



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



In the matter of:)
)
-----) ISCR Case No. 10-06468
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

September 23, 2011

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On January 20, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On February 2, 2011, the Defense Office of Hearings and Appeals (DOHA) issued her a set of interrogatories. She responded to the interrogatories on March 6, 2011.² On April 15, 2011, DOHA issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative*

¹ Item 5 (SF 86), dated January 20, 2010.

² Item 6 (Applicant's Answers to Interrogatories, dated March 6, 2011).

Guidelines for Determining Eligibility For Access to Classified Information (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. 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 April 21, 2011. In a sworn statement, dated May 5, 2011,³ Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on June 2, 2011, and she was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on June 14, 2011, and any response was due on July 14, 2011. She apparently chose not to submit any additional documentation, as none was received by the due date. The case was assigned to me on August 29, 2011.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.k.) of the SOR. Those 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 55-year-old employee of a defense contractor, currently serving as management analyst II,⁴ and she is seeking to retain a security clearance, the level of which has not been described. She previously had a security clearance with access to sensitive compartmented information (SCI) since August 1994.⁵ She has never served in the U.S. military.⁶ She is a May 1975 high school graduate.⁷ In early 1997, Applicant was employed by a company, earning about \$14 per hour, when she was laid off.⁸ She joined her current employer in July 1997,⁹ and commencing in November 2007, she has

³ Item 4 (Applicant's Answer to the SOR, dated May 5, 2011).

⁴ Item 5, *supra* note 1, at 13.

⁵ *Id.* at 30-31.

⁶ *Id.* at 15.

⁷ Item 6 (Personal Subject Interview, dated February 17, 2010) at 1, attached to Applicant's Answers to the Interrogatories.

⁸ Item 4, *supra* note 3, at 1.

⁹ Item 5, *supra* note 1, at 13.

also worked part-time with another employer.¹⁰ Applicant was married in May 1984,¹¹ separated in 1997,¹² and divorced in June 2009.¹³ She has one child of that marriage, a son born in August 1989.¹⁴ Applicant has resided with her fiancé since June 1999.¹⁵

Financial Considerations

(SOR ¶ 1.a.): Applicant first started to experience financial difficulties in 1997, as a result of a combination of circumstances. She lost her job, was recently separated from her husband, and was only receiving \$350 in monthly child support to support their son.¹⁶ In February 1997, a foreclosure action was filed against Applicant's property in the state court.¹⁷ The foreclosure was granted in January 1998, and possession of the property was awarded to the plaintiff.¹⁸

(SOR ¶ 1.b.): In March 1998, a summons was issued against Applicant charging her with two counts of uttering a bad or non-sufficient funds check under \$300.00. In April 1998, another summons was issued against her charging her with an additional count of uttering a bad or non-sufficient funds check under \$300.00.¹⁹ In October 1999, another summons was issued against Applicant charging her with two additional counts of uttering a bad or non-sufficient funds check under \$300.00.²⁰ Applicant acknowledged issuing the checks, but denied that her actions were intentional.²¹ The disposition of the cases has not been described. She claimed she made her checks "good" when she learned of them, but has offered no documentary evidence, such as receipts or cancelled checks, to support her claim.

¹⁰ Item 5, *supra* note 1, at 18-19.

¹¹ *Id.* at 19.

¹² Applicant's Answer to the FORM, *supra* note 7, at 1.

¹³ Item 5, *supra* note 1, at 13, 15.

¹⁴ *Id.* at 22.

¹⁵ *Id.* at 11.

¹⁶ Item 4, *supra* note 3, at 1. Applicant offered no other details pertaining to when she lost her job; the duration of her period of unemployment; whether she had received any unemployment compensation, and if so, how much and for how long; when she separated from her husband; and when she fell behind in her monthly mortgage payments.

¹⁷ Item 7 (Case Information, dated April 1, 2011), at 1.

