DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
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	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

May 24, 2011

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On August 26, 2008, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).[1] On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued her a set of interrogatories. She responded to the interrogatories on January 25, 2010.[2] On another unspecified date, DOHA issued her another set of interrogatories. She responded to the interrogatories on January 25, 2010.[3] On April 29, 2010, DOHA issued a Statement of Reasons (SOR) to her,

[1] Government Exhibit 1 (SF 86), dated August 26, 2008.

[2] Government Exhibit 5 (Applicant's Answers to Interrogatories, dated January 25, 2010).

[3] Government Exhibit 6 (Applicant's Answers to Interrogatories, dated January 25, 2010).

pursuant to 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 and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on May 4, 2010. In a written statement, notarized on May 25, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on July 1, 2010, and the case was assigned to Administrative Judge Robert E. Coacher on July 2, 2010. A Notice of Hearing was issued on July 27, 2010, and he convened the hearing, as scheduled, on August 19, 2010. At the hearing, Applicant requested a continuance because the attorney she had hired and paid had filed for his own bankruptcy and had declined to appear on her behalf. A continuance was granted. The case was reassigned to Administrative Judge Sharon Dam on August 24, 2010. Another continuance was requested by Applicant on September 8, 2010, and it was granted on September 16, 2010. The case was reassigned to me on October 4, 2010. A Notice of Hearing was issued on November 13, 2010, and I convened the hearing, as scheduled, on December 2, 2010.

During the hearing, ten Government exhibits (GE 1-10) and ten Applicant exhibits (AE A-J) were admitted into evidence without objection. Applicant and one other witness testified on her behalf. The hearing transcript (Tr.) was received on December 7, 2010. The record was kept open until December 23, 2010, to enable Applicant to supplement the record. Applicant took advantage of that opportunity and she submitted one additional document which was admitted into evidence (AE K) without objection.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations (¶¶ 1.a. through 1.aa.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 46-year-old employee of a defense contractor, currently serving as an administrative assistant.[4] She is seeking to obtain a security clearance, the level of which has not been divulged. She is a 1983 high school graduate and a 2001 college graduate with a degree in an unspecified discipline.[5] Over the years, Applicant has held

[4] Government Exhibit 1, *supra* note 1, at 10-11.

several different positions with various employers. She was a preschool teacher from October 1999 until June 2007, and an administrative assistant from June 2007 until April 2008. She joined her current employer in May 2008.[6] Applicant has never served with the U.S. military.[7]

Applicant was married in August 1986,[8] and she and her husband have three daughters, born in 1988, 1991, and 1998, respectively.[9]

Financial Considerations

There was nothing unusual about Applicant's finances until about October 2006 when her eldest daughter became ill and was hospitalized for three or four months, commencing in September 2006.[10] Applicant took a leave of absence from work during the entire time to care for her then 18-year-old daughter, and she was at the hospital almost full-time.[11] Before October 2006, Applicant's credit was excellent.[12] However, once she took her leave of absence, Applicant's husband's income was insufficient for them to keep up with their monthly bills.[13] When Applicant returned to work, she took on reduced hours, with a reduced salary, to care for her daughter at home.[14] Some accounts became delinquent and were either placed for collection or charged off. In January 2007, one of Applicant's daughters was involved in an automobile accident, and she spent four days in the hospital.[15] Applicant took on the responsibility of paying her daughter's $58 monthly student loan payments until her daughter was able to regain her driver's license.[16]

In about July 2007, Applicant contacted a debt resolution company via the Internet and eventually, after consulting with a representative on the telephone, she signed a contract with the debt resolution company to assist her with debt consolidation

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[5] *Id.* at 10.

[6] *Id.* at 12.

[7] *Id.* at 23.

[8] *Id.* at 16-17.

[9] *Id.* at 19-21.

[10] Government Exhibit 6 (Personal Subject Interview, dated September 17, 2008), at 4, attached to Applicant's Answers to the Interrogatories; Tr. at 68.

[11] Government Exhibit 6, at 4.

[12] *Id.*

[13] *Id.*

[14] Tr. at 69.

[15] Government Exhibit 6, *supra* note 10, at 4.

