addressed their delinquent debts by sending her creditors letters asking them to prove the legitimacy of the debts, even though he knew some of the debts were legitimate. He did not include information showing the legitimacy of underlying debts and he did not promise to pay the debts that were substantiated. Some of those contested debts may ultimately prove to be Applicant’s delinquent debts.

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 security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c).

There is some evidence tending to mitigate Applicant's conduct under the whole person concept. She is either not financially sophisticated, or lacks attention to detail. She was confused about which debts were resolved in her 2005 bankruptcy. She made mistakes, and her debts became delinquent. She discharged her delinquent debts in 2005 using bankruptcy, which is a legally authorized method of resolving her debts. Her dedication to her work, her children and her spouse is a very positive indication of her good character and trustworthiness. She is completely loyal to her country. Applicant's record of good employment, and solid military record weighs in her favor. There is no evidence of any security violation, or criminal activity. Her non-SOR debts are current and being paid. These factors show some responsibility, rehabilitation, and mitigation.

The mitigating evidence under the whole person concept and the adjudicative guidelines are not sufficient to warrant access to classified information. Although the overall amount of unresolved debt is \$1,156 and not substantial, she has the funds to pay these two debts, promised to pay these two debts at her hearing, had ample time to resolve these two debts and yet has chosen not to pay these two debts. Moreover her 2005 bankruptcy documentation lists numerous delinquent debts, which provides a lengthy history or track record of delinquent debt. Applicant has been aware of her post-2005 allegedly delinquent SOR debts since the SOR was issued, and she did not respond to security concerns with alacrity. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has not mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude she is not eligible for access to classified information.

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
Subparagraphs 1.b and 1.c:	Against Applicant
Subparagraphs 1.d to 1.k:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

Mark W. Harvey
Administrative Judge