¹⁸ *Id.* at 2.

¹⁹ Item 8 (Case Information, dated April 1, 2011), at 1-3.

²⁰ *Id.* at 5.

²¹ Item 4, *supra* note 3, at 1. Applicant offered no other details pertaining to the circumstances of the dishonored checks, including any explanation as to why her checking account was not sufficient to cover the checks.

(SOR ¶ 1.c.): In July 2007, Applicant financed the purchase of a residence with a mortgage loan in the amount of \$262,140.²² In late 2009, Applicant fell behind in her monthly mortgage payments, and by February 2010, the account was 90 days past due.²³ The history of the events furnished by Applicant is somewhat confusing, for she claimed she obtained a mortgage modification when her monthly payment increased from \$1,591 to \$1,941; did the modification for three months at \$1,641 per month; and then her monthly payment increased to \$2,300.²⁴ Applicant has offered no documentary evidence regarding the mortgage modification process and purported results. Applicant indicated an inability to afford any monthly payment in excess of \$1,300, claiming that she had to support her son's college expenses without any financial assistance from her ex-husband.²⁵ In June 2010, a foreclosure action was filed against Applicant's property in the state court.²⁶ The foreclosure was granted and the property was sold at auction in September 2010.²⁷ As of May 2011, Applicant was still residing in the residence, and indicated she would be "vacating the premises soon."²⁸

(SOR ¶ 1.d.): Applicant had a retail store charge account which she claimed she opened in 2009.²⁹ In fact, the account was opened in May 2008.³⁰ She used the account to purchase Christmas gifts.³¹ The high credit was \$3,000, and as of February 2010, the balance was \$1,319, with a past due amount of \$160.³² Applicant acknowledged the account became delinquent when she had to pay for her son's college expenses rather than paying this individual account.³³ The balance was charged off in December 2010.³⁴ Applicant indicated she would pay off the account in March 2010.³⁵ In May 2011, she contended she had made one payment and was in the

²² Item 11 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 4, 2010), at 7.

²³ *Id.*

²⁴ Item 4, *supra* note 3, at 1.

²⁵ *Id.*

²⁶ Item 9 (Case Information, dated April 1, 2011), at 1.

²⁷ *Id.* at 3.

²⁸ Item 4, *supra* note 3, at 1.

²⁹ Item 6, *supra* note 7, at 4.

³⁰ Item 11, *supra* note 22, at 13.

³¹ Item 6, *supra* note 7, at 4.

³² Item 11, *supra* note 22, at 13.

³³ Item 6, *supra* note 7, at 4.

³⁴ Item 10 (Equifax Credit Report, dated February 1, 2001), at 1.

³⁵ Item 6, *supra* note 7, at 4.

process of making monthly payments,³⁶ but has offered no documentary evidence, such as receipts or cancelled checks, to support her contention.

(SOR ¶ 1.e.): There is a department store charge account which was opened in December 2007. She used the account to purchase household items.³⁷ The account became \$660 delinquent in December 2009, when it was closed and charged off.³⁸ Applicant acknowledged the account became delinquent when she had to pay for her son's college expenses rather than paying this individual account.³⁹ Applicant indicated she would pay off the account in April 2010.⁴⁰ Applicant entered into a repayment agreement with the creditor in March 2011, and, commencing March 8, 2011, was to make monthly payments of \$55 for 11 months and one payment of \$55.13.⁴¹ She has offered no documentary evidence, such as receipts or cancelled checks, to support her contention that timely payments have been made since March 2011.⁴²

(SOR ¶ 1.f.): There is a department store charge account which was opened in November 2007. Applicant purchased Christmas gifts using the card.⁴³ The account became delinquent with \$266 past due on an \$818 balance in July 2009, when it was closed by the credit grantor.⁴⁴ Applicant acknowledged the account became delinquent when she had to pay for her son's college expenses rather than paying this individual account.⁴⁵ The account was eventually sold or transferred to a collection agency. In March 2011, Applicant called the collection agency and set up repayment arrangements.⁴⁶ Under the agreement, commencing March 8, 2011, she was to make monthly payments of \$84.69 through a "check by phone system" for 12 months.⁴⁷ The first payment was received on March 8, 2011, as confirmed by the collection agency,⁴⁸ but Applicant has offered no documentary evidence, such as receipts or cancelled

³⁶ Item 4, *supra* note 3, at 1.

