



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



In the matter of:)
)
) ISCR Case No. 11-01027
)
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

04/17/2012

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant filed late income tax returns with the IRS for tax years 2007 and 2008. She underpaid her federal income taxes for 2004 through 2010. In February 2012, she entered into an installment agreement with the IRS to repay a \$40,000 federal tax debt at \$2,061 per month starting in late March 2012. Applicant also owes around \$12,619 in past-due consumer debt after satisfying or settling \$2,579 in delinquent balances. Financial considerations security concerns are not fully mitigated. Clearance denied.

Statement of the Case

On November 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, why it could not find that it is clearly consistent with the national interest to continue her security clearance. DOHA took the action under 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 (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR allegations on December 1, 2011, and she requested a hearing. On February 7, 2012, the case was assigned to me to conduct a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On February 14, 2012, I scheduled a hearing for March 13, 2012.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and 17 Applicant exhibits (AEs A-Q) were admitted without objection. Applicant also testified, as reflected in a transcript (Tr.) received on March 22, 2012.

At Applicant's request, I held the record open for two weeks for her to submit additional financial records. Applicant timely submitted nine additional exhibits, which were marked as AE R through Z and admitted into evidence without objection.¹

Findings of Fact

The SOR alleged under Guideline F that as of November 7, 2011, Applicant owed delinquent debt totaling \$50,236.19 to 17 creditors (SOR 1.a-1.q), including \$19,498.19 to the IRS for tax years 2006 to 2009 (SOR 1.q). When she answered the SOR, Applicant asserted that four debts were duplicated in the SOR (SOR 1.d same debt as 1.h, 1.e same debt as 1.j, 1.f same debt as 1.p, and 1.g same debt as 1.n). Applicant denied the medical debts in SOR 1.a through 1.c, and the credit card debts in SOR 1.d (updated balance in 1.h) and SOR 1.g (duplicated in 1.n) because they had been paid. She also denied the debts in SOR 1.i, 1.k through 1.m, and 1.o because she was investigating their legitimacy. Applicant admitted the debts in SOR 1.e (same debt as 1.j), 1.f (same debt as 1.p), and 1.q. At the hearing, the Government conceded the duplicate listings and withdrew SOR 1.d, 1.f, 1.g, and 1.j.² After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

¹Applicant's post-hearing submissions were marked and admitted into the record as follows:

Personal statement, dated March 27, 2012, AE R
Updated status of debts, dated March 26, 2012, AE S
Billing and payment of medical debts in SOR 1.a-1.c, AE T
Settlement payment of debt in SOR 1.o, AE U
Settlement payment of debt in SOR 1.i (same debt as 1.l), AE V
Settlement offer of debt in SOR 1.k (same debt as 1.m), AE W
IRS records, AE X
Character references, AE Y
Performance evaluations for 2010, 2009, and 2007, AE Z

²The Government withdrew SOR 1.f, 1.g, and 1.l.j, where the collection agency is identified as the creditor. In the case of SOR 1.d, the Government elected to allege the updated balance of the debt alleged in SOR 1.h.

Applicant is a 51-year-old principal systems engineer, who has been employed by a defense contractor since August 1999. (GE 1.) Applicant worked from 1983 to the early 1990s as a field engineer for another defense contractor at a university-affiliated research laboratory involved in contract work for the DOD. (AE E.) She held a security clearance without any violations. (AE B; Tr. 112-13.) From 1994 to 1999, Applicant was employed as a senior research associate for an applied research company, where she was involved in catastrophic risk assessment and tropical cyclone modeling. (AE E.) There is no evidence that she needed a security clearance for that position. In April 2001, she was granted a secret clearance for her duties with her present employer, then involving the design and development of weapon systems simulations. (GE 1; AE E.)

Applicant has a bachelor's degree, *summa cum laude*, in mathematics. (AE E.) She and her ex-husband divorced around 1991.³ At the time, Applicant worked part-time while caring for her daughter, who is now 24 years old. (GE 1; AE R.) In October 2004, her daughter was seriously injured in a car accident. Her daughter was hospitalized for a couple of months and then underwent a year of rehabilitation treatment. (Tr. 40, 98, 109.) Applicant focused on her daughter's recovery, and she neglected some financial obligations at the time. (GE 2; Tr. 40.) Around the fall of 2005, Applicant started helping her daughter with her college expenses. (Tr. 110.) Applicant's inattention to some of her financial accounts persisted into 2006 and 2007, as she was concerned with her parents' health. Her parents had numerous medical problems, and her father died in 2007. (GE 2; AE R; Tr. 40, 110.) Several consumer credit accounts stayed in collection status with no effort on her part to resolve them before she was interviewed for renewal of her security clearance.