[16] *Id.*

and debt resolution.[17] The agreement called for Applicant to deposit $107 in her checking account each month for the debt resolution company to contact Applicant's creditors, as well as another $107 in her savings account to build up funds sufficient to enable her to negotiate with her creditors.[18] Applicant was unable to keep setting aside those funds, and was disappointed that there were no positive results derived from the debt resolution company. Accordingly, in May 2008, after about ten months under the contract, Applicant cancelled it.[19]

Throughout 2008, Applicant worked overtime in an effort to "get ahead financially."[20] It was her intention to attempt to save enough money to pay off her small debts first and then to try to negotiate with her creditors for her larger debts and set up repayment plans.[21] Applicant contacted her creditors with the intention of some type of repayment plan, but her efforts and intentions were overcome by events.[22] Based on her salary in 2008, Applicant estimated it would take her at least two years to catch up on her delinquent debts.[23] In March 2009, when the construction industry collapsed, Applicant's husband's construction company essentially shut down, and he remained unemployed until January 2010, when he returned to work with a reduced income.[24]

On October 6, 2009, Applicant and her husband engaged the services of a bankruptcy attorney to provide them with legal counsel and representation in the filing of a joint petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, as well as a pre-bankruptcy review, credit counseling, and a financial management course.[25] The entire legal fee for such services was $2,590, plus $299 filing fee, of which $1,000 was non-refundable.[26] Applicant paid the attorney $2,850 plus another $300 for the filing fee.[27] Included in her payment was $600 in cash as a retainer.[28] On October 11, 2009, a certified financial counselor sent Applicant her bankruptcy briefing packet and

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[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 4-5.

[22] *Id.* at 78-79.

[23] *Id.* at 4.

[24] Tr. at 69, 74.

[25] Applicant Exhibit A (Chapter 7 Fee Agreement – Bankruptcy and Mandatory Pre-Bankruptcy Review, dated October 6, 2009).

[26] *Id.* at 2.

[27] Applicant Exhibit C (Applicant's Letter to the state bar, dated November 23, 2010), attached to her complaint against her former bankruptcy attorney; Tr. at 71.

[28] Applicant Exhibit A (Receipt, dated October 6, 2009), attached to the Chapter 7 Fee Agreement.

financial counseling materials, including a financial assessment with current and proposed budget, a customized action plan, a briefing certificate, and a reference detailing Applicant's various options.[29]

In late October 2009, Applicant sought home mortgage loan modification guidance from the local urban league.[30] On the advice of her bankruptcy attorney, Applicant delayed filing for bankruptcy until the loan modification could be completed.[31] It took several months for the loan modification process, but in July 2010, Applicant's final home mortgage loan modification agreement was approved.[32]

In June 2010, Applicant's bankruptcy attorney informed Applicant:[33]

> In light of the many economic challenges afflicting our firm, after much consideration, we have decided to wind down our future operations. Rest assured that this transition will be seamless because our commitment to you and your case will not change. During the transition period, we will not be accepting any new cases. Instead, we have chosen to devote all of our time and energy to the completion of our existing cases.

In fact, although the bankruptcy attorney had already been paid in full, he performed no further professional services on Applicant's behalf, and failed to answer or return telephone calls or release Applicant's documents.[34] Instead, Applicant was approached by an out-of-state law firm that claimed it had been retained to possibly represent Applicant and would get back to her once the issue of the retainer had been resolved.[35] Attached to the letter was a form to be completed by Applicant authorizing an ACH/Direct Debit Program to enable the new law firm to withdraw funds from Applicant's bank account.[36] During the interim, and following her first attorney's advice, and presuming her delinquent accounts were in her bankruptcy, Applicant made no payments on those accounts.[37] The new law firm never said it would represent Applicant, and she was leery about giving it any money.[38] Finally, after months of

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[29] Applicant Exhibit I (Bankruptcy Briefing packet, dated October 11, 2009).

[30] Applicant Exhibit J (Loan Modification Package, dated November 11, 2009).

[31] Tr. at 70-71.

[32] Applicant Exhibit H (IndyMac Mortgage Services letter, dated July 27, 2010).

[33] Applicant Exhibit A (Letter from attorney, dated June 28, 2010), attached to the Chapter 7 Fee Agreement.

[34] Tr. at 30.

[35] Applicant Exhibit B (Letter from attorney, undated).

[36] ACH/Direct Debit Program form, attached to Applicant Exhibit B.

[37] Tr. at 72.