³⁷ Item 6, *supra* note 7, at 4.

³⁸ Item 11, *supra* note 22, at 15.

³⁹ Item 6, *supra* note 7, at 4.

⁴⁰ *Id.*

⁴¹ Item 6 (Letter from Creditor, dated March 8, 2011), attached to Applicant's Answers to the Interrogatories.

⁴² It should be noted that Applicant submitted an extract of an online banking account that reflects a \$55 charge being made on March 10, 2011 to pay an unspecified bill. See Item 6 (Account Details & History, dated March 16, 2011), at 1, attached to Applicant's Answers to the Interrogatories.

⁴³ Item 6, *supra* note 7, at 3.

⁴⁴ Item 11, *supra* note 22, at 9.

⁴⁵ Item 6, *supra* note 7, at 3.

⁴⁶ Item 6 (E-mail from Creditor, dated March 8, 2011), attached to Applicant's Answers to the Interrogatories.

⁴⁷ *Id.*

⁴⁸ *Id.*

checks, to support her contention that timely payments have been made continuously since March 2011.

(SOR ¶ 1.g.): There is a bank credit card account which was opened in October 2008. Applicant purchased tires for her automobile using the card.⁴⁹ The account became delinquent with \$96 past due on a \$3,328 balance in July 2009, when it was closed by the credit grantor.⁵⁰ Applicant acknowledged the account became delinquent when she had to pay for her son's college expenses rather than paying this individual account.⁵¹ The account was eventually sold or transferred to a collection agency, and the balance increased to \$3,610.⁵² Applicant initially contended that she paid of the account, and that as of February 2010, it had a zero balance.⁵³ She subsequently altered her position, and now contends she has started making monthly payments to the collection agency. It is unclear if the payments are under an agreed repayment plan approved by the collection agency. She submitted documentary evidence of one payment, in the amount of \$150.41, made to that collection agency on March 10, 2011.⁵⁴ Applicant has offered no documentary evidence, such as receipts or cancelled checks, to support her recent contention that timely payments have been made continuously since March 2011.

(SOR ¶ 1.h.): Applicant obtained a \$10,998 student loan for her son through a bank in September 2007.⁵⁵ By December 2009, the loan was reported as deferred with \$1,566 past due 180 days.⁵⁶ The bank subsequently changed its name. The account was placed for collection with an education loan collection agency, and by January 2011, the past due balance had increased to \$15,903.⁵⁷ Applicant acknowledged the account became delinquent when she had to pay for her son's college expenses rather than paying this individual account.⁵⁸ She acknowledged that she had not made any payments, but contended that in March 2011, she sought a loan modification with the original lender.⁵⁹ Applicant has offered no documentary evidence, such as an approved modification agreement, a deferment agreement, receipts or cancelled checks, to

⁴⁹ Item 6, *supra* note 7, at 3.

⁵⁰ Item 11, *supra* note 22, at 9.

⁵¹ Item 6, *supra* note 7, at 3.

⁵² Item 10, *supra* note 34, at 2.

⁵³ Item 6, *supra* note 7, at 3.

⁵⁴ Item 6 (Account Details & History), *supra* note 42, at 1.

⁵⁵ Item 11, *supra* note 22, at 12, wherein it appears the loan was obtained in 2007. *But see* Item 6, *supra* note 7, at 4, wherein it appears the loan was obtained in 2009.

⁵⁶ *Id.* Item 11.

