



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-03395
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 31, 2009

**Decision**

GALES, Robert Robinson, Chief Administrative Judge:

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

**Statement of the Case**

On November 9, 2007, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On August 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It should be noted that on December 29, 2005, the President promulgated revised *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*, and on August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing implementation of those revised Adjudicative Guidelines (hereinafter AG) for all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), in which the SOR was issued on or after September 1, 2006. The AG are applicable to Applicant's case because her SOR was issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on an unspecified date. In a sworn, written statement, dated September 20, 2008, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on December 2, 2008, and the case was assigned to Administrative Judge Michael H. Leonard on December 8, 2008. It was reassigned to me on January 5, 2009, due to caseload considerations. A Notice of Hearing was issued on January 12, 2009, and I convened the hearing, as scheduled, on January 27, 2009.

During the hearing, four Government exhibits and seven Applicant exhibits were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on February 5, 2009.

The record was kept open until February 10, 2009, to enable Applicant to supplement the record. Applicant took advantage of that opportunity and, on February 10, 2009, she submitted one additional document (marked as Applicant Exhibit H) which was admitted into evidence without objection.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted a majority of the factual allegations in the SOR (¶¶ 1.a., 1.c., 1.e. through 1.l., 1.n., and 1.o.). She denied the remaining allegations.

Applicant is a 26-year-old employee of a defense contractor, and she is seeking to obtain a security clearance, the level of which has not been divulged. She currently holds an interim clearance. Applicant has never been married,<sup>1</sup> but does have three children born in 1998, 2001, and 2005, respectively.<sup>2</sup> As of January 27, 2009, she resided with her children and fiancé, the father of her youngest child.<sup>3</sup> She has been gainfully employed by the same defense contractor since October 2007, and currently

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<sup>1</sup> Government Exhibit 1 (e-QIP, dated November 9, 2007), at 16.

<sup>2</sup> *Id.* at 19-20.

<sup>3</sup> Tr. at 51-52.

serves as a purchasing agent.<sup>4</sup> Her previous employment included a lengthy period (2001-07) as a customer service representative. She was unemployed for a two month period in 2007.<sup>5</sup>

It is unclear when Applicant's finances commenced a downward spiral, but the various credit reports in evidence would seem to indicate her problems started about the time some accounts were sent to collection as early as 2003-04. Part of her financial difficulties arose from her immaturity and fiscal irresponsibility,<sup>6</sup> and part arose from her gullibility in permitting her former fiancé to purchase items on her joint or individual credit only to resell them for cash which he then used for his own purposes. Applicant apparently ignored her debts, and, as a result, several accounts became delinquent and were either "charged off" or placed for collection. With additional maturity and a growing sense of responsibility, and after completing her e-QIP, she eventually came to the realization that her actions were inappropriate. In an effort to correct her financial circumstances, she turned to a credit counselor for financial guidance in late November or early December 2007.<sup>7</sup> She was told to continue ignoring her delinquent debts until 2010, at which time those debts would drop off her credit report.<sup>8</sup> Not feeling comfortable with such guidance, she ignored it and commenced her initial efforts of addressing those delinquencies.<sup>9</sup>

The first step in her effort to correct and reestablish credit occurred in early 2008, when she called most of her identifiable creditors to verify her responsibility for the accounts and their balances, and try to negotiate reduced balances and payment terms.<sup>10</sup> In conjunction with her efforts to take care of her outstanding debts, Applicant's fiancé pays the current bills such as rent, utilities, and those requiring immediate attention.<sup>11</sup>

The SOR identified 16 purportedly continuing delinquencies. She disputed responsibility for one account, claiming it was a joint account she had with her father, and it had been discharged by her father's bankruptcy in 2003-04.<sup>12</sup> Some of the accounts have been paid off and others are in the process of being paid under an

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<sup>4</sup> Government Exhibit 1, *supra* note 1, at 11-12.

<sup>5</sup> *Id.* at 13.

<sup>6</sup> Tr. at 22-23.

<sup>7</sup> *Id.* at 50.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 51.

<sup>10</sup> Government Exhibit 2 (Responses to Interrogatories, dated June 4, 2008).

<sup>11</sup> Tr. at 51-52.

