



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



In the matter of:)
)
-----) ADP¹ Case No. 08-05920
SSN: -----)
)
Applicant for Public Trust Position)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

December 31, 2009

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to mitigate trustworthiness concerns regarding her delinquent debts under Guideline F (financial considerations). She failed to adequately mitigate eight debts totaling \$15,012. Applicant’s eligibility to occupy a public trust position is denied.

Statement of the Case

On June 25, 2005, Applicant completed a Questionnaire for Public Trust Positions (SF 85P) (Government Exhibit (GE) 2). On March 23, 2009, she completed an SF 85P (GE 1). On May 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her (GE 10), pursuant to Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised; Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated

¹ Department Counsel noted the case was an ADP case rather than an ISCR case. With consent of the parties, I changed the statement of reasons to indicate the case is an ADP case (Tr. 15-16).

Jan. 1987, as amended (Regulation); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges trustworthiness concerns under Guideline F (financial considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Regulation that it is clearly consistent with the national interest to grant or continue Applicant's eligibility to occupy a public trust position, which entails access to sensitive information. DOHA recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked.

On March 20, 2009, Applicant responded to the SOR allegations (GE 11). On September 3, 2009, Department Counsel indicated he was ready to proceed. On September 14, 2009, DOHA issued a hearing notice (GE 9). On October 14, 2009, the hearing was held as scheduled. At the hearing, Department Counsel offered eight exhibits (GE 1-8) (Tr. 19-22), and Applicant offered seven exhibits (Tr. 27-30; AE A-G). Applicant objected to the admissibility of four credit reports because she had successfully disputed the accuracy of the credit reports (Tr. 22; GE 4-7; AG F). I admitted the documents and noted the information about the successful disputes went to the weight rather than to the admissibility of documents (Tr. 24). There were no other objections, and I admitted GE 1-8 (Tr. 24), and AE A-G (Tr. 30). Additionally, I admitted the SOR, response to the SOR, and hearing notice (GE 9-11). I received the transcript on October 22, 2009. On December 15, 2009, Department Counsel forwarded AE H to Z to me without objection, and I admitted AE H to Z into evidence. I closed the record on December 16, 2009.

Findings of Fact²

Applicant denied all of the SOR allegations in her SOR response without elaboration (GE 11). She did not make any admissions. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant's statement of reasons (SOR) listed 22 delinquent debts totaling \$18,872. She has made \$300 payments in August, September and October 2009, to address one SOR debt (Tr. 75-76). She has not made any other payments to any of her other SOR creditors.

Applicant is a 60-year-old employee of a defense contractor (Tr. 7). She has been continuously employed by the same employer since June 1996 (Tr. 32; GE 1). From June 2005 to June 2006, she was employed by another large defense contractor (GE 1 at 3). Her primary work for the last several years has been as a software trainer. From January 2005 to June 2005, she was employed by another corporation (GE 1 at 3). She has never served in the military (Tr. 34; GE 2).

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

In 1967, Applicant graduated from high school (Tr. 7). She attended college from 1967 to 1971 and majored in education (Tr. 8; GE 2). She subsequently completed sufficient college courses to maintain her teaching certificate (Tr. 32). She has not received a degree (Tr. 8, 37). She erroneously indicated on her 2005 SF 85P that she had a bachelor of arts degree (Tr. 37; GE 2). The college she attended from 1967 to 1971 has closed and she does not have her transcript (Tr. 38). She does not have the ability to corroborate her attendance at college from 1967 to 1971 (Tr. 38). She has never held a security clearance (Tr. 9).

Applicant married in 1986, and she was divorced in 1988 (Tr. 7). She married the second time in 1989, and she was divorced in 1992 (Tr. 8).³ She has one child, a son, who is 38 years old (Tr. 8; GE 2).

Applicant's file does not include any adverse information about her being fired from a job, leaving employment under adverse circumstances, or relating to police involvement. For example, there is no evidence she has ever been charged with a felony or any firearms or explosives offense(s), or that she has any currently pending charges. There is no evidence she has ever been charged with any offense related to alcohol or drugs. There is no evidence that she has abused alcohol or drugs. In the financial information section of her March 23, 2009, SF 85P, she disclosed that she had debts currently delinquent over 90 days, and debts delinquent over 180 days in the last seven years (GE 1). She attached a credit report and a statement in which she denied receiving notice of her delinquent debts and a judgment. Applicant did not list any periods of unemployment in the last 12 years (GE 1, 2).

Financial considerations

The SOR listed 22 delinquent debts, totaling \$18,872 as follows: ¶ 1.a (\$169); ¶ 1.b (\$5,732); ¶ 1.c (\$1,410); ¶ 1.d (\$98); ¶ 1.e (\$3,250); ¶ 1.f (\$329); ¶ 1.g (\$188); ¶ 1.h (\$1,238); ¶ 1.i (\$3,713); ¶ 1.j (\$471); ¶ 1.k (\$421); ¶ 1.l (\$266); ¶ 1.m (\$249); ¶ 1.n (\$207); ¶ 1.o (\$40); ¶ 1.p (\$152); ¶ 1.q (\$110); ¶ 1.r (\$87); ¶ 1.s (\$151); ¶ 1.t (\$60); ¶ 1.u (\$139); and ¶ 1.v (\$392).

In the last few years, Applicant has never been unemployed for a significant period of time, and she has received a good salary (Tr. 129-130). She has traveled frequently for work and did not take the time to ensure her creditors were paid or disputed debts were resolved (Tr. 130). She had to move after she lost her last job, and the move was expensive (Tr. 130).

Applicant contacted the credit reporting companies and disputed her delinquent debts (Tr. 46). On February 17, 2009, TransUnion stated that Applicant had previously disputed her debts with respect the account in SOR ¶¶ 1.i (\$3,713) and 1.k (\$421) (AE B). Because her latest dispute did not include any new information, TransUnion

³At her hearing Applicant said she was married twice to the same man, and once to another man (Tr. 60). When she completed her 2005 and 2009 SF 85Ps, she indicated she was divorced; however, she did not list the name of her former spouse or the dates of her marriages or divorces (GE 1, GE 2).

considered the dispute to be frivolous (AE B). She did not provide any letters from TransUnion indicating any account information was disputed and removed from her credit reports.

Credit repair company (KCCS)

On September 23, 2008, Applicant signed an agreement with a credit repair company (KCCS) (AE K). She said she paid KCCS \$1,000 to assist with correction of her credit reports (Tr. 48, 58, 126-127; GE 3 at 16; AE F).⁴ She provided her social security number to KCCS (Tr. 59). She received an undated and unsigned letter from KCCS, advising Applicant that they had successfully removed 14 inaccurate items from her credit report (Tr. 48; AE F at 1). In October 2009, Applicant asked KCCS for a list of the corrections (Tr. 47-48, 70). At her hearing, she conceded she had not set up any payment plans, except for the three payments to the creditor in SOR ¶ 1.h (Tr. 109). She planned to change to a different credit repair company after she obtains the information about the inaccurate credit reports (Tr. 126, 151). I requested that she provide a copy of her contract with KCCS after her hearing, and she provided part of it (Tr. 70-71, 146; AE K).⁵ Her KCCS contract does not authorize KCCS to negotiate with creditors to set up payment plans, and is focused on removing obsolete or incorrect information from credit reports (AE K). Information is obsolete under the Fair Credit Reporting Act after seven years (AE K at 3).

On October 19, 2009, KCCS sent Applicant a brief email listing her debts and creditors. The KCCS email listed five creditors and seven accounts (AE L). All five creditors were listed on the SOR. The KCCS email did not provide specific information about the amounts owed on those seven accounts or the account numbers for the seven accounts (AE L). The documentation from creditors or credit reporting companies supporting the KCCS email was not provided.

SOR ¶ 1.a (\$169)—SUBSTANTIATED, UNRESOLVED DEBT. Applicant's September 20, 2007, and August 17, 2008, credit reports list a revolving credit card account opened in 1993 with a balance of \$169 (Tr. 42-45; GE 6 at 4; GE 3 at 37). The creditor charged off \$169 in July 2001 (GE 6 at 4). Applicant called this creditor and several others, and the creditors asked for Applicant's social security number to verify her identity (Tr. 44). Applicant declined to provide her social security number and the creditor declined to provide information about Applicant's account (Tr. 44, 57-58). She wanted to verify that she signed a contract for a credit card with the creditor (Tr. 55). She denied that she had an account with the creditor, and said she reviewed her checkbook and was unable to locate any payments to the account (Tr. 55).

SOR ¶ 1.b (\$5,732)—SUBSTANTIATED, UNRESOLVED DEBT. This debt related to business expenses charged on Applicant's credit card in 2005 and 2006 during her employment that ended in June 2006 (Tr. 88-90; GE 1). Applicant charged

⁴Applicant did not provide documentary proof of any payments to KCCS.

⁵The information from KCCS did not indicate how much she was supposed to pay KCCS (AE K).

about \$5,500 on a credit card, which was never paid. In 2006 and 2005, Applicant went on numerous work-related trips (Tr. 39; GE 3 at 42-66). Her employer was supposed to pay the creditor directly (Tr. 89). On November 25, 2006, Applicant emailed her corporate supervisor and asked for help with two discrepancies, including one for \$5,000, that were related to her travel account (Tr. 89-90; GE 3 at 44). On November 28, 2006, her supervisor provided very detailed spreadsheets concerning her travel expenses in 2005 and 2006, and suggested that Applicant identify any discrepancies (GE 3 at 42). Her supervisor asked Applicant to do her analysis as quickly as possible because the employer would soon not be able to assist with the reconciliation (GE 3 at 42). The spreadsheet shows a delinquent amount of \$5,973 (Tr. 90; GE 3 at 48 line one). She said she sent her employer an expense report for \$5,000 that was not included on her spreadsheet (Tr. 132-133); however, she did not describe the content of the expense report. In the last several months, Applicant did not make any payments to address this debt (Tr. 95). I asked her to provide her last expense report so that I could compare it to her employer's spreadsheet and determine whether or not she received credit for her expenses (Tr. 134). She was unable to locate a copy of her last expense report and on October 29, 2009, she sent an email to her former employer seeking a copy (AE M). She provided an email from another employee whose last expense claim was not resolved for three years (AE P).

On November 3, 2009, Applicant's former employer explained that Applicant failed to submit her expenses for reimbursement within 90 days of the incur date (AE R at 3). She failed to complete the filing process early in 2007 to resolve the dispute (AE R at 3).⁶ The analysis indicated she failed to submit several hotel bills from April and May 2006, with her claims (AE R at 4), and concluded that the related government contract is closed, making recovery of the costs from the government problematic (AE R at 6).

SOR ¶ 1.c (\$1,410)—SUBSTANTIATED, UNRESOLVED DEBT. This debt related to Applicant declining to pay her credit card debt because she considered the fees and penalties for late payments to be excessive (Tr. 96-99). She opened her account in 2000 (Tr. 102; GE 7 at 6). The creditor charged off \$1,104 in October 2001 (Tr. 102-103; GE 7 at 6). Eventually the creditor doubled the amount she owed from fees, penalties, and interest (Tr. 101-102). She attempted to negotiate a settlement; however, she stated the creditor was unreasonable (Tr. 99-100).⁷

SOR ¶ 1.d (\$98)—DEBT NOT SUBSTANTIATED. This debt related to a telecommunications account (Tr. 104-105; GE 7 at 11). She denied knowledge of the account (GE 3 at 6). She sent the creditor a letter seeking authentication of the debt (Tr.

⁶An email dated January 17, 2007, and spreadsheet from Applicant's employer notes that she may not have filed about \$6,500 in hotel expenses and suggests she obtain a receipt from a particular hotel and provide it to her employer (AE S, T). There is no evidence that Applicant provided the requested receipt to her employer.

⁷This debt apparently does not appear in Applicant's current credit report because there has not been any activity on the account for more than seven years, and the information was deleted because it was obsolete. See KCCS agreement (AE K).

105; letter is similar to the letter at AE C at 1). She did not receive a reply from the creditor in SOR ¶ 1.d (Tr. 105). She did not pay the debt in SOR ¶ 1.d (Tr. 106).

SOR ¶ 1.e (\$3,250)—SUBSTANTIATED, UNRESOLVED DEBT. This debt related to Applicant breaking her lease on an apartment in 2003 (Tr. 77-78, 81). Her father was ill and she needed to move (Tr. 78). She failed to give the 60-day notice as required in her contract (Tr. 78). She admitted that she erroneously denied responsibility for this debt in her SOR response (Tr. 79). She has not contacted the creditor (Tr. 80). She believed KCCS would contact the creditor and discuss a settlement for perhaps less than \$2,000 (Tr. 81). She has not paid anything to this creditor in the last six years (Tr. 82).

SOR ¶ 1.f (\$329)—DEBT NOT SUBSTANTIATED. This debt was listed in Applicant's September 20, 2007 credit report (Tr. 106; GE 6 at 10). However, Applicant did not recognize the name of the creditor and her 2007 credit report did not include an address for contacting the creditor (Tr. 106; GE 3 at 9).

SOR ¶ 1.g (\$188)—DEBT NOT SUBSTANTIATED. Applicant's credit report indicates this debt is to a bank (Tr. 107). Applicant had an account with the bank (Tr. 107). She did not contact the bank; however, she expected KCCS to do so (Tr. 108). She did not know if KCCS had contacted the creditor in SOR ¶ 1.g, and she had not paid this debt (Tr. 108).

SOR ¶ 1.h (\$1,238)—PAYMENT PLAN. This debt related to Applicant breaking a lease on an apartment (Tr. 82-83). An August 7, 2009, letter from the creditor states she now owes \$2,143 to the creditor in SOR ¶ 1.h for a May 15, 2008, judgment, and she is accruing interest at the rate of 12% per month (AE D). According to her agreement with this creditor, the first monthly payment of \$300 was due on August 17, 2009, and \$300 was due every 30 days thereafter until the debt was paid (AE D). She provided photocopies of three \$300 money orders dated in August, September, and October 2009, and indicated these three payments made this debt current (Tr. 83-84; AE E, I). When she responded to the SOR, she denied this debt because she took exception to some of the charges, such as clean-up costs (Tr. 84-87).

SOR ¶¶ 1.i to 1.v (\$6,458)—10 DEBTS NOT SUBSTANTIATED, FOUR SUBSTANTIATED, UNRESOLVED DEBTS. These 14 SOR debts all related to medical services Applicant allegedly received. Applicant said she always went to the same doctor (Tr. 67). She believed that if she owed her doctor money he would stop providing care for her (Tr. 67). She contended the 14 accounts should have been paid by her insurance company, or were not her responsibility (Tr. 48-53). She said she submitted the bills or invoices to her insurance company; however, the insurance company did not pay their portion of the bill (Tr. 53-54). Applicant intended to dispute all 14 medical debts (Tr. 69). Applicant provided a February 17, 2009, TransUnion report, which indicated two medical debts were still valid despite her disputes: SOR ¶¶ 1.i (\$3,713) and 1.k (\$421) (AE B). After her hearing, Applicant provided her October 30, 2009, Experian Credit Report which included the medical debts in SOR ¶¶ 1.n (\$207) (AE O at 2) and 1.q (\$110).

Applicant's net monthly salary after deductions is \$3,526 (Tr. 110-113; GE 3 at 10; AE J, X). Her monthly expenses are about \$2,356,⁸ leaving about \$1,170 to address her delinquent debts (Tr. 113-122; GE 3 at 10). After deducting her monthly debt payment of \$300 to the creditor in SOR ¶ 1.h, her approximate remainder is \$870 (Tr. 124). Applicant rents her current residence (Tr. 32). Her rent is current (Tr. 109-110). In July 2009, she purchased a 2007 Honda vehicle, and her monthly vehicle payment is \$450 (Tr. 117). She provides about \$150 monthly to her elderly parents (Tr. 119). Her utilities are current (Tr. 123).

Applicant believed she would not have delinquent debts in the future because she is no longer traveling due to her employment and has the time to ensure her debts are paid or resolved (Tr. 131). Sometimes she did not pay disputed debts because she believed they were unjust (Tr. 131). She has not incurred any delinquent debt in the last three years (Tr. 151). She has not received credit counseling (Tr. 128).

After her hearing, Applicant provided her October 30, 2009, Experian Credit Report which included the debt in SOR ¶ 1.b (\$5,732) (AE O at 2), and a non-SOR judgment filed on May 15, 2008, for \$1,753 (AE O at 1).

Character evidence

On January 25, 2009, Applicant received a superb rating from her supervisor (AE G). On a scale of one to five with five being the best rating, she received fives in all areas (AE G). She is outstanding in the areas of quality of work, knowledge, dependability, ability to improve, organization, problem solving, customer service, interpersonal skills, and technical support skills (AE G). Her supervisor specifically noted her organizational skills and superb ability to maintain pleasant, interpersonal relationships (AE G).

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). The government's authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

Positions designated as ADP I and ADP II are classified as "sensitive positions." Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's

⁸Her expenses, excluding debt payments, totaled \$1,565 (AE Q at 2).

loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. See Regulation ¶ C8.2.1.

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

A person who seeks access to sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security and trustworthiness 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 [or access to sensitive information].” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance [or trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national

interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

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 the relevant trustworthiness concern is under Guideline F (financial considerations).

Financial Considerations

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

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified [and sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two conditions that could raise a trustworthiness concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts”; and “(c) a history of not meeting financial obligations.” The Appeal Board has noted, “Applicant’s credit report was sufficient to establish the Government’s prima facie case that Applicant had . . . delinquent [SOR] debts that are of security concern.” ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006). The SOR listed 22 delinquent debts, totaling \$18,872. Applicant’s history of delinquent debt is also documented in her credit reports and her oral statement at her hearing. She failed to ensure her creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

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

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

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 full application of AG ¶ 20(a) because she did not act more aggressively and responsibly to resolve his delinquent debts. Her delinquent debts are "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)). As indicated previously, the SOR listed 22 delinquent debts, totaling \$18,872. Despite some positive developments, Applicant's unresolved, delinquent debts continue to cast doubt on her current reliability, trustworthiness, and good judgment.

Four of the fourteen medical SOR debts are established. On February 17, 2009, TransUnion reiterated that Applicant still owed the medical debts in SOR ¶¶ 1.i (\$3,713) and 1.k (\$421). Applicant provided her October 30, 2009, Experian Credit Report which included the medical debts in SOR ¶¶ 1.n (\$207) and 1.q (\$110). There is insufficient evidence to establish the other 10 medical debts listed in SOR ¶¶ 1.i, 1.l, 1.m, 1.o, 1.p, and 1.r to 1.v are owed.

Applicant's responsibility for four of the eight non-medical SOR debts in ¶¶ 1.a to 1.h is established. The debts in SOR ¶¶ 1.d (\$98), 1.f (\$329), and 1.g (\$188) were not established. She denied knowledge of the creditors in SOR ¶¶ 1.d and 1.f, and although she had an account with the creditor in SOR ¶ 1.g, she was unaware of the \$188 debt. Applicant admitted she did not make any payments on seven of the eight non-medical SOR debts. However, Applicant has made sufficient progress paying or resolving one debt. The debt in SOR ¶ 1.h (\$1,238) relates to Applicant breaking a lease on an apartment. An August 7, 2009, letter from the creditor states she now owes \$2,143. From August to October 2009, she paid \$900 to the creditor.

Applicant receives partial credit under AG ¶ 20(b) because her financial problems were aggravated when she left employment and was briefly unemployed, and had to move to a different city to secure employment. Her 14 medical debts are another uncontrolled aspect of her financial situation.⁹ She does not receive full mitigating credit

⁹"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

because she did not establish that she acted with sufficient initiative and resolve to address her delinquent debts. She did not provide sufficient documentation about her finances to meet her burden and establish mitigation under AG ¶ 20(b).

AG ¶ 20(c) does not fully apply. Applicant did not receive financial counseling. Although she provided a personal financial statement and used a credit repair company to obtain changes to her credit reports, she could have benefited from financial counseling. She did not carefully monitor the credit repair company's efforts on her behalf. After she learned that she had not successfully disputed debts, she did not take the next step to resolve the delinquent debt, that is, further investigation or negotiation of a payment plan. She seemed to have sufficient funds remaining after payment of her expenses and debts to begin payment plans with her SOR creditors. She did not show a sufficient track record of reducing and resolving her debts. There are not "clear indications that the problem is being resolved or is under control." She does not receive full mitigation under AG ¶ 20(d) because she did not establish good faith¹⁰ in the resolution of the SOR debts in ¶¶ 1.a to 1.c, 1.e, 1.i, 1.k, 1.n, and 1.q.

AG ¶ 20(e) applies to the debts in 1.j, 1.l, 1.m, 1.o, 1.p, 1.r to 1.v. Applicant hired a credit repair company to contest the information in her credit reports, and subsequently received some information that 10 medical debts were removed from her credit reports. Although there is minimal documentation supporting Applicant's dispute of any debts, under all the circumstances, I will mitigate these 10 medical debts. Applicant had health insurance, and always sought medical care from the same provider. It is probable that her medical care provider failed to provide sufficient documentation to obtain payments from her insurance company, or her insurance company failed to adequately explain to her provider what is needed to perfect the provider's claims. Removal of the medical debts from her credit reports is sufficient to show they were successfully disputed. However, the four medical debts currently listed on her credit reports (1.i, 1.k, 1.n, and 1.j) are not adequately disputed.

at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

¹⁰The 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)).

Some of Applicant's non-medical, SOR debts do not appear on the two credit reports she provided. However, her credit repair company has disputed some of her debts because they were over seven years old, asserting the debt information was obsolete. Under the Appeal Board's jurisprudence, debts that are beyond the statute of limitations for collections cannot be mitigated solely because they are not collectable.¹¹ There is insufficient evidence to establish she was never responsible for the non-medical debts in SOR ¶¶ 1.a to 1.h.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve her delinquent debts. Her financial situation was adversely affected by her changing employment, needing to move to a different city, and medical debts. Some debts were not paid because she was traveling extensively for her employer. His SOR listed 22 delinquent debts, totaling \$18,872. Ten medical debts totaling \$2,007 were sufficiently disputed and mitigated, and the SOR debt to ¶ 1.h (\$1,238) was in a payment plan. Eight SOR debts for \$15,012 were not mitigated. I am not confident she will pay these eight delinquent SOR debts because of her insufficient track record of financial progress on her SOR debts shown over the last three years.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance or assignment to a public trust position by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable 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 or assignment to a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guideline F in my whole person

¹¹The statute of limitations clearly and unequivocally ends an Applicant's legal responsibility to pay the creditor after the passage of a certain amount of time, as specified in state law. In a series of decisions the Appeal Board has rejected the statute of limitations for debts generated through contracts, which is the law in all 50 states, as automatically mitigating financial considerations concerns under AG ¶ 20(d). See ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008). See also n. 10, *supra*.

analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance or assignment to a public trust position is insufficient at this time, there are several factors tending to support approval of her access to sensitive information. Applicant deserves substantial credit for volunteering to support the Department of Defense as an employee of a defense contractor. She provided a superb employee evaluation. There is no evidence that she has a criminal record or has ever violated security rules. There is every indication that she is loyal to the United States, the Department of Defense, her employer. She does not abuse alcohol or illegal drugs. She has never been fired from a job or left employment under adverse circumstances. Her file does not contain any adverse information relating to police involvement. Her changes in employment and medical treatment contributed to her financial woes. She paid \$900 towards one of her SOR debts, and successfully disputed other adverse financial information. These factors show some responsibility, rehabilitation, and mitigation.

The whole person factors against continuation of Applicant's access to sensitive information are more substantial at this time. Failure to pay or resolve her just debts is not prudent or responsible. Applicant has a lengthy history of financial problems. Some of her debts became delinquent more than five years ago. On September 18, 2008, she responded to DOHA interrogatories, and on July 20, 2009, she responded to the SOR. She had ample opportunity to contact her SOR creditors and to make greater progress in the resolution of her SOR debts. She did not pay, start payments, adequately dispute, or otherwise resolve eight of her SOR debts (SOR ¶¶ 1.a to 1.c, 1.e, 1.i, 1.k, 1.n, and 1.q), which total \$15,012. Although she made three, \$300 payments to one SOR creditor, her personal financial statement indicates she had sufficient funds after expenses to address more of her delinquent SOR debts.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated trustworthiness concerns pertaining to financial circumstances. 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 failed to mitigate or overcome the government's case. For the reasons stated, I conclude she is not eligible to occupy a public trust position at this time.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

| | |
|----------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a to 1.c: | Against Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraphs 1.f to 1.h: | For Applicant |
| Subparagraph 1.i: | Against Applicant |
| Subparagraph 1.j: | For Applicant |
| Subparagraph 1.k: | Against Applicant |
| Subparagraphs 1.l and 1.m: | For Applicant |
| Subparagraph 1.n: | Against Applicant |
| Subparagraphs 1.o and 1.p: | For Applicant |
| Subparagraph 1.q: | Against Applicant |
| Subparagraphs 1.r to 1.v: | For Applicant |

Conclusion

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

Mark Harvey
Administrative Judge