⁵⁷ Item 10, *supra* note 34, at 2.

⁵⁸ Item 6, *supra* note 7, at 4.

⁵⁹ Item 6, *supra* note 2, at 13.

support her recent contention that either a modification or a deferment had been approved, or that timely payments have been made continuously since March 2011.

(SOR ¶ 1. i.): Applicant financed the purchase of an automobile in November 2007.⁶⁰ By January 2010, the account had become 180 days past due, in the amount of \$7,664, with a balance of \$7,668.⁶¹ The balance was charged off and the account was closed in January 2010.⁶² The account was apparently transferred or sold to a debt purchaser. Applicant acknowledged the account became delinquent when she had to pay for her son's college expenses rather than paying this individual account.⁶³ In February 2010, Applicant stated she was "currently working out a consolidation loan with [another bank] and planned (sic) on having it paid off in full in [March] 2010."⁶⁴ In March 2011, Applicant contended she had made her first payment of \$100 to the new holder of the debt.⁶⁵ She submitted a money order, in the amount of \$100, dated March 9, 2011, made to the order of the debt collector, to demonstrate her initial payment.⁶⁶ In May 2011, Applicant claimed to be making continuing monthly payments, of an unspecified amount, on unspecified dates, but she has offered no documentary evidence, such as receipts or cancelled checks, to support her contention that timely payments have been made continuously since March 2011.⁶⁷

(SOR ¶ 1. j.): In February 2006, Applicant and her boyfriend financed the purchase of a residence with a mortgage loan in the amount of \$92,800.⁶⁸ In December 2009, Applicant fell behind in her monthly mortgage payment, and by February 2010, the account was 30 days past due on a balance of \$88,249.⁶⁹ Applicant's boyfriend had lost his job and moved to another state, leaving Applicant unable to make the monthly payment.⁷⁰ The bank notified Applicant that the foreclosure process had started, and in November 2010, Applicant's check in the amount of \$1,987.52 was returned because it did "not represent the total amount due" on the account.⁷¹ In May 2011, Applicant stated

⁶⁰ Item 11, *supra* note 22, at 7. Applicant contended the account was actually a credit card that she used to pay for home repairs. See Item 6, *supra* note 7, at 2.

⁶¹ *Id.*

⁶² Item 11, *supra* note 22, at 7.

⁶³ Item 6, *supra* note 7, at 3.

⁶⁴ *Id.*

⁶⁵ Item 6, *supra* note 2, at 13.

⁶⁶ Item 6 (Money Order, dated March 9, 2011), attached to Applicant's Answers to the Interrogatories.

⁶⁷ Applicant said the debt collector had refused to furnish her with receipts. See Item 6, *supra* note 2, at 13.

⁶⁸ Item 11, *supra* note 22, at 13.

⁶⁹ *Id.*

⁷⁰ Item 4, *supra* note 3, at 2.

⁷¹ Item 6 (Letter from Bank, dated November 1, 2010), at 62, attached to Applicant's Answers to the Interrogatories.

she was “going to do a loan modification,” but had to wait until she had completed her taxes in May 2011.⁷² She denied the loan had gone to foreclosure.⁷³ Applicant has offered no documentary evidence, such as a loan modification application or loan modification agreement, to support her contentions.

(SOR ¶ 1.k.): Applicant obtained a student loan for an unspecified amount for her son during an unspecified period. The SOR alleged a loan with the U.S. Department of Education was placed for collection, in the approximate amount of \$7,262, on an unspecified date. Applicant admitted those facts, but stated she believed the loan was to be deferred and that the lender had already furnished her with the forms to complete in order to apply for a deferment.⁷⁴ The 2010 credit report refers to only one student loan with the identified creditor, and as of December 2009, that loan, with a balance of \$4,860, was reported as deferred with \$713 past due 180 days.⁷⁵ The 2011 credit report also refers to the same creditor, and as of December 2010, that student loan, with a balance of \$5,776, was reported as in collection with a past due balance of \$5,776.⁷⁶ By March 2011, the account balance had increased to \$7,262, with a principal balance of \$4,933, interest of \$907.60, and fees and costs of \$1,421.60.⁷⁷ Applicant and the creditor entered into a repayment agreement on her “defaulted” account, and her initial \$83 payment was due by March 8, 2011, followed by regular monthly payments.⁷⁸ Applicant made that initial payment,⁷⁹ but has offered no documentary evidence, such as receipts or cancelled checks, to support her contention that timely payments have been made continuously since March 2011.