<sup>12</sup> *Id.* at 29-30. With a joint account, it should be noted the father's bankruptcy only discharges his liability, and not hers.

agreed payment plan. She also disputed several accounts as being the responsibility of her former fiancé, and believes several of the SOR allegations refer to duplicate accounts. Those debts listed in the SOR, and their respective current status, according to the credit reports, and Applicant's comments regarding same, are described below:

<b>SOR ¶</b>	<b>TYPE DEBT</b>	<b>AMOUNT</b>	<b>STATUS</b>
1.a.	Telephone service	\$690	Collection. No action taken. Unpaid, but intends to pay.
1.b.	Store credit card	\$1,838	Collection. Negotiated. PAID OFF.
1.c.	Credit card	\$4,086	Charged off. Attempted negotiations. Unpaid, but intends to pay.
1.d.	Automobile loan	\$2,317	Repossession. Collection. Charged off. Negotiated. PAID \$1,100 & payment plan accepted.
1.e.	Medical	\$103	Collection. MEDICAID bill. Unpaid, but intends to pay.
1.f.	Credit card	\$1,564	Collection. Negotiated. First of 3 payments made under PAYMENT PLAN.
1.g.	Store credit card	\$1,307	Collection. Negotiated. PAID OFF.
1.h.	Credit card	\$1,298	Collection. Disputed as part of father's bankruptcy.
1.i.	Store charge account	\$3,790	Delinquent over 180 days. Disputed. Unpaid, but intends to pay.
1.j.	Payday loan	\$253	Collection. Charged off. PAID OFF.
1.k.	Medical	\$495	Collection. MEDICAID bill. Unpaid, but intends to pay.
1.l.	Credit card	\$1,306	Collection. Negotiated PAYMENT PLAN. Unpaid.
1.m.	Credit card	\$1,689	Collection. Disputed as duplicate of SOR ¶ 1.l. If not, intends to pay.
1.n.	Medical	\$37	Collection. MEDICAID bill. Unpaid, but intends to pay.
1.o.	Mobile telephone service	\$335	Collection. Unpaid, but intends to pay.
1.p.	Store credit card	\$1,133	Collection. Disputed. Unpaid, but intends to pay.

SOR ¶ 1.a. refers to telephone service Applicant obtained for her mother who ran up a long distance bill that Applicant was unable to pay.<sup>13</sup> The account was

<sup>13</sup> Tr. at 24.

eventually sent to collection and, although Applicant has not yet addressed it, she intends to do so after some of her other debts are paid off.<sup>14</sup>

SOR ¶ 1.b. refers to a store credit card that became delinquent, so it was sent to collection. In September 2008, Applicant entered into negotiations with the collection attorneys representing the creditor, and later that month, paid the agreed outstanding balance in full.<sup>15</sup>

SOR ¶ 1.c. refers to a credit card that became delinquent. The account was charged off.<sup>16</sup> Prior to November 2007, Applicant attempted to negotiate payment arrangements with the creditor, but her efforts to do so were thwarted when the creditor refused to accept less than the entire balance in one lump sum payment.<sup>17</sup> She intends to pay the outstanding balance after she has resolved some of the other debts.<sup>18</sup>

SOR ¶ 1.d. refers to an automobile loan Applicant and her former fiancé obtained for his automobile. The original loan was for \$10,000, and monthly payments were apparently made by her former fiancé for an unspecified period before ceasing. The account eventually went into collection and was charged off,<sup>19</sup> and the vehicle was repossessed and subsequently sold at auction,<sup>20</sup> leaving a deficiency balance of \$2,317. All the correspondence, including the collection correspondence, was mailed to his address, and Applicant was unaware that the payments had stopped, or the vehicle had been repossessed.<sup>21</sup> Applicant and the attorneys for the creditor agreed to an initial payment plan, and she made monthly payments for about one year before finding herself unable to continue. When she asked her former fiancé for assistance, he agreed to make some payments, but he failed to follow through.<sup>22</sup> Another payment plan was commenced in May 2008, when she made an initial payment of \$1,100, and that plan has continued with monthly payments of \$100 being made by her.<sup>23</sup> She intends to

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<sup>14</sup> Government Exhibit 2, *supra* note 10, at 5.

<sup>15</sup> Applicant Exhibit D (Letter from Collection Attorneys, dated September 25, 2008).

<sup>16</sup> Government Exhibit 4 (Equifax Credit Report, dated November 13, 2008) at 1.

<sup>17</sup> Government Exhibit 1, *supra* note 1, at 30.