- Three medical debts of \$54 (SOR 1.a), \$42 (SOR 1.b), and \$63 (SOR 1.c) from March/April 2006 were sent to collection in October 2006. (GEs 2, 3.) Applicant paid the debts on September 24, 2011. (GE 2; AEs F, Q, T.)
- In January 2006, Applicant made a last payment on a retail charge debt of \$10,980. In August 2006, the debt was referred for collection. As of June 2010, the account was \$11,216.73 past due (SOR 1.e). (GEs 2-4.) As of October 20, 2011, she had requested information from the creditor about repaying the debt in installments because she could not pay the debt in a lump sum. (GE 2; AE G.) The assignee would accept payments from her but would not agree to a monthly repayment plan. (Tr. 47, 51.) As of March 2012, she had been notified of where to send any payments she chose to make. (AE Q.) She made no payments because she was focused on reaching an installment agreement with the IRS on a sizeable federal tax delinquency. (Tr. 50.)

³At the hearing, Department Counsel questioned Applicant about an IRS garnishment in August 1992 for \$1,000 to \$2,000. (Tr. 76.) The Government did not allege any tax delinquency before 2006. Nonetheless, Applicant felt compelled to explain that she owed credit card and tax debt after her divorce in 1991, but she had worked hard and paid off the debts. (AE R.)

- Applicant made no payments on a credit card account (SOR 1.h) after September 2005. As of May 2010, her account was in collection with the credit reporting agencies reporting a \$1,200 charged-off balance. (GE 5.) She began to repay the debt in or after July 2010. (Tr. 59.) As of August 2011, the account balance was \$450. (GE 4.) She made three \$150 payments between August 11, 2011 and October 7, 2011, to satisfy the debt. (GE 2; AEs H, Q.)
- In October 2004, a \$198 telephone debt was referred for collection (SOR 1.i). As of December 2006, the collection agency in 1.i reported a \$263 balance. (GE 3; Tr. 61.) The debt increased to \$281.45 due to fees. (AE Q.) Applicant paid \$140.90 to settle the debt on March 20, 2012. (AEs R, V.)
- Around June 2004, the credit card debt in SOR 1.k was sold to another lender (SOR 1.m) with \$2,119 past due. (Tr. 62-63.) As of October 2005, the debt had a past-due balance of \$602. (GE 3.) On January 27, 2012, a new assignee billed Applicant for a \$602.45 balance. (AEs I, W.) As of March 13, 2012, she had yet to make any payments toward the debt, but she intended to pay it over the next few months. (AE Q.) On March 17, 2012, the assignee offered to settle the balance for a lump sum payment of \$451.86. (AE W.) As of the close of the record, the debt had not been resolved. (AE S.)
- Applicant stopped paying on a \$527 balance owed the creditor in SOR 1.n around March 2006, and her account was sent to collection. By September 2007, the unpaid balance had accrued to \$710. As of March 2009, her account was \$773 past due. As of September 16, 2011, she had satisfied the debt. (GEs 2-4; AEs J, Q; Tr. 65.)
- In June 2010, a \$166.03 wireless phone debt for her daughter's phone was placed for collection (SOR 1.o). (GE 3; Tr. 66.) As of January 26, 2012, the debt had not been paid. (AE K.) Around March 20, 2012, Applicant paid \$116.22, which was accepted in full settlement. (AEs R, U.)
- In March 2007, a wireless phone account, opened by Applicant for her daughter, was referred for collection with \$800 past due (SOR 1.p). As of August 2011, Applicant disputed the debt with the credit reporting agencies because she believed it had been settled. (GEs 2, 4.) As of March 2, 2012, a formal request was pending to validate the debt. (AEs L, S.)

Applicant had a history of late payments on some other accounts, which she satisfied well before the SOR. In February 2005, Applicant financed the purchase of a car for her daughter through an \$11,064 loan. (Tr. 118.) Applicant's \$244 monthly loan payments were late 60 days twice and 30 days late 11 times before she paid off the

loan in March 2009. (GE 3; Tr. 40.) In December 2005, Applicant made a last payment on a \$13,000 furniture debt, which was then sold to another lender before she paid it with a loan from her 401(k). (Tr. 98.) For the most part, Applicant made payments as agreed on a \$10,673 student loan taken out in December 1996.⁴ She was late 90 days in July 2008 and 60 days in March 2009 but paid off the loan in May 2009. (GE 3.)

Applicant's father helped her prepare her income tax returns until a couple of years before his death in 2007. (Tr. 103.) For tax year 2004, Applicant underpaid her taxes by \$7,466.49. (GE 2.) For tax year 2005, she initially received a refund, but she was then assessed a tax liability of \$226.14 on \$130,637 in adjusted gross income. (GE 2; AE M.) For tax year 2006, Applicant underpaid her federal taxes by \$4,082 on an adjusted gross income of \$140,631. On May 6, 2009, the IRS issued a notice of intent to levy for nonpayment of back taxes. The notice was returned to the IRS as "refused or unclaimed." Applicant did not file her federal income tax return for 2007 until May 18, 2009, when she filed it along with her 2008 return.⁵ She underpaid her taxes by \$6,141 on adjusted gross income of \$134,733 for 2007, and by \$8,025 on adjusted gross income of \$146,034 for 2008. She was assessed penalties for filing late returns for both years. For tax year 2008, she had unreported lottery winnings that increased her tax liability.⁶ (Tr. 79.)

On June 29, 2009, the IRS issued a notice of tax delinquency for 2007, and the IRS established an installment agreement to repay her taxes. For reasons not apparent in the record, a new installment agreement was established in March 2010. Applicant filed a timely return with the IRS for tax year 2009, but she underpaid her income taxes by \$3,403 on adjusted gross income of \$165,853. (AE M.) On July 16, 2010, Applicant paid \$648 to the IRS, of which \$226.21 was applied to her 2005 taxes and \$421.79 to her 2006 taxes.⁷ (GE 2.) On June 11, 2011, the IRS notified Applicant of unpaid taxes for 2009. In September 2011, the IRS conducted a review of unreported income for 2009. (AE M; Tr. 79.) Applicant had no intent to evade federal taxes ("I really didn't plan

⁴Applicant's credit record includes a student loan debt taken out in December 1996 for \$10,673. (GEs 4, 5.) While Applicant testified that she helped her daughter's college costs, those costs would not have been incurred until the fall of 2005. (Tr. 110.) Applicant earned her bachelor's degree in May 1982 (GE 1), although she apparently took graduate level mathematics courses and a computer science certificate program between 1983 and 1993. (AE E.)

⁵Among Applicant's post-hearing submissions was a document showing she had printed out her return for tax year 2006 using tax preparation software on April 17, 2007, and she mailed it to the IRS on April 20, 2007. (AE X.) This documentation confirms that she submitted her return for 2006—not 2007--only a few days after it was due. It was error for Applicant to indicate on March 27, 2012, that the receipt of mailing was for her 2007 tax return. Similarly, she indicated that she filed her tax return for 2009 one month late when evidence shows it as her 2008 tax return that was filed in May 2009.

⁶Applicant testified that she won around \$2,000 in the lottery. (Tr. 101.) It is unclear whether those were her lottery winnings for 2008 and 2009 or just 2008.

⁷Applicant claims she paid \$700 a month, around a couple thousand in total in 2007 and 2008 (Tr. 79), and she thought her debt was satisfied because she received no other letters from the IRS. (Tr. 72.)

to stiff the IRS.”). (Tr. 71). She attributes her tax problems to oversight (Tr. 70-71) and to disorganization. (Tr. 114-15.)