On January 20, 2010, when Applicant completed and submitted her SF 86, she responded to questions in Section 26 thereof, inquiring about her financial record.⁸⁰ Among the questions were inquiries regarding accounts in collection, defaults on loans, delinquencies on any Federal debts, and 90-or 180-day delinquencies on any debts. Applicant responded “no” to each question, despite her knowledge that the debts identified in the SOR fell within the categories inquired about.⁸¹ The investigator from the U.S. Office of Personnel Management (OPM) attributed Applicant’s failure to properly answer the questions to “oversight.”⁸²

⁷² Item 4, *supra* note 3, at 2.

⁷³ Item 6, *supra* note 71, at 62.

⁷⁴ Item 4, *supra* note 3, at 2.

⁷⁵ Item 11, *supra* note 22, at 11.

⁷⁶ Item 10, *supra* note 34, at 2.

⁷⁷ Item 6 (Letter from Creditor, dated March 9, 2011), attached to Applicant’s Answers to the Interrogatories.

⁷⁸ *Id.*

⁷⁹ Item 6, *supra* note 54, at 40.

⁸⁰ Item 5, *supra* note 1, at 32-34.

⁸¹ *Id.*

In March 2011, Applicant completed a personal financial statement reflecting net monthly income of \$4,215.11; total monthly expenses of \$1,500; and monthly debt payments of \$1,157.26.⁸³ A monthly net remainder of \$1,557.85 was available for discretionary spending.⁸⁴

There is no evidence that Applicant ever received financial counseling covering such topics as debt consolidation, money management, repayment plans, or budgeting.

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.”⁸⁵ 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.”⁸⁶

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.”⁸⁷ The Government initially has the burden of producing evidence to establish

⁸² Item 6, *supra* note 7, at 2-4.

⁸³ Item 6 (Personal Financial Statement, dated March 14, 2011).

⁸⁴ *Id.* Applicant’s calculation was \$1,557.95; it was off by ten cents.

⁸⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁸⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁸⁷ “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,

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.⁸⁸

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."⁸⁹

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."⁹⁰ 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 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

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).

⁸⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁸⁹ *Egan*, 484 U.S. at 531

⁹⁰ See Exec. Or. 10865 § 7.

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. Also, *"consistent spending beyond one's means, which may be indicated by excessiveness indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis,"* may be potentially disqualifying under AG ¶ 19(e).

As noted above, Applicant first started to experience financial difficulties in 1997. She lost her residence to foreclosure in February 1997. On several occasions in 1998 and 1999, she uttered bad or non-sufficient checks to obtain goods or services. In 2008 and 2009 she again experienced substantial financial difficulties when she found herself unable to continue making monthly payments on her various accounts, and they became delinquent. Some accounts were placed for collection, some fell into default, and some were charged off. One residence was foreclosed and sold at auction in 2010, and the foreclosure process was commenced on another residence in 2010. Applicant purchased Christmas gifts, household items, and tires for her automobile, as well as obtained student loans for her son, but chose to pay her son's college expenses rather than remaining current with her accounts. Her accounts remained unaddressed by her during the entire period, despite maintaining her regular employment and her second part-time job. AG ¶¶ 19(a), 19(c), and 19(e) 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."*⁹¹

⁹¹ 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

AG ¶¶ 20(a) and 20(c) do not apply. Applicant was living beyond her means while continuing to purchase items, finance residences and an automobile, and obtain student loans for her son when her accounts became delinquent. Despite maintaining her permanent employment, and obtaining a part-time job, the financial situation is continuing in nature, and the specific causation is not adequately described. Applicant made a decision to continue her lifestyle while choosing to support her son's college expenses in lieu of her own financial obligations. She simply stopped paying various accounts and they became delinquent. She denied having any financial delinquencies in January 2010.