<sup>18</sup> Tr. at 26.

<sup>19</sup> Government Exhibit 3 (Combined Credit Report of Experian, Trans Union, and Equifax, dated December 5, 2007), at 6.

<sup>20</sup> *Id.* at 27.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Applicant Exhibit F (Correspondence and receipts, various dates).

continue making her monthly payments on schedule and hopes to accelerate them when she is able to do so.<sup>24</sup>

SOR ¶¶ 1.e., 1.k., and 1.n. refer to medical bills which should have been timely submitted to MEDICAID by the billing departments of the medical providers, but were not. Applicant attempted to dispute her responsibility for the accounts but obtained no favorable resolution. As a result, she has accepted responsibility for the bills and intended to pay them off commencing in February 2009.<sup>25</sup>

SOR ¶ 1.f. refers to a credit card that became delinquent, so it was sent to collection.<sup>26</sup> Sometime prior to January 2009, Applicant entered into negotiations with the collection attorneys representing the creditor, and a payment plan was agreed to under which she made, on January 5, 2009, the first of three \$200 monthly payments to satisfy her indebtedness.<sup>27</sup>

SOR ¶ 1.g. refers to a store credit card that became delinquent, so it was sent to collection.<sup>28</sup> In May 2008, Applicant entered into negotiations with the collection agency representing the creditor,<sup>29</sup> and the matter was finally ironed out in January 2009, when it was agreed that the balance would be adjusted to \$689.53, and it would be paid by February 2, 2009.<sup>30</sup> The account has been paid off.

SOR ¶ 1.h. refers to a credit card account Applicant and her father held jointly.<sup>31</sup> The account became delinquent and was sent to collection.<sup>32</sup> It was subsequently transferred to another lender, and she thought her responsibility was eventually discharged through her father's bankruptcy under Chapter 7.<sup>33</sup>

SOR ¶ 1.i. refers to a store charge account that Applicant and her former fiancé held jointly. She never saw the card and never used it.<sup>34</sup> The account became

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<sup>24</sup> Tr. at 28.

<sup>25</sup> *Id.* at 28, 31-33.

<sup>26</sup> Government Exhibit 3, *supra* note 19, at 5.

<sup>27</sup> Applicant Exhibit B (Correspondence and receipt, dated January 5-6, 2009).

<sup>28</sup> Government Exhibit 3, *supra* note 19, at 5; Tr. at 30.

<sup>29</sup> Government Exhibit 2, *supra* note 10, at 2.

<sup>30</sup> Applicant Exhibit H (Letter from Collection Agency, dated January 31, 2009).

<sup>31</sup> Tr. at 30.

<sup>32</sup> Government Exhibit 4, *supra* note 16, at 2.

<sup>33</sup> Government Exhibit 3, *supra* note 19, at 6.

<sup>34</sup> Tr. at 30.

delinquent over 180 days,<sup>35</sup> and Applicant attempted to dispute it because the charges were incurred by her former fiancé.<sup>36</sup> She has now accepted responsibility for the account, but because of the substantial balance, she intends to address the account once she has taken care of some of the others.<sup>37</sup>

SOR ¶ 1.j. refers to a payday loan she had received. Each time she made payments toward the loan, the creditor enticed her into applying for more money, and she “fell into a poor-judgment hole.”<sup>38</sup> The account became delinquent, was sent to collection, and was eventually charged off.<sup>39</sup> On January 26, 2009, the day before the hearing, Applicant paid off the remaining balance of \$215.80.<sup>40</sup>

SOR ¶ 1.i. refers to a credit card that became delinquent, so it was sent to collection.<sup>41</sup> In January 2009, Applicant reached a settlement with the collection attorneys representing the creditor, and agreed to make an initial payment, by “auto-draft,”<sup>42</sup> of \$1,141 by January 31, 2009, and a final payment of \$349 by February 28, 2009.<sup>43</sup>

SOR ¶ 1.m. refers to a credit card which Applicant does not recognize and claims is a duplication of the allegation set for in SOR ¶ 1.i.<sup>44</sup> Applicant has attempted to identify the account by contacting the attorney for the creditor to determine if the accounts are one and the same or separate, and if they turn out to be the same account, she will address it.<sup>45</sup> She simply wants to avoid paying twice for the same account.<sup>46</sup> Government Exhibit 3 (a credit report) and Applicant Exhibit A (another credit report) are substantially less than clear and are thus, inconclusive.

