



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



In the matter of:)
)
-----) ISCR Case No. 08-08653
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro Se*

April 30, 2009

Decision

HARVEY, Mark W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Applicant has demonstrated a meaningful track record of debt repayment. She credibly promised to pay any valid, unpaid debts listed in her statement of reasons (SOR). Access to classified information is granted.

Statement of the Case

On March 31, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) Security Clearance Application (SF 86) (Government Exhibit (GE) 1). On January 22, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR detailing the basis for its preliminary decision to deny Applicant eligibility for access to classified information, citing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On March 11, 2008, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 14, 2009. The case was assigned to me on April 14, 2009. On April 14, 2009, DOHA issued a hearing notice. The hearing was held on April 21, 2009. At the hearing, Department Counsel offered six exhibits (GEs 1-6) (Transcript (Tr.) 22-24), and Applicant offered one exhibit (Tr. 76-77, 79-80; AE A). There were no objections, and I admitted GEs 1-6 (Tr. 24), and AE A (Tr. 80). Additionally, I admitted the SOR, response to the SOR and the hearing notice (GEs 7-9). I received the transcript on April 29, 2009.

Findings of Fact¹

In her SOR response, Applicant admitted full responsibility for one debt listed in the SOR (SOR ¶ 1.c, \$2,118), which she settled and paid (GE 9 at 1). She admitted she may owe a state tax debt, and filed documentation asking for recalculation of her tax liability (SOR 1.a, \$932). She denied responsibility and/or knowledge of the other debts and noted they were not listed on her current credit report. She explained she was unable to research most of the SOR debts because SOR creditors could not locate her records without file or account numbers, which may be on her April 2008 credit report (the basis for the SOR). She requested a copy of the April 2008 credit report and promised to pay her legitimate debts, even though payment might be barred by the State statute of limitation for contracts (six years) (GE 9 at 4). Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 42 years old (Tr. 6, 28). In 1985, she graduated from high school (Tr. 6, 9). She received her associate's degree in criminal justice and her bachelor's degree in 2003 (Tr. 6, 28). She is currently working on her master's degree in business administration (Tr. 7). She married in 1985 and divorced in 1986 (Tr. 9). She married the second time in 1987 and divorced in 1994 (Tr. 9). She married the third time in 1997 and divorced in 2004 (Tr. 9). She married her current husband in December 2006 (Tr. 7). Her stepdaughter is 18, and her biological children are 8, 10, 20 and 23 years old (Tr. 8). She attributed her SOR debts to financial problems resulting from her divorces and her efforts to support her children (GE 9 at 3-4).

Applicant moved several times because her third spouse was on active duty. She lived in Germany from 2003 to 2006 and was employed as a contract specialist (Tr. 64-

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

65). Her current husband retired from a military service in June 2007, and has new employment (Tr. 67; GE 2 at 4). She is seeking a Secret clearance (Tr. 10).

In 2003, Applicant was unemployed for about five months (GE 1 at 47). Subsequently, Applicant has not been unemployed, except for seven months when she was in between jobs after moving from one state to another in 2007 (Tr. 66-67). She has worked for a government contractor since December 2007 as a budget and financial analyst (Tr. 26, 69). She received two certificates of appreciation from the U.S. Army for her work (Tr. 70). In 2008, she was selected as New Employee of the Year (Tr. 70).

Financial considerations

Applicant completed her security clearance application on March 31, 2008, and noted that she obtained a list of eight delinquent accounts, totaling \$6,565 from a credit report (GE 1 at 41-46). The delinquent accounts ranged from \$2,500 to \$50 (GE 1 at 41-46). She was unfamiliar with most of the creditors and debts. She subsequently paid or resolved all of the debts except for four debts, which were subsequently listed on her SOR in ¶¶ 1.f (\$50), 1.g (\$949), 1.h (\$281), and 1.k (\$1,035)(GE 8).

Applicant's statement of reasons (SOR), dated January 22, 2009, lists 11 delinquent debts (SOR ¶¶ 1.a to 1.k), totaling \$20,299. When Applicant learned she had delinquent debts listed on her credit report in March 2008, she used available credit reports to contact creditors to resolve her debts (Tr. 35-37). She resolved five of eight accounts on her credit report. In early May 2008, an Office of Personnel Management (OPM) investigator questioned Applicant about her knowledge of about 10 additional delinquent debts (AE A). Applicant denied knowledge of most of the accounts and promised to attempt to research and resolve them (AE A). On November 25, 2008, Applicant responded to DOHA interrogatories about her debts (GE 2). She provided proof of payment of some debts, and denied knowledge of other debts (GE 2).

In regard to the SOR debts, Applicant was unable to locate sufficient account information to assist most of the SOR creditors in locating her accounts. Her search for creditors and account numbers was inhibited because she did not have the April 2008 credit report (GE 4) that supported most of the allegations of delinquent SOR debt until about two weeks before her hearing (Applicant received the April 2008 credit report from previously assigned Department Counsel as part of the discovery process) (Tr. 37, 40). Applicant was TDY for three weeks prior to her hearing (Tr. 50). She called or emailed creditors from her TDY location and asked the creditors to mail information to her home address (Tr. 36-37, 41, 50). The creditors sometimes commented that she should not worry about the debts because they were beyond the statute of limitations, as many were 10-13 years old, and had been dropped off of her credit reports (Tr. 75, 77-78; GE 9). She did not know in several cases whether the SOR creditors had provided information to support the validity of the debts listed on the April 2008 credit report because she had not returned home to check her mail in three weeks (Tr. 36-37, 41, 50). The resolution of her SOR debts is more specifically described as follows:

(1) The debt in SOR ¶ 1.a (\$932) is for a state tax lien (Tr. 38-39; GE 3 at 1; GE 4 at 4). Applicant was unaware of this delinquent debt until April 2008 (GE 9 at 1). In her SOR response, she asked for a copy of the April 2008 credit report to help her resolve the debt because this debt was not on her current credit report (GE 9 at 1). Applicant agreed she was responsible for this debt (GE 9). Applicant contacted the state and asked the state to recalculate her taxes because the tax filing did not correctly indicate her filing status as head of household (Tr. 38-39; GE 9 at 6-9, 12). She noted that the tax lien had expired (Tr. 38-39). She provided documentation supporting the dispute (Tr. 38). She expected to learn whether she owed anything in a few weeks (Tr. 38-39).

(2) Applicant denied knowing anything about the debt in SOR ¶ 1.b (\$2,990) (Tr. 39; GE 4 at 5). Applicant was unaware of this delinquent debt until April 2008 (GE 9 at 1). In her SOR response, she asked for a copy of the April 2008 credit report to help her resolve the debt because this debt was not on her current credit report (GE 9 at 1). As soon as she received the April 2008 credit report listing the debt, she contacted the creditor and the creditor promised to provide detailed information about the debt (Tr. 40). She thought that the debt might be beyond the statute of limitations if it was her debt; nevertheless, she promised to resolve the debt (Tr. 41).

(3) On April 11, 2009, Applicant made the last payment to settle the debt in SOR ¶ 1.c (\$2,118) for \$1,350 (Tr. 41-43; GE 2 at 10; GE 4 at 6; GE 9 at 1, 17).

(4) Applicant did not know anything about the debt in SOR ¶ 1.d (\$613) (Tr. 43; GE 4 at 6). This debt appears on the April 2008 credit report (GE 5). She was overseas from the time the account was opened to the time it was reported (Tr. 43). Applicant was unaware of this delinquent debt until April 2008 (GE 9 at 1). In her SOR response, she asked for a copy of the April 2008 credit report to help her resolve the debt because this debt was not on her current credit report (GE 9 at 1). She has not yet contacted the creditor because she just received the April 2008 credit report (Tr. 44).

(5) Applicant did not recognize the medical debts in SOR ¶¶ 1.e (\$949), 1.f (\$50), and 1.g (\$949) (Tr. 45-48; GE 4 at 10, 11, 12). SOR ¶¶ 1.e and 1.g appear to be a duplication of the same debt (Tr. 45-48). Applicant was unaware of this delinquent debt until April 2008 (GE 9 at 2). She called the creditor in SOR ¶ 1.f, and the creditor was unable to locate information about the debt (GE 9 at 2). She noted this debt was not on her current credit report (GE 9 at 2). She left two messages for the creditor in SOR ¶¶ 1.e and 1.f in the last two weeks; however, she has not received a response from the creditor (Tr. 45-46). If she can obtain sufficient supporting documentation, and the debts appear to be valid, she planned to submit the medical debts to TRICARE for payment (Tr. 47).

(6) Applicant had an account with a telephone company listed in SOR ¶ 1.h (\$281) that apparently became delinquent after she moved overseas (Tr. 49; GE 4 at 11). Applicant knew she had a debt on her credit report to a collection agency for \$281 (GE 1 at 44). Applicant was unaware of the source of delinquent debt (telephone company bill) until April 2008 (GE 9 at 2). She contacted the original creditor, and the

original creditor had no record of her account. She also contacted the collection agent; however, they could not locate the debt either without information from the April 2008 credit report (GE 9 at 2). In her SOR response, she asked for a copy of the April 2008 credit report to help her resolve the debt because this debt was not on her current credit report (GE 9 at 1). Two weeks before her hearing, she received the April 2008 credit report (GE 5). After she received the April 2008 credit report (GE 5), she contacted the creditor to validate the debt (Tr. 49).

