



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



In the matter of: )  
 )  
----- ) ADP Case No. 09-02388  
SSN: ----- )  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 28, 2010

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant failed to mitigate trustworthiness concerns regarding her history of delinquent debts under Guideline F (financial considerations). She failed to adequately mitigate two of the three debts listed on her statement of reasons (SOR). Applicant's eligibility to occupy a public trust position is denied.

**Statement of the Case**

On November 30, 2008, Applicant completed a Questionnaire for Public Trust Positions (SF 85P) (Government Exhibit (GE) 1). On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her (hearing exhibit (HE) 3), 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 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) (HE 3). 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 (HE 3). DOHA recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked.

On September 21, 2009, Applicant responded to the SOR allegations (HE 4). On October 15, 2009, Department Counsel indicated he was ready to proceed. On November 13, 2009, and January 6, 2010, DOHA issued hearing notices (HE 1, 2). Her hearing was delayed from the scheduled date of December 14, 2009, at Applicant's request (Transcript (Tr.) 14-15; Applicant's Exhibit (AE) F, G). Applicant agreed to proceed with her hearing on January 8, 2010 (Tr. 14-15). Her hearing was held as scheduled on January 8, 2010, using video teleconferencing. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Tr. 17-18), and Applicant offered seven exhibits (Tr. 19-21; AE A-G). There were no objections, and I admitted GE 1-3 (Tr. 18), and AE A-G (Tr. 21-22). Additionally, I admitted the SOR, response to the SOR, and hearing notices (HE 1-4). I received the transcript on January 15, 2010. On January 20, 2010, Department Counsel forwarded AE H to N to me without objection, and I admitted AE H to N into evidence. I closed the record on January 21, 2010.

### **Findings of Fact<sup>1</sup>**

Applicant denied the debt in SOR ¶ 1.a (\$1,340) and admitted the debts in SOR ¶¶ 1.b (\$15,082) and 1.c (\$11,861) in her SOR response (HE 4). Her admissions are accepted as findings of fact.

Applicant is a 39-year-old employee of a defense contractor (Tr. 5). She is a medical appointment clerk, which is a public trust position (Tr. 7). She has been continuously employed as a medical appointment clerk from December 2008 to the present (Tr. 32; GE 1). From June 2007 to November 2008, she was primarily unemployed; however, she also held temporary employment jobs from June 2007 to November 2008 (Tr. 24; GE 1). She earned about \$12,000 from her temporary employment during that 18 month period (Tr. 25). From September 2002 to June 2007, she worked as a customer service and billing supervisor (Tr. 25-26; GE 1). She has never served in the military (GE 1).

In 1989, Applicant earned a graduate equivalency diploma (GED) (Tr. 5). She received some technical training as a certified nursing assistant (Tr. 5-6).

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

Applicant married her spouse in 1988 (Tr. 22; GE 1). She has three children, who were born in 1992, 1996, and 2007 (Tr. 23; GE 1). Her husband has been employed at the same corporation since 1989 (Tr. 23).

Applicant's file lists one situation where she left employment under adverse circumstances (GE 1). In June 2007, she was fired because she was unable to perform new job requirements in the area of accounting (Tr. 26; GE 1). There is no evidence of adverse 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 November 30, 2008, SF 85P, she disclosed that she had three debts currently delinquent over 180 days, and listed those debts in SOR ¶¶ 1.b and 1.c (GE 1). She also disclosed a hospital bill, and a judgment issued in April 2008 (GE 1).

### **Financial considerations**

Applicant's SOR listed 3 delinquent debts totaling \$28,283. The specific amounts and status of those debts are as follows:

**SOR ¶ 1.a (\$1,340)—PAID.** This debt related to Applicant's credit union account. On December 5, 2008, she established a payment plan and agreed to pay the creditor \$75 a month beginning on December 30, 2008 (Tr. 47). As of September 21, 2009, all payments were made and her balance was \$600.35 (AE A). She missed her payment for December because of Christmas (Tr. 47-48). She planned to make a double, catch-up payment after her hearing (Tr. 48-49). On January 9, 2010, she paid \$515.30 resolving this debt (AE L).

**SOR ¶ 1.b (\$15,082)—PAYMENT PLAN INITIATED.** This debt related to a credit card account, and a law firm was handling the collection (Tr. 63; HE 4). The account was in Applicant's name alone, and her husband has not helped her with the debt (Tr. 55). On April 20, 2009, the law firm obtained a judgment (Tr. 50; AE B). She communicated with the creditor in November 2009 about a payment plan (Tr. 51). A December 7, 2009, letter from the creditor indicates she owes \$16,565, and interest was accruing at the rate of 28% annually (AE B).<sup>2</sup> The creditor confirmed a conversation with Appellant that she will pay \$400 monthly beginning on December 28, 2009 (AE B). Payment of \$4,802 annually would be interest only and would not reduce the principal owed on her debt (Tr. 52). On December 30, 2009, she made her first \$400 payment (Tr. 51-52; AE M—money order).

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<sup>2</sup>She believed the true interest rate was much lower, and intended to check the judgment itself for the interest rate (Tr. 53).

**SOR ¶ 1.c (\$11,861)—PAYMENT PLAN INITIATED.** This debt related to a credit card, and a collection company was handling the collection (Tr. 56; HE 4). On May 27, 2009, the creditor obtained a judgment for \$13,869 (AE C). The creditor obtained \$255.75 from Appellant through a garnishment (AE C). On December 10, 2009, Appellant agreed to pay \$250 monthly on a settlement amount of \$13,852 starting January 31, 2010 (AE C). No interest payments are required as long as she makes her payments (Tr. 57). The interest rate on the balance is 6.9% per annum, or \$955 annually on the current balance, if she misses a payment (AE C). An employee of the creditor orally advised Appellant that if she made a few payments the total amount of the debt would be reduced (Tr. 58).

Appellant's joint 2006 federal income tax return showed adjusted gross income of \$117,951, taxes withheld of \$14,008, and a refund of \$3,422 (AE N at 13, 14). Appellant's 2007 federal income tax return showed adjusted gross income of \$150,326, taxes withheld of \$22,036, and a refund of \$328 (AE N at 15-16). Appellant's income was increased because \$29,866 was withdrawn from a pension fund (AE N at 17).<sup>3</sup>

Appellant's joint 2008 federal income tax return showed wages of \$75,043, adjusted gross income of \$106,089, taxes withheld of \$9,397, and a refund of \$8,431 (AE N at 17). Appellant's income was increased because she had a \$43,077 capital gain (AE N at 18). Her income was also decreased because they took a \$20,816 write-off from their rental property (AE N at 17-18).<sup>4</sup>

Applicant's youngest child was born seven months premature, and he required substantial medical assistance to survive (Tr. 27). She had \$2,600 in medical expenses that her medical insurance did not cover (Tr. 28, 30). In 2007, when one of her children was 11 years old, he had serious medical problems (Tr. 28; AE K at 2). He had considerable bleeding and lost 27 pounds (Tr. 28; AE K at 2). He was hospitalized for 15 days (Tr. 29; AE K at 1-2). The family had medical insurance, and these medical problems occurred during Applicant's period of unemployment (June 2007 to November 2008) (Tr. 30). Applicant said her husband's salary was \$60,000 per year while she was unemployed (Tr. 31-32).

Applicant's net monthly salary after deductions is about \$2,000 (Tr. 32). Before October 2009, her monthly salary was about \$1,300 (Tr. 32). Her husband's net salary is about \$3,800 (Tr. 33). Their monthly expenses are about \$4,000, leaving about \$1,100 to address her delinquent debts (Tr. 39-40). Their largest payment is their mortgage of \$2,450 (Tr. 40). Applicant and her husband's names are on the mortgage (Tr. 46). Her husband's monthly motorcycle payment is \$270 (Tr. 35). After deducting her monthly SOR debt payments of \$650, her approximate remainder is about \$1,275

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<sup>3</sup> I did not draw any adverse inference from Appellant's failure to explain the disposition of this pension money, or how or if it must be repaid to the pension account.