SOR ¶ 1.o. refers to a mobile telephone service account. Applicant contends the account was on a monthly basis, and following a dispute she decided to cancel the

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<sup>35</sup> Government Exhibit 3, *supra* note 19, at 10.

<sup>36</sup> *Id.*

<sup>37</sup> Tr. at 30.

<sup>38</sup> *Id.* at 31.

<sup>39</sup> Government Exhibit 3, *supra* note 19, at 10.

<sup>40</sup> Applicant Exhibit E (Creditor receipt, dated January 26, 2009).

<sup>41</sup> Government Exhibit 3, *supra* note 19, at 12.

<sup>42</sup> Tr. at 43. An “auto-draft” is similar to an automatic allotment.

<sup>43</sup> Applicant Exhibit C (Letter from creditor attorneys, dated January 15, 2009); Tr. at 32.

<sup>44</sup> Tr. at 32-33.

<sup>45</sup> *Id.* at 44.

<sup>46</sup> *Id.* at 33.

service.<sup>47</sup> Rather than comply with her instructions, the creditor charged her for a disconnection fee, an action which she unsuccessfully disputed.<sup>48</sup> The account was sent to collection.<sup>49</sup> Applicant intends to satisfy the account by the end of February or beginning of March 2009.<sup>50</sup>

SOR ¶ 1.p. refers to a store credit card account that Applicant and her former fiancé held jointly. Together, they used the card one time to purchase a set of tires.<sup>51</sup> That balance was paid off, but the account remained open.<sup>52</sup> Applicant's former fiancé apparently purchased another set of tires and resold them, leaving her with the unpaid balance.<sup>53</sup> The account apparently became delinquent, and Applicant attempted to dispute it because the charges were incurred by him. Her efforts were unsuccessful because the account was supposedly sold to a collection agency with whom she has dealt for another account. The collection agency told her they did not have the identified delinquent account.<sup>54</sup> Neither of the two credit reports submitted by the Government lists the account. Nevertheless, Applicant has now accepted responsibility for the account, and intends to address it in June or July 2009.<sup>55</sup>

With the exception of her delinquent debts, Applicant's finances are otherwise unremarkable, and she has no other financial issues or difficulties.<sup>56</sup> According to her most recent Personal Financial Statement, completed in June 2008, Applicant has a monthly sum of over \$3,343 for discretionary expenses.<sup>57</sup> She and her current fiancé combine their income and share expenses. He pays the monthly household expenses,<sup>58</sup> and she pays her delinquent accounts.<sup>59</sup> She has learned her lesson about

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<sup>47</sup> *Id.* at 33.

<sup>48</sup> *Id.*

<sup>49</sup> Government Exhibit 3, *supra* note 19, at 8.

<sup>50</sup> Tr. at 33, 44-45.

<sup>51</sup> *Id.* at 45.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 34.

<sup>54</sup> Government Exhibit 2, *supra* note 10, at 7.

<sup>55</sup> Tr. at 34, 45-46.

<sup>56</sup> *Id.* at 79.

<sup>57</sup> Government Exhibit 2 (Personal Financial Statement, dated June 4, 2008, attached to Interrogatories), *supra* note 10.

<sup>58</sup> Tr. at 52.

<sup>59</sup> *Id.*



payday loans.<sup>60</sup> With the exception of some of her SOR-listed bills, she is current in all other bills.<sup>61</sup>

Despite her financial delinquencies, Applicant's performance has not suffered. Her most recent performance evaluation, issued in December 2008, reflects an individual whose overall performance is rated as "exceptional," the highest rating possible.<sup>62</sup>

## 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."<sup>63</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>64</sup>

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 useful in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>65</sup> The Government initially has the burden of producing evidence to establish

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<sup>60</sup> *Id.* at 42.

<sup>61</sup> *Id.* at 53.

<sup>62</sup> Applicant Exhibit G (Performance Evaluation, dated December 30, 2008), at 4.

<sup>63</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>64</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>65</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4,

a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>66</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>67</sup>

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>68</sup> 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. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to

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2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>66</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>67</sup> *Egan*, 484 U.S. at 531

<sup>68</sup> See Exec. Or. 10865 § 7.

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant’s history of delinquent debt is documented in her credit reports, answer to the SOR, her answers to interrogatories, and the evidence, including her testimony, presented during the hearing. The Government has established AG ¶¶ 19(a) and 19(c).

The guidelines also include examples of conditions that could mitigate security concerns arising from financial considerations. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” In addition, when “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,” AG ¶ 20(b) may apply. Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”<sup>69</sup> Also, AG ¶ 20(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” may apply.

Applicant’s conduct does not warrant full application of AG ¶¶ 20(a) or 20(e) because she did not act more aggressively, timely, and responsibly to resolve her delinquent debts. Those delinquent debts are “a continuing course of conduct” under

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<sup>69</sup> The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

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

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

the Appeal Board's jurisprudence.<sup>70</sup> Applicant receives partial credit under AG ¶ 20(a) because her financial problems "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." AG ¶ 20(e) applies because she disputed some of the SOR debts, either because they were incurred by someone else, were caused by a breakdown in medical filing, were believed to have been discharged under her father's bankruptcy, or she could not recognize the creditor or had reason to believe there was some duplication of debts listed in her credit report.

AG ¶ 20(b) applies because Applicant's financial situation was damaged when her former fiancé ran up bills on their joint accounts, without her knowledge or approval; and when medical providers failed to submit bills in a timely manner to MEDICAID, causing the full responsibility to fall on Applicant, rather than be shared or totally covered by MEDICAID. Initially, she lacked the income to pay some of her debts, but with counseling and greater maturity, she commenced negotiations with creditors and started paying her SOR debts. While it may have taken some time, this 26-year old Applicant matured and eventually established that she acted responsibly under the circumstances.<sup>71</sup>

AG ¶ 20(c) applies because Applicant sought financial counseling and guidance in late November or early December 2007, well before the issuance of the SOR. She was told to continue ignoring her delinquent debts until 2010, at which time those debts would drop off her credit report. But to her credit, and not feeling comfortable with such guidance, she ignored that irresponsible advice and commenced her initial efforts of addressing those delinquencies. There are now "clear indications that the problem is being resolved or is under control." She understands the security implications of her earlier inaction pertaining to delinquent debt and intends to scrupulously avoid future delinquent debt.

She has also established mitigation under AG ¶ 20(d) because Applicant showed good faith in her efforts to resolve her SOR debts. She has established a reasonable plan to continue to do so.

### **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):

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<sup>70</sup> See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

<sup>71</sup> "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)).

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guideline F in my analysis below.

There is evidence against mitigating Applicant's conduct. As noted above, part of her financial difficulties arose from her immaturity and fiscal irresponsibility, and part arose from her gullibility in permitting her former fiancé to purchase items on her joint or individual credit only to resell them for cash which he then used for his own purposes. Applicant also apparently ignored her debts, and, as a result, several accounts became delinquent and were either "charged off" or placed for collection. She has admitted to having been financially irresponsible and gullible as a young adult. She ignored her valid debts and they became delinquent. Most of the delinquent accounts were sent to collection or charged off, and in one instance, a motor vehicle was repossessed.

The mitigating evidence under the whole person concept is more substantial. With additional maturity and a growing sense of responsibility, and after looking at her credit score and realizing she was a poor role model for her children, and acknowledging the fact that she was no longer a teenager,<sup>72</sup> she eventually came to the realization that her actions were inappropriate. There is no evidence of any security violation, and to the contrary, she is considered a valued employee who is an exceptional performer. She is a law-abiding citizen. She started to address her delinquent debts and has paid off some of them, has agreements to pay off others, and intends to satisfy any remaining debts in the near future. Her personal payment plan is in place and being followed, and she has no new delinquent debts.

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:<sup>73</sup>

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

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<sup>72</sup> Tr. at 46-47.

<sup>73</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant is a high school graduate, who started attending college in 2007. She is not sophisticated in the area of finance, and has experienced substantial financial difficulties, primarily because of her immaturity and gullibility. She made mistakes, and debts became delinquent. There is, however, simply no reason not to trust her. Moreover, with substantial maturity, she has established a “meaningful track record” of debt payments by actually paying some of her delinquent SOR debts, setting up arrangements with others, and setting up her personal plan to resolve the remaining debts. These factors show responsibility, rehabilitation, and mitigation. Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has 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 mitigated or overcome the government’s case. For the reasons stated, I conclude she is 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant

### **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 security clearance. Eligibility for access to classified information is granted.

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ROBERT ROBINSON GALES  
Chief Administrative Judge