(7) Applicant had an account with the credit card company listed in SOR ¶ 1.i (\$5,793) with a limit of \$500 (Tr. 50-51; GE 4 at 11; GE 9 at 2). She thought her former husband may have had an account with the same company and generated the debt (Tr. 51). Applicant was unaware of this delinquent debt until April 2008 (GE 9 at 2). She contacted the creditor, and the creditor had no record of her account (GE 9 at 2). The creditor said they needed the April 2008 credit report to assist in locating the debt. In her SOR response, she asked for a copy of the April 2008 credit report to help her resolve the debt because this debt was not on her current credit report (GE 9 at 2). She asked the credit card company for information about the debt; however, she did not receive a reply (Tr. 51-52).

(8) Applicant did not recognize the creditor's name in SOR ¶ 1.j (\$4,589) (GE 9 at 2). Applicant was unaware of this delinquent debt until April 2008 (GE 9 at 2). In her SOR response, she asked for a copy of the April 2008 credit report to help her resolve the debt because this debt was not on her current credit report (GE 9 at 2). She did not get a chance to contact the creditor for the reasons explained previously (Tr. 36-37, 41, 50, 52-53; GE 4 at 13).

(9) Applicant agreed that she had a telecommunications account with the creditor listed in SOR ¶ 1.k (\$1,035) (Tr. 53; GE 4 at 13; GE 9 at 3). After Applicant moved, her husband kept an account with the creditor (GE 9 at 2). Applicant was unaware of this delinquent debt until March 2008 (GE 1; GE 9 at 2). She called the creditor; however, the creditor was unable to locate the account and thought the April 2008 credit report might have a good account number (GE 9 at 3). In her SOR response, she asked for a copy of the April 2008 credit report to help her resolve the debt because this debt was not on her current credit report (GE 9 at 3). At her hearing, Applicant said her husband had documentation proving this debt was paid (Tr. 54).

Applicant thought she could pay the debts without the assistance of a credit counselor (Tr. 55-56). Applicant's experience as a contract representative and budget analyst provided her with the skills to prepare a budget.

Applicant's credit report, dated February 24, 2009, shows eight debts in "pays as agreed" status: (1) a vehicle loan of about \$23,000 with a monthly payment of \$592 (GE 9 at 23); (2) a vehicle loan of about \$29,000 with a monthly payment of \$537 (GE 9 at 25); (3) a student loan of about \$5,000 with monthly payments of \$35 (GE 9 at 26); (4) a student loan of about \$1,800 with monthly payments of about \$20 (GE 9 at 26); (5) a credit card debt of about \$370 with monthly payments of about \$35 (GE 9 at 29), (6) a

revolving department store account of about \$200 (GE 9 at 31), (7) a credit card debt of about \$430 with a monthly payment of \$30 (GE 9 at 32), and (8) a credit card debt with a balance of about \$500 (GE 9 at 25).

Applicant provided letters showing payment of six non-SOR creditors (listed as delinquent on credit reports), with accounts resolved on July 31, 2007, October 28, 29 and 30, 2008, November 24, 2008, and February 16, 2009 (GE 2 at 2, 11, 12, 13-14, 15; GE 9 at 5, 11, 13, 14, 15, 16). Applicant's credit report, dated February 24, 2009, corroborates her other evidence about paying several paid debts after charge off or paid after repossession (GE 9 at 23, 31-32, 33). Applicant made handwritten notes on the February 16, 2009, credit report indicating "paid" to correspond with the receipts she provided for several accounts listed in the report as currently being in delinquent status (GE 9 at 5, 11, 13, 14, 15, 16).

Applicant purchased a home in February 2009 (Tr. 56-57). She has two car loans, a motorcycle loan, and three credit cards and all six accounts are current (Tr. 59-61). See credit report information, *supra*. She has not missed any payments on her vehicle loans (Tr. 62). She has sufficient funds to pay off the balance on her credit cards and the \$8,000 balance on the motorcycle; however, she prefers to make payments to establish her credit (Tr. 72-73). She provides substantial financial support to her children (Tr. 62).

Applicant's personal financial statement showed her and her husband's combined monthly gross income is about \$9,000, their monthly net income is about \$8,000, and their monthly balance remaining after paying her debts and expenses is about \$3,000 (Tr. 81-86; AE A; GE 2 at 4).

Applicant promised to resolve her debts to the creditors who provided information establishing the validity of her debts even though they are not legally collectable because of the statute of limitations (Tr. 104-105).

Policies

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

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not

inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an Applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, "Applicant's credit report was sufficient to establish the Government's prima facie case that Applicant had [] delinquent [SOR] debts that are of security concern." Applicant's history of delinquent debt is documented in her response to DOHA interrogatories, her SOR response and at her hearing. About ten years ago, she fell behind on some of her credit cards and accounts. She failed to ensure her creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

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

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

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

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct does not warrant full application of AG ¶¶ 20(a), 20(b) or 20(e) because she did not act more aggressively and responsibly to resolve her 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)). Applicant receives partial credit under AG ¶¶ 20(a) and 20(b) because her financial problems initially resulted because of her divorces, and partially because of unemployment. She receives substantial mitigating credit because her delinquent debts "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." Moreover, she established that she acted responsibly under the circumstances, when she paid or settled and paid six non-SOR delinquent SOR debts, and eight current debts were in "pays as agreed" status.² AG ¶ 20(e) does not fully apply because she did not dispute all of her SOR debts. AG ¶ 20(e) does fully apply to the two debts that were duplications of each other (SOR ¶¶ 1.e and 1.g (a medical debt for \$949)).

AG ¶ 20(c) partially applies. Applicant did not receive financial counseling and therefore this mitigating condition cannot be fully applied. However, there are "clear indications that the problem is being resolved or is under control." She understands the security implications of delinquent debt and will scrupulously avoid future delinquent debt. She has also established some, but not full mitigation under AG ¶ 20(d) because she showed good faith³ in the resolution of her SOR debts.

Applicant should have been more diligent and made greater efforts sooner to resolve her delinquent debts. Her actions to date are insufficient to fully apply any of the

²"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

³The 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)).

mitigating conditions. However, security concerns are fully mitigated under the “Whole Person Concept,” *infra* at pages 10-11.

Whole Person Concept

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

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

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There is evidence against mitigating Applicant’s conduct. About ten years ago, several of Applicant’s debts became delinquent. Years passed without resolution of her delinquent debts. The SOR lists 11 delinquent debts (SOR ¶¶ 1.a to 1.k), totaling \$20,299. Because of a duplication, she actually had ten debts, totaling about \$19,000. She failed to keep her accounts current and she failed to maintain contact with her creditors. She failed to obtain financial counselling. After her OPM interview and receipt of DOHA interrogatories, she did not aggressively seek debt repayment or resolution, and sufficiently document her remedial efforts. These factors show some financial irresponsibility and lack of judgment. Her history of delinquent debt raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole person concept is more substantial. There is no evidence of any security violation. She is a law-abiding citizen. Her divorces, support for her five children and two periods of unemployment caused her income to significantly decline and/or her expenses to increase. Some credit card accounts or telephone/utility debts became delinquent. She moved several times, and her creditors lost track of her. Ultimately, she paid or settled and paid all delinquent accounts that she was able to validate. Her current, valid debts, such as her credit cards, two vehicle loans, and her mortgage are in “current” status. Her February 24, 2009, credit report shows eight “pays as agreed” determinations. She provided receipts showing the derogatory determinations on this credit report were resolved through

payment of her creditors. She is now diligently working to determine the validity of the remaining SOR debts. She and her husband have ample income to pay any SOR debts that are valid. The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his 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 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is 42 years old. She has achieved some important educational goals, demonstrating her self-discipline, responsibility and dedication. She is working on her masters of business administration degree. She has worked for the government overseas as a contract administrator and more recently as a budget analyst. She understands how to budget and what she needs to do to establish her financial responsibility. Years ago, she made mistakes, and her or her former husband’s debts became delinquent. She compounded those mistakes by failing to act more aggressively to resolve her debts after her OPM interview. There is, however, simply no reason not to trust her. Moreover, she has established a “meaningful track record” of debt payments by actually paying six non-SOR delinquent debts and a substantial delinquent SOR debt. Most importantly, she is paying her mortgage, two car loans, a motorcycle loan, and three credit cards as agreed. She is diligently endeavoring to determine whether any remaining SOR debts are valid. She credibly promised to pay any valid, remaining SOR debts, even if they are not legally collectible because of the State six-year statute of limitations for judicial enforcement of contracts. These factors show responsibility, rehabilitation, and mitigation. She has demonstrated her loyalty, patriotism and trustworthiness through her service to the Department of Defense as a defense contractor. 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

Subparagraphs 1.a to 1.k: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

Mark W. Harvey
Administrative Judge