



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-06656

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel

For Applicant: *Pro se*

July 13, 2011

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On December 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a January 15, 2011, response, Applicant admitted 11 of the 13 allegations raised under Guideline F. She also requested a hearing before a DOHA administrative judge. DOHA assigned the case to another administrative judge on February 11, 2011. The case was transferred to me on May 2, 2011, for caseload considerations. The parties proposed a hearing date of May 18, 2011. A notice setting that date for the hearing was issued on April 26, 2011. I convened the hearing as scheduled.

Applicant gave testimony, introduced one witness, and offered seven documents, which were accepted into the record without objection as exhibits (Exs.) A-

G. She was given through June 10, 2011, to submit any additional documents. The Government introduced five documents, which were accepted into the record without objection as Exs. 1-5. The transcript (Tr.) of the proceeding was received on May 26, 2011. On June 21, 2011, Department Counsel forwarded seven additional documents received from Applicant. Lacking any objection to their submission, they were accepted as Exs. H-N and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet her burden of mitigating security concerns related to financial considerations. Clearance is denied.

### **Findings of Fact**

Applicant is a 55-year-old electronics technician who has worked for the same government contractor since February 2010. She is divorced and has two adult children. Applicant earned an associate's degree in applied science, as well as an associate's degree in liberal arts. She served in the U.S. Army from 1975 through 1979.

From about 1993 to 1994, Applicant was finishing her studies at community college. A recent divorcee, she was receiving public assistance while raising her children. Wanting to complete her academic studies, she applied for and received a student loan for about \$3,900. When she completed her degree, she accepted an entry level job with a salary that was barely sufficient to support her children. Payments on the loan were initially deferred. At the time, she was "very naive" about the terms of her student loan.<sup>1</sup> The loan went into default in around 2002.

Applicant transferred to a new job in 2005. She "took a position of considerably less money because [her] children were older and it afforded [her] an opportunity to work in [her] field."<sup>2</sup> She eventually made payments on her defaulted student loan in 2006, but she stopped after making about nine monthly payments.<sup>3</sup>

In 2008, Applicant heard rumors that her state-sponsored position might be in jeopardy. In April 2009, union positions were cut, but, being a non-union member, Applicant retained her job briefly. However, a decision to further reduce the workforce led to her dismissal as "low man on the seniority totem pole."<sup>4</sup> With regard to her finances, "everything just kind of puddled" when she lost her job.<sup>5</sup> She received financial counseling to manage her finances.<sup>6</sup> Unemployed from April 2009 until February 2010, Applicant searched for a new job in a region that has taken the recent economic

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<sup>1</sup> Tr. 15.

<sup>2</sup> Tr. 15.

<sup>3</sup> Tr. 59-60.

<sup>4</sup> Tr. 16.

<sup>5</sup> *Id.*

<sup>6</sup> Tr. 68.

downturn particularly hard. She accepted her current position in February 2010. She completed a security clearance application (SCA) in March 2010.

While much of the above was transpiring, Applicant began feeling down and out of sorts. This feeling first started in about 2005. Unbeknownst to her, she was suffering from the initial stages of a medical condition that went undiagnosed and increasingly affected her ability to focus on her life. It went unnoticed in her workplace due to the solitary nature of her mostly manual work.<sup>7</sup> When her symptoms first started, Applicant passed it off as age, exhaustion, or a ‘mind fog.’ By 2010, it had worsened. She became depressed and her lethargy made her function like “a turtle.”<sup>8</sup>

As her illness reached a peak in mid- to late-2010, Applicant met with investigators about her security clearance application. She was unaware of some of the debts at issue. The abandoned student loan balance had grown to approximately \$46,273.<sup>9</sup> One of the investigators suggested she contact the student loan grantor and request a reduction on the balance now owed on that debt. She contacted the original lender, but it was unwilling to reduce the balance owed or otherwise work with her.<sup>10</sup> The loan was ultimately transferred to the U.S. Department of Education. In November 2010, she was offered the opportunity to rehabilitate the loan by making a monthly series of at least nine regular payments.<sup>11</sup> Ultimately, payments on the loan were instituted by the Education Department through payroll deduction. Regular payments of \$207 have thus been made every two weeks since April 2011.<sup>12</sup> She is currently seeking validation of the currently purported balance through formal dispute.<sup>13</sup>

When DOHA initially received the case in February 2011, Applicant was in very poor health and scheduling for her hearing date was tentatively postponed so she could

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<sup>7</sup> Tr. 67-68. While Department Counsel expressed genuine concerns regarding the issue of whether Applicant’s condition was sufficiently dire if it did not adversely affect her work, Applicant stated that much of her work is apparently the type where speed is not an issue and she could “do it in [her] sleep.” Tr. 67.

<sup>8</sup> Tr. 67-68. Applicant noted, “I was depressed or something and like I said, became a turtle and just started hiding things from myself. At the time, I thought it was depression and I [did not] want to go get medication because that will make you sleep on the job.”

<sup>9</sup> See SOR.

<sup>10</sup> Tr. 21. Presumably, this attempt was before the issuance the Education Department’s Nov. 21, 2010, offer for rehabilitation.

<sup>11</sup> Ex. 2 (Student loan recovery branch, dated Nov. 21, 2010). Rehabilitation of a student loan can lead to the removal of their defaulted status from a borrower’s credit report, extend repayment terms for up to 30 years, and reduce the balance owed through the elimination of collections costs and some assessments.

<sup>12</sup> Tr. 22, 27-28; Ex. D (pay stubs); see also Title IV of the Higher Education Act, which addresses student loans and rehabilitation. Applicant did not provide a copy of a rehabilitation agreement. Therefore, it is unclear whether these payments are in response to the rehabilitation offer.

<sup>13</sup> Ex L (Experian printout, dated Jun 10, 2011).

seek treatment.<sup>14</sup> She was hospitalized in April 2011. Hospitalization and treatment helped stabilize Applicant's physical condition. Her condition was found to have been caused by complications from an earlier surgery that slowly led to chemical imbalances and dangerously low blood levels. By the time the problem was definitively identified, the condition was deemed life threatening and medical care was administered.<sup>15</sup> She is now in improved health, although she continues under medical care pending the completion of her treatment.<sup>16</sup> Her treatment should end later this year. She has recovered from her sense of "fogginess." Applicant is back at work full-time, although she has also been dealing with the results of a recent fire and helping to care for a grandchild.<sup>17</sup>

In her personal life, Applicant offered some degree of financial assistance or support to her two children at various times throughout the 2000s. Both her adult children suffered from medical issues and, at times, came home with their spouses to live with Applicant.<sup>18</sup> Currently, Applicant is offering her home as a place to stay for one of her children and a grandchild.<sup>19</sup> Such situations have caused extra strains on Applicant's finances.

At issue in the SOR are 13 delinquent debts (§§ 1.a-1.m). Applicant provided evidence that the debts at issue in § 1.c (\$145 telecommunications debt from 2009) and § 1.e (\$155 collection account, date of delinquency unknown) have been satisfied.<sup>20</sup> She has formally disputed the debts at § 1.a (\$50 medical debt from 2006) and § 1.b (\$491 medical debt from 2005), which may be related to either the onset of her illness or long-forgotten bills related to her children.<sup>21</sup> The student loan debt noted at § 1.d, which is in repayment with the total balance in dispute, is discussed above. The remaining debts, including the years in which they became delinquent, are as follows and amount to approximately \$2,800:

1.f – \$364 medical debt from 2009 – unpaid.

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<sup>14</sup> At the time Applicant's health worsened, she had been working on discovering the origin of some of the debts at issue. Tr. 38.

<sup>15</sup> Tr. 18.

<sup>16</sup> Ex. N (Dr.'s letter, dated Jun. 2, 2011). Applicant's physician wrote that her condition, which was ever-increasingly manifesting itself with signs of depression, "fogginess," and the feeling of being overwhelmed was one that developed increasingly over time, noting that it may have been related to her anemia and "may have affected her behavior and/or job performance."

<sup>17</sup> Ex. M (Email, dated Jun. 20, 2011).

<sup>18</sup> Tr. 17.

<sup>19</sup> The adult child, who was unemployed, recently returned to the workforce.

<sup>20</sup> HE-1 (Government schematic).

<sup>21</sup> Ex. K (Experian printout, dated Jun. 10, 2011). Applicant previously disputed these items by mail with Equifax and TransUnion, but has yet to receive a response. Ex. K (Email, dated Jun. 20, 2011).

1.g – \$780 collection account from 2009 – unpaid. Applicant testified that she made a \$100 payment by money order on this account after she was released from the hospital in April 2011, but provided no evidence of payment.<sup>22</sup>

1.h – \$365 medical debt from 2009 – unpaid.

1.i – \$110 collection account from 2009 – unpaid.

1.j – \$410 collection account from 2009 – unpaid.

1.k – \$265 past due credit union account (delinquency date unknown) – In communication with creditor. Payment schedule devised.<sup>23</sup>

1.l – \$500 past due account (delinquency date unknown) – unpaid.

1.m – \$75 past due account (delinquency date unknown) – unpaid.

Since meeting with investigators and receiving the December 2010 SOR, Applicant has been aware of the debts at issue. She suspects some of the older debts may be related to medical bills for her children that have remained unaddressed since her divorce. This suspicion is based on the fact that following her divorce, her husband neglected to extend appropriate health care coverage for their children. She also noted that having moved multiple times, some bill statements may have eluded proper delivery.<sup>24</sup>

Applicant provided evidence of payment to one entity with Exs. B-C, which she believes are for either the debts at ¶¶ 1.l and 1.j or 1.l and 1.m. She failed, however, to provide evidence showing that any of these debts were satisfied, or that any payments she did make otherwise satisfied these debts.<sup>25</sup> Applicant showed that she is paying a tax levy from 2008 not shown on the SOR.<sup>26</sup>

Applicant has developed a flexible budget under which she meets her monthly obligations, including deductions for her student loan and current medical bills, of approximately \$2,200. This sum is deducted from her net monthly income of about \$2,000.<sup>27</sup> While these sums show a negative discrepancy, Applicant makes up for the

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<sup>22</sup> Tr. 62.

<sup>23</sup> Tr. 65-66; Ex. J (Emails, various dates).

<sup>24</sup> Tr. 38.

<sup>25</sup> Tr. 24-26.

<sup>26</sup> Tr. 27.

<sup>27</sup> Ex. D (Pay stubs). Applicant's 2011 pay stubs reflect a net income of approximately \$980 every two weeks after deduction of payments on her guaranteed student loan (GrnStuLn), reflecting a recent rise from about \$1,488 in 2010.

difference with exceptional thrift, occasional contributions from her child, and “cushions” she created that are built into her budget. Such cushions include over-budgeting her rent for \$500 a month when it is really \$325, and inflating her monthly financial needs for transportation and other costs.<sup>28</sup> By building in her cushion, she assures that she has sufficient funds to meet her monthly obligations, including a category for her overdue debts. Consequently, her income almost precisely meets her budget’s reflection of her regular and anticipated expenditures. However, there is no evidence of any cash reserves that might help in the event of a financial emergency.

Applicant anticipates that her monthly allotment for medical bills and co-pays (\$175) will be reduced considerably over the next few months as her treatments end. She also expects to eliminate her need for miscellaneous expenditures (\$100) when her daughter and grandchild move into their own home. This move is currently planned to take place in or by October 2011.<sup>29</sup> With her largest debt already in repayment (student loan), Applicant hopes to apply the monthly sums now devoted to medical bills and miscellaneous items, which would amount to about \$275, to her remaining delinquent debts.<sup>30</sup> In general, Applicant eschews the use of credit cards and has not acquired additional debt.<sup>31</sup>

Applicant is well-regarded in her community. She is a valued employee, known for her positive attitude and excellent work.<sup>32</sup> She is committed to both her work and to the fulfillment of her financial obligations. As a witness, Applicant introduced a long time friend, who corroborated the ill effects of Applicant’s illness on levels of energy and concentration.<sup>33</sup> That same witness also noted that Applicant has improved considerably since her April 2011 hospitalization.<sup>34</sup>

### **Policies**

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this

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<sup>28</sup> Ex. E (Budget).

<sup>29</sup> Tr. 30.

<sup>30</sup> Tr. 78.

<sup>31</sup> Tr. 77.

<sup>32</sup> Ex. I (Employer’s letter, dated May 16, 2011).

<sup>33</sup> Tr. 84.

<sup>34</sup> *Id.*

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>35</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>36</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>37</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>38</sup>

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

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<sup>35</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>36</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

## Analysis

### Guideline F - Financial Considerations

Under Guideline F, “failure or an 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.”<sup>39</sup> It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”<sup>40</sup> Applicant has 11 delinquent debts that remain unpaid. While the vast majority of debt at issue has been in repayment with the Education Department since April 2011, approximately \$3,200 remains either unpaid or in dispute. Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

The debts at issue are multiple in number and remain largely unpaid. Although Applicant is currently living within her income, her finances remain extremely tight due to a temporary extension in her most current financial assistance to a child and the continued need for medical care. Therefore, at this time, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment) does not apply.

Multiple factors have adversely affected Applicant’s handling of her finances. She was underemployed after college. Her ex-husband was deficient in his provision of health care for their children after their divorce. In 2008, she learned of a potential reduction in force at work. While there is no evidence she then began to look for a new job, she maintained her employment until a second round of cuts was made in 2009. Nearly a year of unemployment followed. Meanwhile, starting in about 2005, her health began to falter. Lethargy, depression, and a foggy state of mind escalated, affecting her ability to function properly. Her condition was eventually diagnosed, and she was hospitalized with a life-threatening condition in April 2011. While her health has been restored, she is still receiving some treatment for her condition. Despite such conditions, and giving appropriate consideration to the effect of her recent medical issues on her ability to function, Applicant made at least some effort to keep in control of her finances. Such factors are sufficient to raise FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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).

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<sup>39</sup> AG ¶ 18.

<sup>40</sup> *Id.*



Applicant has received financial counseling. Although it did not directly lead to a clear plan for her current debts, it did provide her with the tools to work out a manageable budget that helps her meet her monthly obligations and curtail the acquisition of additional debt. From that budget, she is now making payments on her student loan. Counseling apparently also showed her how to dispute accounts on her credit report as a way to contest or verify credit report entries. To the extent this counseling helped her focus throughout her illness, aided her in creating a workable budget that has prevented her from acquiring additional debt, and helped her address some of her delinquent debt (*i.e.*, ¶ 1.c and ¶ 1.e), FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) applies.

Applicant has paid two debts in full and formally disputed two debts (¶¶ 1.c, 1.e, 1.a, 1.b). She has budgeted for the deduction of payments on her student loan to the Education Department, while simultaneously disputing the account balance with a major credit reporting bureau (¶ 1.d). She has contacted and either made a payment or discussed repayment with two creditors (¶¶ 1.g and 1.k). In addition, she has made payments on two debts which she believes are among those noted in the SOR, although she has been unable to provide a nexus between them for the purposes of this process. FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. None of the other FC MCs apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a highly credible 55-year-old electronics technician who has worked for the same government contractor since February 2010. Divorced, she raised two children, for whom she still provides periodic financial and emotional care. She currently helps support one child, who only recently found a new job. Applicant has two associate's degrees and is a veteran of the U.S. Army. She lives in a region that has been particularly challenged in the recently adverse economy. Applicant was unemployed for nearly a year, from April 2009 until February 2010. The physical illness that plagued her for several years impacted her health, attitude, and focus. Recent hospitalization helped address this condition. Her treatments should end later this year. Applicant employs a budget which helps her meet her monthly obligations.

Applicant demonstrated that she has exerted a moderate amount of effort in addressing the debts at issue in the past six months. Whether payments toward her

student loan were initiated by her through a rehabilitation agreement or imposed by the Education Department is unclear. However, she has budgeted for these deductions and has been in repayment since April 2011. Two accounts, in addition to the student loan, are in formal dispute. Two other accounts have been paid. Remaining unaddressed is \$2,800 to \$3,200 in additional debts, most of which were acquired during her illness or during her period of unemployment. Clearly, the creation of many of her delinquent debts was related to these factors.

Despite her renewed health and recent focus on her delinquent debt, concerns remain regarding her past financial management. Despite the fact her student loan became delinquent in 2002, she voluntarily took a position making considerably less money in 2005, a volitional move that apparently further impacted her finances in an adverse manner. Then, in 2006, she abandoned an attempt at making timely payments on that loan after only about nine months. Moreover, there is no evidence she made any cursory efforts to look for other positions when a reduction in force was pending in 2008 or considered secondary employment at any time.<sup>41</sup> Such factors demonstrate poor judgment, particularly in the face of a student loan metastasizing from only about \$3,900 to an unwieldy sum in excess of \$46,000 after at least a decade of neglect. While it is acknowledged that her illness slowly worsened to the point that it adversely impacted her mood and ability to focus in more recent years, there is no evidence that it was the reason Applicant's student loan has been largely neglected since the 1990s. However, if Applicant further explored the various possibilities available for modifying the balance owed, this debt may prove to be far more manageable than it appears.

While Applicant is a highly credible, straight-forward, and honest woman, concerns also remain due to the current state of her finances. At best, her current monthly expenditures meet her monthly income with little to no excess funds available at month's end. She anticipates her financial situation will soon improve, assuming her treatments end and her child moves out by October 2011. There are no guaranties, however, that these events will occur as presently planned or that more parental or medical assistance may be needed in the near future. Even if the sum saved by eliminating these expenses (up to \$275 a month) were to become available by the end of the year, Applicant failed to provide evidence of a reasonable plan utilizing these sums to address her present and delinquent obligations.

Moreover, Applicant's student loan payments were only recommenced in April 2011. She has yet to establish a reliable history of regular payments toward that debt. Further, such deductions are highly contingent on her maintaining her present position at her present salary. Should there be a change in her employment terms, those payments would more than likely be again discontinued through simple necessity.

In short, despite significant mitigating conditions with regard to the creation of many of the more recent debts, Applicant failed to provide much in mitigation as to how

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<sup>41</sup> It also remains unclear whether the current payroll deductions for the student loan were instituted by Applicant in response to the offer for loan rehabilitation, or whether it was unilaterally imposed by the Education Department without Applicant's direct participation. Consequently, it cannot be concluded that Applicant's recent deductions for her student loan are serving as a predicate to student loan rehabilitation.

her debts will be satisfied. I do not doubt Applicant's sincerity or her commitment to address her debts, and I am completely sympathetic with the symptoms of her recent illness. Hopefully, her improved health will help her in her endeavor. However, it would be premature to conclude that she has established a reasonable plan to repay all of her delinquent debts and that she has thus far made notable progress on those debts. Given all these considerations, there is presently insufficient evidence to mitigate Guideline F security concerns. Clearance is denied.

### **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
Subparagraphs 1.a-1.e:	For Applicant
Subparagraphs 1.f-1.m:	Against Applicant

### **Conclusion**

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

ARTHUR E. MARSHALL, JR.  
Administrative Judge