<sup>4</sup> I did not draw any adverse inference from Appellant's failure to explain \$43,077 received from a capital gain or the \$20,816 write off from the family rental property. The documentation from the closing on the rental property was not offered as an exhibit.

(Tr. 41). She plans to pay \$400 to the creditor in SOR ¶ 1.b, and \$250 to the creditor in SOR ¶ 1.c (Tr. 35). Her husband's retirement account contains about \$70,000 (Tr. 38).

Applicant and her husband maintain separate accounts (Tr. 41). She does not have access to her husband's account (Tr. 43). He makes the house and motorcycle payments (Tr. 43-44).

Applicant pays for daycare (about \$500 per month), food (about \$600 per month), gas for her car (about \$150 per month), electricity, and school lunches (\$40 per month) (Tr. 43-44). Appellant has about \$20 left in her account at the end of the month (Tr. 44-45). When she runs out of money, her husband gives her some additional money (Tr. 45). She is taking responsibility for making the payments on the SOR debts (Tr. 46).

Applicant paid her debt for physical therapy (AE J). Resolution of this debt makes an additional \$50 available each month (AE J).

Appellant lived in the same house for 12 years (Tr. 36). They decided to build a new house and rent out their current house (Tr. 36). The tenants stopped paying the rent and they sold their rental house for about what was owed on it (Tr. 36). The sale resolved a mortgage debt of about \$100,000 (Tr. 62; GE 3 at 3). The mortgage was about four months behind at closing (Tr. 62). Closing on their rental house was in October 2008 (Tr. 37). They had to bring money to the closing (AE K at 2). They had problems with their builder (Tr. 42). They obtained a judgment against the builder for \$168,000; however, they have not received any money from him (Tr. 54; AE K). There is little hope that they will recover any funds from the builder (Tr. 55).

Applicant's new home had a fire in April 2009 (Tr. 59). Their insurance company paid \$150,000 for repairs, and \$20,000 for damaged furniture (Tr. 60). The insurance check was deposited into her husband's account (Tr. 61). Applicant fell and had pain in her back and hip (AE K at 3). She cannot afford physical therapy and must exercise at home (AE K at 3).

Applicant has not received credit counseling (Tr. 59). The unusual circumstances that caused her debts were unemployment and medical issues (Tr. 65). She summarized her situation:

I know my financials are a mess. I know there ha[ve] been times the last couple of years I have preferred to bury my head in the sand instead of facing them, because it was hard to face. I am a hard-working and honest person. I will do my best to get these paid off. I haven't filed for bankruptcy just to get rid of them, because I know that they're my obligation. (Tr. 66).

Applicant describes herself as frugal and conscientious (AE K at 3). She avoids spending money on non-essentials and luxury items (AE K at 3). She believes she has payment plans in place to resolve her financial problems (AE K).

The manager of Appellant's department lauded her performance, integrity, loyalty, professionalism, and contributions to the mission (AE D). If Applicant is not permitted to continue her work, it will be a great loss for her department and community (AE D).

A supervisor of Appellant's work, described her as a top performer, who is taking corrective action (AE E). She is a focused, steadfast, and valued member of the contractor's team (AE E). She is trustworthy and conscientious (AE E).

### **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 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 (4<sup>th</sup> 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, “It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.” ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) (internal citation omitted). Applicant’s history of delinquent debt is documented in her credit reports, her SOR response, and her statement at her hearing. Two of her SOR debts were delinquent for a substantial period. 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 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)). As indicated previously, the SOR listed three delinquent debts. She paid the debt in SOR ¶ 1.a (\$1,340). She has payment plans on the two judgments in SOR ¶¶ 1.b (SOR-\$15,082; now-\$16,565) and 1.c (SOR-\$11,861; now-\$13,869). Despite initiating payment plans, Applicant has only made one \$400 payment on one of these two debts, and will not make her first payment on the other debt until the end of January 2010. Her failure to take more timely action on these



two large debts continues to cast doubt on her current reliability, trustworthiness, and good judgment.

Applicant receives partial credit under AG ¶ 20(b) because her financial problems were aggravated when she was unemployed, she had a premature baby, her builder failed to complete the contract, her builder used substandard materials, her builder did not pay the judgment she and her husband obtained, her house was seriously damaged in a fire, and her 11-year-old child was hospitalized for 15 days. However, she had medical insurance and fire insurance. She did not maintain contact with the creditors in SOR ¶¶ 1.b and 1.c.<sup>5</sup> She contacted the creditor in SOR ¶ 1.b in November 2009 to set up a payment plan. She contacted the creditor in SOR ¶ 1.c after a bank garnishment of \$255.75 around November 1, 2009 (AE C).<sup>6</sup> She does not receive full mitigating credit because she did not establish that she acted with sufficient initiative and resolve to address her two delinquent debts. She did not provide sufficient documentation about her finances to meet her burden and establish that she acted responsibly for the last 12 months to establish mitigation under AG ¶ 20(b).

AG ¶ 20(c) does not fully apply. Applicant did not receive financial counseling. Although she is an intelligent and responsible person at work, she could have benefited from financial counseling. From the budget information she provided, it is unlikely that she will be able to make the necessary payments to comply with her settlement agreements. 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 faith<sup>7</sup> in the resolution of the SOR debts in ¶¶ 1.b and 1.c. She did not dispute any delinquent debts and AG ¶ 20(e) does not apply.

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<sup>5</sup>“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

<sup>6</sup> A payment made because of an involuntary garnishment results in limited mitigation because it is not voluntary repayment of a debt. See ISCR Case No. 08-06059 at 6 (App. Bd. Sept. 21, 2009).

<sup>7</sup>The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

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

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 unemployment, medical expenses, problems with her builder, and her house was seriously damaged in a fire. Balanced against these unexpected calamities are the receipt of medical and fire insurance payments, and over the period from 2006 to 2008, the family income exceeded \$100,000 each year, even though she was essentially unemployed from June 2007 to November 2008. Her SOR listed three debts. In the last 12 months, she and her husband were employed, yet they only paid about \$2,000 towards her SOR debts. She currently owes approximately \$30,000 on two SOR debts. Over the last 12 months, her SOR debts have actually increased more than she has paid them down. I am not confident she will keep her promise and pay \$650 per month for the next several years towards her two remaining SOR debts because of her insufficient track record of financial progress on her SOR debts shown over the last year.<sup>8</sup>

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

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(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)).

<sup>8</sup> The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

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 solid recommendations from her supervisor and manager. 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, and her employer. She does not abuse alcohol or illegal drugs. Her file does not contain any adverse information relating to police involvement. Her changes in employment, medical treatment for her and her children, problems with her builder, a tenant, and a fire in her current home contributed to her financial woes. She paid \$400 towards one of her SOR debts, and she paid another SOR debt for \$1,340. She has a plan to pay her two SOR debts. 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 in 2008 and were noted on her November 30, 2008, SF 85P. She described about \$3,000 in medical costs that were not covered by her medical insurance, which is insufficient to cause her financial problems. She and her husband received \$170,000 from an insurance settlement from the fire. She and her husband have been employed for the last 12 months. She had ample opportunity to contact her SOR creditors sooner and to make greater progress in the resolution of her SOR debts. She currently owes about \$30,000 on two SOR debts, and in the last 12 months has paid less than \$2,000 to address her SOR debts. One of her SOR debts is increasing at the interest rate of \$400 per month, and she has only made one \$400 payment to that creditor. I am not convinced that she will keep her two payment plans current.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b and 1.c:	Against 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.

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Mark Harvey  
Administrative Judge