[38] *Id.* at 70.

waiting for a decision, the new law firm declined to handle Applicant's bankruptcy.[39] Applicant subsequently filed her complaint against the bankruptcy attorney with the state bar.[40]

In the beginning, Applicant intended to file for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code in order to pay her creditors.[41] Things did not work out as she had intended. On December 20, 2010, Applicant signed an agreement with another local bankruptcy law firm to provide Applicant and her husband with legal counsel and representation in the filing of a joint petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.[42] The entire legal fee for such services was $3,148, including $299 filing fee.[43] Applicant paid the attorney a $500 retainer, and is to make six monthly payments of $441.33, commencing on January 20, 2011.[44]

On an unspecified date in early January 2010, Applicant completed a Personal Financial Statement reflecting a net combined monthly income of $6,234.36; monthly expenses of $4,679; and debt repayments of $855.[45] She estimated she had a monthly remainder of $700.36 available for discretionary spending.[46] Applicant contends she is current on all other accounts and has not incurred any new debts since 2008.[47]

The SOR identified 27 purportedly continuing delinquencies, as reflected by credit reports from 2008,[48] 2009,[49] and 2010,[50] totaling approximately $55,121, in collection or charged-off accounts. Some accounts reflected in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly, in many instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Some accounts are identified by complete account numbers, while others are identified by

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[39] *Id.* at 72.

[40] Applicant Exhibit C, *supra* note 27; Tr. at 31.

[41] Tr. at 66.

[42] Applicant Exhibit K (Contract for Chapter 7 Bankruptcy Services, dated December 20, 2010).

[43] *Id.* at 1.

[44] *Id.*

[45] Government Exhibit 5 (Personal Financial Statement, undated), attached to Applicant's Answers to Interrogatories.

[46] *Id.*

[47] Tr. at 41.

[48] Government Exhibit 2 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 11, 2008).

[49] Government Exhibit 3 (Equifax Credit Report, dated October 29, 2009); Government Exhibit 4 (Experian Credit Report, dated October 30, 2009).

[50] Government Exhibit 7 (Equifax Credit Report, dated July 1, 2010); Government Exhibit 9 (Equifax Credit Report, dated August 13, 2010); Government Exhibit 10 (Equifax Credit Report, dated November 24, 2010).

partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits. The information reflected is not necessarily accurate or up to date.

Character References and Work Performance

Applicant's annual performance reviews for the periods of April 2008 through March 2009, and April 2009 through March 2010, reflect an employee whose overall performance rating is "high meets," the second highest rating of the five possibilities.[51] She received merit awards in 2009 and 2010,[52] as well as a promotion in 2010, with an associated salary increase of 10.04 percent.[53] A 2005 performance appraisal from a former employer rates Applicant as "very good – performance is clearly above normal job standards; consistently one of the better performers," the second highest rating of five possibilities.[54]

Applicant's supervisor (who also happens to be her sister-in-law) and coworkers are very supportive of Applicant's application for a security clearance. Applicant is considered organized, extremely competent, committed, motivated, a hard worker, friendly, reliable, efficient, cooperative, and in possession of a "strong moral compass."[55] Applicant's reputation for honesty, integrity, and trustworthiness is considered "great."[56]

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."[57] As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[58]

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[51] Applicant Exhibit D (Annual Performance Reviews, various dates).

[52] Applicant Exhibit F (Merit Award Notices, various dates).

[53] Applicant Exhibit F (Change Notice: Promotion, dated October 13, 2010).

[54] Applicant Exhibit E (Employee Performance Review, dated June 5, 2005).

[55] Applicant Exhibit G (Character references, various dates).

[56] Tr. at 104-105.

[57] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[58] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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

In the decision-making process, facts must be established by "substantial evidence."[59] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[60]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[61]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[62] Thus, nothing

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[59] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[60] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[61] *Egan*, 484 U.S. at 531

[62] *See* Exec. Or. 10865 § 7.

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 or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

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

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. As noted above, there was nothing unusual about Applicant's finances until about October 2006. Commencing in September 2006, Applicant took a leave of absence from work to care for her then 18-year-old daughter who was hospitalized. However, Applicant's husband's income was insufficient for them to keep up with their monthly bills, and when Applicant returned to work, she took on reduced hours, with a reduced salary, to care for her daughter at home. Some accounts became delinquent and were either placed for collection or charged off. All of the accounts have remained unresolved. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "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." Evidence that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows

"the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."[63]

Applicant's financial difficulties resulted from a combination of events which initially commenced in September 2006 when her eldest daughter became ill and was hospitalized for three or four months. Applicant took a leave of absence from work during the entire time to care for her daughter, but Applicant's husband's income was insufficient for them to keep up with their monthly bills. When Applicant returned to work, she took on reduced hours, with a reduced salary, to care for her daughter at home. Accounts became delinquent and were either placed for collection or charged off. Another incident occurred in January 2007, when one of Applicant's daughters was involved in an automobile accident, and she spent four days in the hospital. Applicant took on the temporary responsibility of paying her daughter's monthly student loan payments.

In about July 2007, Applicant signed a contract with the debt resolution company to assist her with debt consolidation and debt resolution. Over a period of about ten months, during which Applicant made payments to the debt resolution company, she became disillusioned that there were no positive results derived from the debt resolution company. In May 2008, she cancelled the contract.

Throughout 2008, Applicant worked overtime in an effort to "get ahead financially." It was her intention to attempt to save enough money to pay off her small debts first and then to try to negotiate with her creditors for her larger debts and set up repayment plans. Applicant contacted her creditors with the intention of some type of repayment plan, but her efforts and intentions were overcome by events. In March 2009, with the collapse of the construction industry, Applicant's husband's construction company shut down, and he remained unemployed until January 2010, when he returned to work with a reduced income.

In October 2009, in another effort to resolve her delinquent accounts, Applicant and her husband hired a bankruptcy attorney to provide them with legal counsel and representation in the filing of a joint petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. Applicant paid the attorney $3,150. Later that month, a certified financial counselor sent Applicant her a bankruptcy briefing packet and financial

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[63] The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

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

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

counseling materials, including a financial assessment with current and proposed budget, a customized action plan, a briefing certificate, and a reference detailing Applicant's various options. Following her bankruptcy attorney's advice, and presuming her delinquent accounts were in her bankruptcy, Applicant made no payments on those accounts. If everything had occurred as initially planned, Applicant's delinquent accounts would have been resolved by mid-2010. Unfortunately, in June 2010, the bankruptcy attorney went bankrupt, causing Applicant to lose the money she paid him as well as precious time with respect to the bankruptcy filing.

An out-of-state law firm was to take over Applicant's bankruptcy representation, but after months of waiting for a decision, the new law firm declined to handle Applicant's bankruptcy. In July 2010, Applicant's home mortgage loan modification agreement was approved. In December 2010, Applicant engaged another local bankruptcy law firm to file a joint petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. Applicant paid the attorney a $500 retainer, and is to make six monthly payments of $441.33, commencing on January 20, 2011. Applicant is current on all other accounts and has not incurred any new debts since 2008.

Much of what occurred was largely beyond Applicant's control and took place under such circumstances that it is unlikely to recur. Applicant received counseling for her financial problems, and there are clear indications that the problem would have been resolved in mid-2010, but is now being resolved. Applicant acted responsibly under the circumstances, and her current reliability, trustworthiness, or good judgment, are not in question. AG ¶¶ 20(a), 20(b), and 20(c), apply, and 20(d), partially applies.

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.

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.

There is some evidence against mitigating Applicant's conduct. Applicant has a history of financial delinquencies commencing in 2006, when she permitted accounts to

become delinquent and placed for collection or charged off. Those accounts remained delinquent for over four years.

The mitigating evidence under the whole-person concept is more substantial. Applicant's initial financial delinquencies were the unfortunate consequence of her daughter's illness and Applicant's efforts to care for her. Her financial difficulties continued because of her time off from work and eventual reduced salary, as well as her husband's lengthy period of unemployment due to the collapse of the construction industry. Throughout 2008, Applicant worked overtime in an effort to get ahead financially to be able to address her delinquent accounts. Applicant is current on all other accounts and has not incurred any new debts since 2008. She obtained financial guidance and counseling, and engaged attorneys to assist her in resolving her delinquent accounts. She obtained a modification of her home loan mortgage.

Applicant did not turn her back on her creditors. Instead, she followed legal advice and went the route of bankruptcy. Unfortunately, her efforts were delayed when one bankruptcy attorney declared bankruptcy, another declined to represent her, and she was forced to pay another bankruptcy attorney to represent her. I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[64] Her substantial efforts are sufficient to mitigate continuing security concerns. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[65]

> In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has " . . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

[64] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

[65] ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from her financial considerations.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	For Applicant
Subparagraph 1.x:	For Applicant
Subparagraph 1.y:	For Applicant
Subparagraph 1.z:	For Applicant
Subparagraph 1.aa:	For Applicant

Conclusion

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

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ROBERT ROBINSON GALES
Administrative Judge