Although Applicant discussed her delinquent accounts with the OPM investigator in February 2010, and indicated her intention of paying off several accounts by April 2010, she failed to do so. She also contended she had paid off one account in February 2010, and that it had a zero balance, but that statement was subsequently proven inaccurate. It was not until March 2011, one year after her OPM interview, and several days following her receipt of the DOHA interrogatories that she contacted some of her creditors and made some payments. Applicant made her first payments on any of the SOR accounts in March 2011. She has produced little evidence to indicate that she has contacted all of her creditors, attempted to negotiate settlements, established repayment plans, or commenced making routine monthly payments. With a monthly net remainder available for discretionary spending, it was possible that Applicant could have commenced the payment of her delinquent accounts. While she provided some evidence of an initial payment for some of the accounts, she has submitted no documentary evidence to support her contentions that she has repayment agreements for all of the accounts or that she has made more than the initial payments. The majority of the accounts remain unpaid or unresolved.⁹² In addition, there is no evidence establishing that Applicant ever received financial counseling. Applicant's handling of her finances, under the circumstances, casts doubt on her current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) only partially applies because of Applicant's loss of employment and separation from her husband in 1997. That might explain why no efforts were made during that brief period, but the events commencing ten years later, and continuing until at least 2011, are largely unexplained. Her boyfriend's job loss and relocation may offer

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 she 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)).

⁹² "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.

some explanation as to why she has been struggling with their jointly-owned residence, but there is no other explanation for Applicant's continuing financial problems. Applicant failed to describe which specific factors were beyond her control, other than her general lifestyle, and decision to place her son's college expenses before her other financial obligations. She failed to state what caused her inability to continue making her monthly payments. Moreover, sufficient time has passed since Applicant generated her bills and she still has not fully addressed her delinquent accounts. The reasons stated do not establish she acted "responsibly under the circumstances."

AG ¶ 20(d) only minimally applies because Applicant has failed to show that, aside from some last-minute payments in March 2011, she had made continuing good-faith efforts to repay, or even address, her overdue creditors or otherwise resolve her debts. She has offered very little documentation to support her contention that such efforts have been made. To the extent that she made some efforts, the inconsistencies in her explanations, and her omissions regarding delinquent accounts in her SF 86, do not generate substantial confidence in her claims that she is making monthly payments or seeking modifications, especially in the absence of documentation to support her contentions.

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. Moreover, 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.⁹³

There is some evidence in favor of mitigating Applicant's conduct. Applicant spoke with some of her creditors in 2010 or 2011, but it is unclear what she told them or what offers she made to resolve the delinquencies.

⁹³ 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).

The disqualifying evidence under the whole-person concept is substantial. Applicant has a history of spending beyond her means, leading to financial delinquencies. She simply stopped making her monthly payments and chose to pay her son's college expenses in lieu of her own accounts. She used credit cards, charge cards, and loans for a variety of purposes, and while she has finally started to focus on her delinquent debts, she has not really resolved any of those delinquent accounts. Applicant has offered no explanation as to why she was unable to continue making her monthly payments or why she could not seek reduced payments under repayment plans during the period 2007 to 2011. Even though she apparently has sufficient funds each month to make some small payments in an effort to resolve her accounts, until March 2011, she apparently chose not to do so. Applicant's relative inaction reflects traits which raise concerns about her fitness to hold a security clearance. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge