



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



In the matter of:)
)
-----) ISCR Case No. 08-07301
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

July 23, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes about \$72,000 in delinquent debt from 2006 that she has yet to resolve. While some of the debt was incurred for a now closed mortgage business, Applicant has a track record of late payments on living expenses that raises concerns for her ability to manage her finances and to repay the delinquent debt in the foreseeable future. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 2, 2008. On February 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F that provided the basis for its decision to deny her a security clearance and refer the matter to an administrative judge. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

amended (Directive); and the revised adjudicative guidelines (AG) effective within the Department of Defense as of September 1, 2006.

On February 20, 2009, Applicant answered the SOR and requested a hearing. The case was assigned to me on April 2, 2009, to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 16, 2009, I scheduled a hearing for May 8, 2009.

I convened the hearing as scheduled. Five government exhibits (Ex. 1-5) were admitted without any objections. A chart concerning the debts, marked as a hearing exhibit, was submitted as a supplement to the government's oral closing argument. Applicant testified on her behalf, as reflected in a hearing transcript (Tr.) received on May 14, 2009. Applicant also offered three exhibits (Ex. A-C), to which the government had no objections. Exhibits A and B were admitted. Admission of Exhibit C was contingent on Applicant providing a copy on or before May 15, 2009, as she wanted to retain the original document.

On May 13, 2008, Applicant submitted a copy of Exhibit C by facsimile, and it was entered into the record. In her forwarding correspondence, she described recent settlement offers (Ex. D), and moved for the admission of a character reference letter received after the hearing (Ex. E). Department Counsel filed no objections by the May 22, 2009, due date for a response, and the documents were admitted.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owes delinquent debt totaling \$72,027 (SOR ¶¶ 1.a through 1.f). Applicant admitted the debt, although she averred she had made payments to the creditor in SOR ¶ 1.a, was negotiating settlements with the creditors in SOR ¶¶ 1.b through 1.e, and had received a final settlement offer from the creditor in SOR ¶ 1.f. She indicated that she should have that debt paid off within the next two months. Applicant explained that her delinquent debt was due to factors outside of her and her spouse's control: a serious car accident involving their children in February 2006, and a business failure in August 2006 followed by unemployment and underemployment. Applicant cited improvements in their financial situation and her intent to resolve the debts without resorting to bankruptcy.

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

Applicant is a 40-year-old married mother of three children, sons age 7 and 11 and a daughter born in September 2008. She has been employed by a defense contractor as a senior administrative assistant since March 2008, and seeks her first security clearance (Ex. 1).

In August 2004, Applicant and her spouse opened a video and web business out of their home (Ex. 1). Around that same time, Applicant's spouse got involved in a multi-

level marketing mortgage lending company that was based in a distant state. As branch manager/owner, he opened a suburban branch, at which he maintained his primary office and controlled the day-to-day operations. He opened a second branch in an urban locale that was managed by four partners, each of whom had put up a share of the funds to operate the business (Tr. 89-90).¹ Applicant's spouse put up at least \$10,000, largely on Applicant's personal credit, to establish the two branches (Tr. 97, 99). Applicant had been unemployed for a year. She went to work as an executive assistant for her spouse in the suburban branch, although she also helped out at the urban branch (Ex. 1). Her spouse continued to retain his position in sales at a local radio station while getting established in the mortgage business. He had no previous experience in the industry (Tr. 92).

Applicant's spouse took cash advances against her account in SOR ¶ 1.b, and he charged some expenses for the mortgage business using her personal credit (Tr. 87, 99).² Her spouse opened utility accounts (e.g., telephone) in his own name for the mortgage business (Tr. 29). Applicant or her spouse or both also traveled on personal credit to Las Vegas and to Texas to do corporate events for their home-based media/video business (Tr. 87). Her spouse did not open a business credit card account. According to Applicant, their business partners were supposed to reimburse them monthly for expenses but failed to keep up with their obligations (Tr. 88, 96-97).

In February 2006, Applicant's two sons were involved in a serious car accident with their nanny, who died as a result of her injuries. The children suffered primarily emotional trauma. Applicant began to work from home and reduced her hours to about 20 a week as she cared for them and took them to mental health counseling (Tr. 30, 48-50, 52-53). The costs were covered by their insurance for the most part, although there is one outstanding bill that the insurer is refusing to pay (Tr. 51). Applicant and her spouse had to retain legal counsel to obtain coverage for some of the costs associated with the accident and the attorney's final bill has not yet been paid (Tr. 52).

Applicant handled the family's finances from 2004 to mid-2007 (Tr. 103).³ She stopped paying on some of their financial obligations, including on some credit card accounts that were solely in her name. The lender in SOR ¶ 1.b charged off a delinquent balance of \$37,644 due to nonpayment after May 2006 (Exs. 4, 5). As of July 2006, Applicant's credit card account in SOR ¶ 1.e was closed because she was 150 days past due. As of March 2008, the account was in collection with a balance owed of \$14,903 (Ex. 5). She made no payments on their joint Discover card account after July

¹Applicant believes these partners responded to an advertisement placed by the corporate headquarters (Tr. 91).

²Applicant estimated that three-quarters of the debt balances in SOR ¶¶ 1.b, 1.c, and 1.e were for business expenses (Tr. 87). She testified that she had opened the account in SOR ¶ 1.b in her name, but later added her spouse as an authorized user (Tr. 105).

³Applicant testified initially that her spouse handled the family's finances, including between 2006 and July 2008 (Tr. 66). She later clarified that she took over the finances from 2004 until mid-2007 when she felt overwhelmed (Tr. 103). The debts at issue became delinquent during that time.

2006. As of September 2008, the outstanding balance of that debt had reached \$3,789 (SOR ¶ 1.a) (Exs. 4, 5).

In August/September 2006, the state terminated the rights of the national mortgage lender to operate within its boundaries. All branch offices, including those owned by Applicant's spouse, had to cease operations until further notice (Tr. 28). Over the next few months, Applicant and her spouse hoped that the business license of the out-of-state mortgage company would be reinstated and they would be allowed to resume operations (Tr. 55). Checks from her spouse's partners began to be returned for insufficient funds (Tr. 92-93). Applicant's spouse continued to pay the overhead costs of the suburban and urban branches, largely with personal savings until December 2006, when he decided to close the business (Ex. 2). He closed the suburban office, but his partners at the urban branch resisted and became affiliated with another mortgage lender (Tr. 28-29, 90-91).⁴ Applicant was left with substantial debt on her personal credit card accounts, some of which was incurred for the mortgage business. Until September 2007, Applicant's spouse received some residual income from the national mortgage lender on mortgage loans closed outside the state (Tr. 28, 48, 56), but even with their video and web business, they were unable to cover all their financial obligations (Tr. 56).

Applicant stopped making payments on her credit card debt in SOR ¶ 1.c by February 2007. As of October 2007, she owed a collection balance of \$12,305 (SOR ¶ 1.c) (Exs. 4, 5). A gasoline credit card account on which Applicant owed \$2,000 was closed by the credit grantor (SOR ¶ 1.d) for nonpayment since December 2006 (Exs. 4, 5). Applicant and her spouse also began to fall behind in late 2006 on a joint auto loan of \$24,548 that they had taken out in May 2004 for a Nissan Pathfinder. As of March 2008, the loan was 60 days past due for the third time (not alleged in SOR) (Ex. 5). In about August 2007, they began to fall behind on their mortgage. As of late 2007, their mortgage loan was 60 days past due but they brought it current by February 2008 (Ex. 5). On January 4, 2008, Applicant was given the option of settling a delinquent gasoline credit card debt of \$615.66 (SOR 1.f) for a lump sum payment of \$61.57 or five payments of \$24.63 (Ex. 3). She did nothing about the debt until March 2009.

Following the closure of his mortgage office, Applicant's spouse worked for his brother's employer in the mortgage industry from December 2006 to September 2007 (Ex. 2), when he returned to his previous job at the radio station because he was not bringing enough income into the home to sustain their family (Tr. 30, 57). In mid-2007, Applicant turned over handling of the family's finances to her spouse because she was overwhelmed (Tr. 104), even though she was unemployed. She had not found an administrative position that would allow her to be at home after school (Tr. 57). In July 2007, Applicant and her spouse traveled to the Bahamas (Ex. 1), but it was paid for by

⁴Applicant testified that the partners barred her spouse from access to the urban branch and contacted the police ("They took our personal belongings, our wedding photos, you know, anything that we had personally in the office. The police came and said my husband could not take a single thing out of the office, it got really nasty and my husband feared for our lives, so we had to keep a baseball bat at our door because it got so bad." Tr. 90). She testified threats were made against their family and she wanted to file a complaint with the police, but that her spouse did not want to aggravate the situation (Tr. 100).

her father-in-law's travel agency in return for some videotaping work (Tr. 82-83). By September 2007, Applicant realized that she had to bring in income, and she went to work for her brother-in-law's employer at reduced hours, albeit reluctantly since she was not a talented salesperson (Ex. 3, Tr. 59). She worked on commission and closed only one mortgage over the few months she was there (Ex. 3, Tr. 59).

In March 2008, Applicant began working for her current employer (Ex. 1, Tr. 31). She and her spouse established a new budget and a plan to save \$100 per pay period. She also set up a 401(k) at work for her retirement (Ex. 2). That same month, the creditor in SOR ¶ 1.a obtained a \$4,362.75 judgment against her, and placed a lien against their home. In late March 2008, their 2004 model-year vehicle was repossessed after they fell behind in their payments.

On April 2, 2008, Applicant completed an e-QIP for a security clearance. She disclosed the judgment and lien awarded the creditor in SOR ¶ 1.a and the very recent repossession of their vehicle, although she explained that she and her spouse were in the process of gathering the funds needed to redeem the car by April 10, 2008. In response to the financial delinquency inquiries, Applicant listed the judgment and car repossession debts and some credit card debts (\$12,305 on SOR ¶ 1.c, \$2,000 on SOR 1.d, \$37,644 on SOR ¶ 1.b, and \$13,794 on SOR ¶ 1.e). As for being a party to any public civil court actions in the last seven years, Applicant listed the judgment lien, but also that they were still awaiting a settlement for their sons' injuries in the February 2006 car accident (Ex. 1). On April 7, 2008, Applicant's spouse paid \$1,885.16 to redeem their 2004 Nissan Pathfinder from repossession (Ex. 2).

Over the January to May 2008 time frame, Applicant and her spouse incurred medical costs of about \$2,413.72 not covered by insurance (Ex. A). Applicant disputed their responsibility for most of the debt (Ex. 2).

Applicant and her spouse got behind on their mortgage in April and May 2008. The mortgage lender offered them a means to bring their loan current by signing a promissory note for the \$5,992.49 past due. On May 28, 2008, Applicant her spouse agreed to resume regular payments of their mortgage immediately, and starting in December 2008, to make regular installment payments of \$48.49 per month on the promissory note in addition to their mortgage payments. Two days later, the mortgage lender issued a notice of intention to foreclose on their mortgage. They avoided foreclosure by making their subsequent monthly payments of \$2,059.44 on time (Ex. 3).

On May 19, 2008, the agency holding the debt in SOR ¶ 1.e offered to settle the \$15,674.96 balance on receipt of a lump sum payment of \$7,053.73. On June 16, 2008, Applicant sent letters to the creditors in SOR ¶¶ 1.a through 1.d. She offered to pay 10% of the outstanding balances of SOR ¶¶ 1.a, 1.c, and 1.d (¶¶ 1.a and 1.d at \$25 per month and ¶ 1.c at \$50 per month). Applicant offered to pay \$1,200 at \$50 per month to settle the \$37,644 debt balance of SOR ¶ 1.b. Her payments would be contingent on the creditors waiving interest and removing any negative information from her and her spouse's credit records. Applicant asked both the original creditor of SOR ¶ 1.c and the agency collecting the debt to cease contacting her at work about the debt because she

had been reprimanded by her employer because of their calls. Applicant's creditors had not responded to her offers by July 18, 2008, so she sent second letters offering to settle SOR ¶ 1.a for \$1,308.82 (up from \$436.28), ¶ 1.b for \$3,764.40 (up from \$1,200), and ¶ 1.c for \$2,461 (up from \$1,230.50⁵). Also, on July 18, 2008, Applicant offered to settle the debt in SOR ¶ 1.e for 10% of the original balance of \$13,794 at \$50 per month. Over the next few weeks, she sent followup letters to the creditors in SOR ¶ 1.d and 1.e, offering again to resolve the debts at 10% of the original balances. On August 7, 2008, a new assignee of the debt in SOR ¶ 1.c requested payment of the \$12,305.24 full balance from Applicant (Ex. 3).

In the summer of 2008, Applicant's spouse paid \$1,500 toward a \$3,500 copier debt for his former business,⁶ and they paid for summer camp for their two sons (Ex. 3). In July 2008, Applicant incurred late charges on three department store revolving charge accounts for failure to make a payment the previous month (Ex. 3). On July 29, 2008, the court ordered Applicant and her spouse to pay \$25 per month on the judgment owed the creditor in SOR ¶ 1.a, pending a hearing on the matter scheduled for December 1, 2008 (Ex. 2). Applicant, who gave birth to their third child (a daughter) in late September 2008 (Tr. 73), did not make any payments on the debt until December 2008, because she was out of work for six weeks on unpaid maternity leave (Tr. 71). She paid for a short-term disability benefit but found out she was ineligible to collect as she had not been with her employer for a year (Tr. 71).

DOHA sent financial interrogatories to Applicant on July 19, 2008, requesting that she document any payments on the debts in SOR ¶¶ 1.a–1.e. On August 14, 2008, Applicant forwarded copies of her current monthly bills (utilities, school tuition, summer camp, mortgage), medical bills, and her efforts to reach settlements on her delinquent credit card debt. She provided evidence of her and her spouse's employment income, of joint savings and checking balances totaling \$2,205, and of the value (\$1,764.74) of her 401(k). She estimated a net monthly remainder of \$1,014.52, including a monthly payment of \$25 on SOR ¶ 1.a but excluding any payments on the debts in SOR ¶¶ 1.b–1.e. Applicant indicated that she and her spouse had taken specific actions to get back on track financially. She had acquired stable employment and they had restarted their home-based web and video business for extra income. They had redeemed their Nissan vehicle from repossession and had averted foreclosure of their mortgage. Her spouse was paying on the copy machine debt from their failed mortgage business. They had brought current some bills, and were working to bring current their heating oil, cellular phone, and outstanding medical debts. She added that they planned to put up their home for sale, and would use any equity to pay off their debts. Applicant volunteered that her spouse had been in a car accident with their 2001 Honda on August 6, 2008, and they were waiting to see whether the car could be repaired or would have to be replaced (Ex. 3). The vehicle was subsequently determined to be

⁵In her letter to the creditor, Applicant increased her offer to \$2,461. However, in her settlement offer to the collection agency, she reiterated her previous settlement offer of 10% or \$1,230.50 (Ex. 3).

⁶Applicant testified they got stuck with paying the copier lease of \$5,000 ("It jumped from, I thought it was \$3,500 and it ended up being \$5,000.") (Tr. 86). She told DOHA in August 2008 that they were under a plan to make \$500 payments per month until the \$3,500 balance was paid off (Ex. 3).

totaled and they bought a used 1998 model year minivan to replace it. They owe nothing on that vehicle (Tr. 77).

In August 2008, Applicant and her spouse were billed \$6,300 in reduced tuition for their two sons who attend a private school. They received financial aid of \$3,928 for the upcoming school year. As of July 25, 2008, Applicant and her spouse had just finished paying their tuition and extended care obligation for the 2007-08 school year (Ex. 3).

On December 23, 2008, Applicant paid \$75 on the Discover card judgment debt (SOR ¶ 1.a) for October through December 2008. On February 3, 2009, she paid \$25 for January 2009. She paid \$25 for February on the 27th of the month (Ex. B). After Applicant missed her payment for March 2009, the creditor obtained a court order to garnish her wages. Applicant had the order rescinded, and on April 15, 2009, an "agreement for judgment" in the amount of \$4,678.70 was awarded the creditor. Applicant is under court order to repay the debt at \$25 per month beginning April 30, 2009, in return for waiver of future interest, provided her payments are made on time (Tr. 41, 72-73). In the event of a default, interest is to accrue from March 8, 2008 (Ex. C). On April 28, 2009, she paid the creditor \$50 (Ex. B).

In mid-April 2009, Applicant's spouse was laid off from his job at the radio station. He has since focused on their home-based video and web design business (Tr. 60). He was collecting unemployment compensation of \$750 per week (Tr. 61, 75). On March 3, 2009, Applicant paid \$61.57 to settle the debt in SOR ¶ 1.f (Ex. A, Tr. 32). On April 30, 2009, she paid \$1,433.71 to pay off the car loan for the Nissan that had been redeemed (Ex. A, Tr. 32). The money came from their income tax refunds for 2008, which totaled about \$3,900 (Tr. 68-69). On May 8, 2009, Applicant paid \$1,500 of her sons' school tuition. The remainder of the income tax refund monies was still in their bank account (Tr. 68-69). Applicant pays a friend from church \$35 per day to care for her daughter while she is at work (Tr. 74). Applicant is employed full-time, although she has a modified schedule under which she works nine-hour days one week followed by three nine-hour days and one eight-hour day the next week (Tr. 74).

As of May 2009, Applicant had not resolved those debts in SOR ¶¶ 1.a-1.e. Apparently the creditors in SOR ¶¶ 1.b and 1.d have agreed to settle her accounts on receipt of \$3,765⁷ and \$1,000 (Tr. 32-33, 64), although there is no record documenting these offers. She plans to pay the \$1,000 once she has the funds and then work on repaying the creditor in SOR ¶ 1.b (Ex. D). She has not had any contact with the creditor in SOR ¶ 1.c since July 2008 (Tr. 69). Applicant is paying on three retail store charge accounts as of May 2009 (Tr. 80). The accounts had been delinquent in July 2008 (Ex. 3). Based on current expenses, Applicant estimates that she and her spouse have a joint remainder of \$1,000 per month even while he is collecting unemployment compensation. She testified they are saving toward satisfying debts and catching up on

⁷Applicant testified on May 8, 2009, that the creditor owed the \$37,644 offered to settle for 30% of the balance (Tr. 67). On May 13, 2009, she indicated that she had just received an offer to settle the debt for 10% of the balance (Ex. D). She presented no documentation from the creditor corroborating the offers.

their mortgage. As of May 2009, Applicant and her spouse were behind a payment or two on their mortgage. They were seeking to refinance their adjustable rate loan into a 30-year fixed loan that would lower their monthly obligation (Tr. 62). They had about \$2,900 in savings/checking assets (Tr. 82). Asked about why they are continuing to fall behind when they reportedly have \$1,000 in discretionary funds each month, Applicant cited the costs associated with a newborn and a need to readjust their budget to get a handle on their expenditures (Tr. 84). In an effort to reduce their expenses, they had eliminated Internet access at home over a year ago (Tr. 92). Since they keep their check register in their computer, her spouse now takes his laptop to the library and downloads their account information (Tr. 66). They also dropped their telephone land line at home, but have two cell phone accounts (Tr. 92-93). As of July 2008, Applicant had a calling plan costing her \$100 a month. Her spouse was with a separate carrier at a monthly charge of \$80 (Ex. 3). Applicant reduced the percentage of money she was investing in her 401(k) at work so that they would have more income for household expenses (Tr. 94). To prevent unnecessary spending, she no longer carries her debit card and has to clear any purchases with her spouse (Tr. 95). He is handling the family's finances. She trusts him to do so despite his poor choice of business partners in the past (Tr. 101).

Applicant and her spouse hold lay leadership positions in their church. She has been a member of the congregation since 1996. She has proven to the ministers and to others in the church that she can keep information private and they consider her to possess high character and personal integrity (Exs. A, B, E). Applicant and her spouse have signed up to take a financial course offered through their church in the fall in an effort to get out of debt as quickly as they can (Tr. 102).⁸

Applicant is held in high regard by her work colleagues as well. She provides administrative support to several project finance teams where she is known for an excellent work ethic, teamwork, and commitment to the programs (Exs. A, B).

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). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a

⁸Applicant testified that she and her spouse had worked with consumer credit counseling when they first moved to the area and had resolved previous debt successfully (Tr. 102).

conscientious scrutiny of a number of variables known as the “whole person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to 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. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

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

Between May 2006 and February 2007, Applicant stopped paying on five of her credit card accounts (SOR ¶¶ 1.a—1.e), and delinquent debts totaling about \$70,641 were charged off or placed for collection or both. A \$615.66 gasoline credit card debt, in collection as of January 2008 (SOR ¶ 1.f) was settled for 10% of the balance (\$61.57 payment) in March 2009, but the other debts have yet to be resolved. As of May 2009,

the aggregate balance of the unpaid accounts was about \$72,000. Furthermore, in August 2008, she provided documentation showing she owed more than \$2,000 in unpaid medical debt (not alleged in SOR). There is no proof that those debts had been resolved or her liability successfully disputed. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” AG ¶ 19(b), “a history of not meeting financial obligations,” are implicated.

Mitigating condition AG ¶ 20(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,” cannot reasonably be applied. Her financial problems are extensive and ongoing. Just before she completed her e-QIP in April 2008, their car was repossessed for failure to make timely payments. While she redeemed the vehicle within 30 days, they fell behind in their mortgage payments. They avoided foreclosure by executing a promissory note under which they are required to pay \$48.49 per month for 174 months in addition to making their regular mortgage payments. By May 2009, they were again behind in their mortgage.

AG 20(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,” applies, but only in part. The serious car accident in February 2006, the unexpected suspension of the national mortgage lender’s license to operate in the state in 2006, and the denial of short-term disability pay while Applicant was on maternity leave in the fall of 2008, negatively impacted her ability to pay her financial obligations. However, AG ¶ 20(b) does not mitigate the poor financial decisions that led to the incurring of substantial debt that became delinquent in 2006. They put up \$10,000 largely on her credit to open two branches within a multi-level marketing organization in an industry in which her spouse had no previous experience (Tr. 92). He entered into some type of partnership with four persons he did not know but on whom he depended for the funds to run his mortgage business. He took cash advances on her credit card in SOR ¶ 1.b to pay office overhead costs. They used her credit for a trip to Las Vegas for their home-based video business. Nor does AG ¶ 20(b) explain the repossession of their vehicle (albeit redeemed within 30 days) in April 2008, the late charges in July 2008 on some of her retail credit card accounts, or her failure to make her \$25 payment on the debt in SOR ¶ 1.a in March 2009.

Applicant and her spouse had some financial help from consumer credit counseling when they first moved to the area. But one has to question the value of that previous association, given it did not prevent them from risking their own financial solvency by entering into a multi-level mortgage marketing business on little more than credit. Moreover, in lieu of settling the debt in SOR ¶ 1.d with their income tax refund, Applicant paid \$1,500 of the refund toward their sons’ private school tuition. Although not frivolous expenditure, one has to question whether they can reasonably afford private school tuition when her spouse was recently laid off and they are currently behind in their mortgage. Applicant and her spouse have taken some steps to reduce their expenses. She no longer carries her debit card and has to inform her spouse of

any intended purchases. At home, they have eliminated Internet access and their land line. They also registered for a financial class offered at their church this fall. However, it would be premature to apply AG ¶ 20(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,” when she has made little progress toward resolving her delinquent debt.

AG ¶20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies in very limited part. Her payments on her Discover card debt (SOR ¶ 1.a) began after a judgment had been awarded the creditor in March 2008 and a lien had been placed on their home, so it cannot be said that the payments were completely voluntary. She missed her October and November 2008 payments when she was on maternity leave without pay. Although she paid \$75 in December 2008 to catch up, she made a late payment for January 2009 and she missed her March 2009 payment. She argued in closing (Tr. 119) that she had been notified that the creditor was seeking to attach her wages, and she did not want to make a double payment. A creditor is not likely to resort to court action if timely payments are being made. Even with respect to the settlement of the debt in SOR ¶ 1.f, the creditor offered to settle for \$61.57 back in January 2008. Applicant did not pay the settlement amount until March 3, 2009. According to the income and expense figures she provided in August 2008, she should have been able to settle the debt sooner. Applicant proposed settlement offers to her creditors last summer, but her failure to make any payments on the debts in SOR ¶¶ 1.b, 1.c, 1.d, and 1.e undermine her case for mitigation under AG ¶ 20(d). She has had no contact with the creditor in SOR ¶ 1.c since July 2008.

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 conduct and all the circumstances in light of 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 must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

The DOHA Appeal Board has addressed a key element in the whole person analysis in financial cases stating, in part, “an applicant is not required, as a matter of

law, to establish that [she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that [she] has ‘ . . . established a plan to resolve [her] financial problems and taken significant actions to implement that plan.’” ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Assuming her spouse incurred about three-quarters of her delinquent debt in the operation of his mortgage business, Applicant is still responsible for the debt incurred in her name. She handled the family’s finances when the accounts in the SOR became delinquent, so the debt balances were known to her. In her favor, she has been open about her financial problems with the government, and she has had more than her share of unfortunate circumstances that have negatively affected her finances, including her spouse’s recent layoff. But while she presented DOHA with a plan to resolve her financial problems in August 2008, she has not done enough under that plan to overcome the concerns about her financial judgment.

The incurring of late charges on retail credit card accounts in July 2008, when she and her spouse were working full-time, raise doubts about whether she can properly manage her finances. As of May 2009, she and her spouse were again late in their mortgage payments despite the efforts they made to avert foreclosure in May 2008. The creditors in SOR ¶¶ 1.b, 1.d, and 1.e have offered settlements advantageous to Applicant, and she still has not made any payments to those creditors. Based on the facts before me, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant access to classified information at this time, notwithstanding her good work performance for the defense contractor.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

Conclusion

In light of the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ELIZABETH M. MATCHINSKI
Administrative Judge