On June 24, 2010, Applicant applied for an update of her security clearance. On an Electronic Questionnaire for Investigations Processing (e-QIP), Applicant responded affirmatively to the financial record inquiries concerning any failure within the last seven years to pay federal, state, or other taxes, or to file a return, when required by law or ordinance; any bills or debts turned over to a collection agency in the last seven years; and to being currently delinquent on any federal debt. Applicant indicated that she was notified by the IRS in 2009 that her tax return for 2008 and for some previous years had not been received. She found her 2008 return among some other papers and mailed it. Applicant expressed confidence that she had mailed her other returns. Yet, she did not dispute that she owed around \$19,000 to the IRS, which she indicated she was repaying at \$700 per month. Concerning any collection debts, Applicant disclosed on her e-QIP the furniture debt, which she paid in full, albeit in court. Applicant expressed her belief that she was not presently overdue 90 or 180 days on any debts, although she had been late in her payments in the past. Applicant explained under “additional comments” that a series of unfortunate family issues (daughter’s car accident and related medical and car expenses, her daughter’s college costs, her father’s medical issues and then death, and her mother’s medical illness) led her to be late in her bill payments. Applicant added that she has given herself five years to correct her credit situation. (GE 1.)

A check of Applicant’s credit on June 30, 2010, revealed previously undisclosed collection balances owed on the debts identified in SOR 1.a, 1.c, 1.e, 1.h, 1.i (1.l same debt), 1.k (1.m same debt), 1.n, 1.o, and 1.p. (GE 3.) On July 19, 2010, Applicant was interviewed about the delinquencies on her credit record. Applicant expressed her belief that the debts in 1.e, 1.h, 1.k, and 1.n had been resolved. She did not recognize the debts in 1.i, 1.o, or 1.p, and indicated that the small medical debts had not been paid due to oversight. Applicant expressed her intent to contact the creditors and attempt to resolve the outstanding issues on her credit report. Applicant indicated that she had arranged to pay the IRS in affordable monthly installments of \$700. (GE 2.) Applicant paid the IRS \$700 on June 17, 2010, and on July 16, 2010. (AE X) She believes she made “several additional payments,” but she has been unable to produce corroborating evidence. (AE R.) As of October 25, 2010, Applicant was apparently not making any payments to the IRS, as her account was no longer in installment agreement status. (AE M.)

Starting in July or August 2010, Applicant made some efforts to determine who currently held her delinquent consumer credit accounts, and to make payments on the debt in SOR 1.h. Around September 2011, Applicant contacted legal and financial services offered through her employer for guidance and financial counseling. She took their advice, and in October 2011, she signed up for an online credit checking service so that she could monitor her credit report. (Tr. 54.) In September 2011, she made the first of three or four calls to the lender identified in SOR 1.e. (Tr. 49.) In November 2011, she retained the services of a law firm, at a cost of \$100 per month, to assist her in

validating the debts on her credit record and having debts removed if appropriate. (Answer; AE L; Tr. 52.) Applicant also contacted the IRS about her significant tax delinquency, and she was told to increase her tax withholding. As of the pay period ending September 30, 2011, Applicant was claiming single with 10 allowances (“S-10”) for federal tax purposes but only one allowance for state taxes (“S-1”). Applicant informed DOHA on October 21, 2011, that starting with the next pay period she would have additional funds deducted from her pay to ensure that she did not significantly underpay her federal income taxes in the future. (GE 2.)

On October 20, 2011, Applicant proposed \$200 monthly installment payments to the IRS on annual income of \$151,204 and an estimated monthly remainder of \$2,429. (GE 2.) As of November 28, 2011, Applicant owed the IRS \$32,627.59 in delinquent taxes, penalties, and interest for tax years 2006 through 2009 (SOR 1.q).⁸ (AE M.) On February 2, 2012, the IRS notified Applicant that her employer had been instructed to begin withholding income taxes from her pay at the withholding rate of single with zero allowances as she was not entitled to the allowances claimed. (AE O.) Her leave and earnings statement for the pay period ending February 17, 2012, shows that her federal withholding had not yet been adjusted. (AE P.) Applicant owes the IRS around \$40,000 for tax years 2004, and 2006 through 2010. (Tr. 80.) As of February 16, 2012, the IRS had set up an installment agreement for her to repay her federal tax delinquency at \$2,061 per month starting March 28, 2012. (AEs N, S; Tr. 72.)

As of February 2012, Applicant’s car loan had been paid off. She has one active credit card account with a \$600 credit limit. As of December 2011, she had a balance of \$223 on the account. (GE 5.) She continues to pay off two loans from her 401(k) at \$275.44 and \$150.11 every two weeks. (AE P.) Applicant has been paying on the loans for some time. (GE 2.) She took out three loans, the second of which has been paid off. The first loan was for \$15,000 to buy a car for her daughter after the accident. The third loan, which was around \$10,000, was to satisfy her delinquent furniture debt. (Tr. 97-98.)

Applicant’s boyfriend lives with her. He pays half of their \$2,150 monthly rent. (Tr. 107.) He recently lost his job, but he has an offer to start a new position in April 2012. (Tr. 99, 107.) As of March 13, 2012, she planned to make small \$50 payments toward her delinquent consumer credit debts until they are satisfied. (Tr. 108.)

Much of the responsibility for caring for her mother falls on Applicant, who drives her mother to medical appointments and to and from Florida each year. (AEs A, R; Tr. 105.) Applicant also helps out her daughter, who has a child of her own. (AE A.)

Applicant handles classified material and safeguards a closed area on a regular basis at work, and she has committed no violations. (AEs A, B, Y; Tr. 35, 113.) Very conscientious about obtaining ethics and security training (AE D), Applicant has been

⁸Applicant contends that she made additional payments around 2007 and 2008 (Tr. 75) that were not shown in the IRS’ record of installment agreement activity for July 12, 2010 to July 11, 2011 (GE 2), and that the IRS agreed to investigate.

responsible for providing security briefings to co-workers in her section. She has been approved as a courier to transport classified documents to other locations. Applicant voluntarily served as a security subject matter expert and as a program leader on a classified program. (AEs A, B.) In 2007, Applicant was given an achievement award as well as technical honors for her work, although priorities in her primary tasks suffered somewhat because of her involvement in several activities. In 2010, Applicant was particularly effective in communicating task progress, functioning in a team setting, managing distractions, leveraging a large network of subject matter experts, and aligning multiple program initiatives. (AE Z.) In 2011, she held two positions of leadership: as the deputy project leader for two phases of a prototype program involving sensors and as a technical leader for an internal research and development project. Described in her annual performance evaluation as “a highly organized, highly focused technical leader with the drive and strong inter-personal skills to make her a standout performer,” Applicant received technical honors on the nomination of her peers. (AE C.) Applicant has given her coworkers no reason to question her professionalism, trustworthiness, or good judgment. They consider her extremely qualified to hold a security clearance. She is known to have close personal relations with her family. She is not known to have an extravagant lifestyle. (AE A, Y.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven

by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 that 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. 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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.

Guideline F notes several conditions that could raise security concerns. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are established. Largely due to her inattention to her financial matters, Applicant allowed several accounts to go to collection despite her annual adjusted gross income exceeding \$130,000 and take-home pay higher than it should have been because of insufficient federal tax withholdings. Three minor medical debts (SOR 1.a-1.c) and two telephone accounts (SOR 1.i/1.l and 1.p) went to collections. Applicant also fell seriously behind on some credit card balances of \$10,980 (SOR 1.e, currently \$11,216.73), \$1,200 (SOR 1.h), \$602 (SOR 1.k), and \$527 (SOR 1.n, updated balance \$773). Furthermore, Applicant accrued a federal tax debt around \$40,000 due to tax underpayments, penalties, and interest. AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,” is also implicated because she filed late returns for tax years 2007 and 2008. However, her tax indebtedness raises concerns of financial irresponsibility rather than of intentional evasion of her obligations to file returns and pay income taxes.

Concerning potentially mitigating conditions, 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,” cannot reasonably apply to such recent consumer and federal tax delinquencies. Her daughter’s serious car accident in 2004 and her father’s death in 2007 are circumstances contemplated within AG ¶ 20(b), “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” Applicant’s inattention to her finances can reasonably be excused while she dealt with these very stressful events. Applicant’s finances were directly impacted in that she had to buy a car and obtain insurance for her daughter after the accident. Available credit reports show Applicant financed a car in February 2005 through an \$11,064 loan, to be repaid at \$244 per month. Applicant testified without elaboration that she incurred some medical expenses for her daughter. Applicant did not establish that she incurred significant financial burdens from her parents’ hospitalizations and her father’s death in 2007, although her need to care for her parents understandably distracted her from her personal financial affairs. However, Applicant presented no evidence of conditions beyond her control that could reasonably mitigate her failure to make timely efforts to address the debts as soon as the crises had passed.

As recently as June 2010, a wireless telephone provider referred a debt for collection (SOR 1.o). Even if I excuse Applicant’s very late filing of her 2007 income tax return, AG ¶ 20(b) does not mitigate her failure to adjust her tax withholdings or to fulfill IRS installment agreements. Applicant knew that she owed back taxes to the IRS as of June or July 2009, because the IRS established an installment agreement on June 29, 2009, for tax years 2007 and 2008. There is no evidence that Applicant made any payments to the IRS before June 2010, a year later. On July 16, 2010, Applicant paid another \$700 to the IRS. On July 19, 2010, Applicant told an authorized investigator for the DOD that she was paying around \$12,000 in federal tax liabilities at \$700 per month. However, she presented no proof of payments between July 2010 and October 2010, when her account was no longer in installment agreement status.

After her subject interview in July 2010, Applicant began to investigate the debts on her credit report, of which she claims she had no previous knowledge. She satisfied the medical debts in SOR 1.a through 1.c in October 2011. Between August 2011 and October 2011, Applicant made three \$150 payments to satisfy the outstanding balance of the credit card account in SOR 1.h. Around September 2011 she paid the \$773 debt in SOR 1.n. After her hearing, she settled the debts in SOR 1.i (same debt in SOR 1.l) and SOR 1.o for less than their full balances. These efforts to resolve her debts, albeit belated, implicate AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Yet, the \$2,579 in resolved debt is but a fraction of the \$12,619 in consumer credit debt (\$11,819.18 undisputed) and \$40,000 in federal tax liabilities still outstanding.

In February 2012, the IRS set up an installment agreement for Applicant to repay her debt at \$2,061 per month starting in late March 2012. While she has a plan in place to address her sizeable tax delinquency, previous installment agreements were cancelled for reasons not clearly set forth in the record. Moreover, before the IRS formally notified her in early February 2012 that she was not entitled to the withholding allowances claimed, Applicant had been told by an IRS agent by October 20, 2011, that she was not having enough taxes withheld from her pay, and that she should have additional monies deducted for federal taxes. Applicant informed DOHA at that time that she had arranged to have more money withheld from her pay starting with her next pay period. However, a comparison of her paystubs between September 2011 (GE 2) and February 2012 (AE P) shows the same federal withholding status at S-10 with only a small increase in the federal taxes withheld (\$723.76 vs. \$749.21) and zero in additional taxes withheld. As of March 26, 2012, Applicant indicated that her withholding was "being changed." (AE S.) The evidence does not establish that someone other than Applicant is responsible for the inordinate delay in adjusting her tax withholdings. A track record of demonstrated payments to the IRS is needed before I can fully apply AG ¶ 20(d) or AG ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control."

AG ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue," applies, if at all, to the delinquent telephone debt in SOR 1.p. Applicant believes that she settled the debt in the past. However, while she filed a dispute with Equifax (GE 5), and a law firm filed a formal request for verification (AE L), she failed to document that the debt had been paid or was otherwise invalid.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁹

By all accounts, Applicant has been a very productive and trustworthy employee for the defense contractor. Coworkers familiar with her work performance attest to her technical expertise, and to her long record of security compliance without blemish, including during periods when she was dealing with very stressful family circumstances.

⁹ The factors under AG ¶ 2(a) are as follows:

- (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.

Although one has to question why she needed to take loans from her 401(k) when she was earning in excess of \$130,000 annually and underpaying her federal taxes, she appears to be living within her means presently.

An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Were this case just about the unpaid consumer credit debt, her recent debt payments would be sufficient basis to justify continuation of her security clearance. However, her handling of her income tax matters is not what is expected of a senior engineer, who graduated from college with highest honors in mathematics and should understand the importance of timely compliance with her income tax obligations. On October 20, 2011, she proposed to repay her large IRS debt at only \$200 per month on annual income around \$151,204. So too, her failure to ensure a proper adjustment to her federal tax withholding by March 2012 reflects a lack of urgency in resolving her debts. Based on the information of record, I am unable to conclude at this time that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Withdrawn
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Withdrawn
Subparagraph 1.g:	Withdrawn
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant (duplicate of 1.l)
Subparagraph 1.j:	Withdrawn
Subparagraph 1.k:	For Applicant (duplicate of 1.m) ¹⁰
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant

¹⁰A favorable finding is returned as to SOR 1.k even though it is the same debt as SOR 1.m, which was found against Applicant because of nonpayment. SOR 1.k was not proven to represent additional indebtedness.

Subparagraph 1.p: Against Applicant
Subparagraph 1.q: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge