DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

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

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

04/20/2012

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On January 13, 2011, 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 an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued her a set of interrogatories. She responded to the interrogatories on August 23, 2011.[2] On another unspecified date, DOHA issued her a set of interrogatories. She responded to those interrogatories on August 23, 2011.[3] On

[1] Government Exhibit 1 (SF 86), dated January 12, 2011.

[2] Government Exhibit 2 (Applicant's Answers to Interrogatories, dated August 23, 2011).

[3] Government Exhibit 3 (Applicant's Answers to Interrogatories, dated August 23, 2011).

December 7, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline J (Criminal Conduct) and Guideline F (Financial Considerations) and detailed reasons why DOHA was unable to 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 December 13, 2011. In a written statement, notarized but undated, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 28, 2012, and the case was assigned to me on March 2, 2012. A Notice of Hearing was issued on March 14, 2012, and I convened the hearing, as scheduled, on April 3, 2012.

During the hearing, eight Government exhibits (GE 1-8) and two Applicant exhibits (AE A-B) were admitted into evidence without objection. Applicant and one other witness testified. The hearing transcript (Tr.) was received on April 11, 2012.

Findings of Fact

In her Answer to the SOR, Applicant admitted the only factual allegation pertaining to criminal conduct (¶ 1.a.) of the SOR, as well as several of the factual allegations pertaining to financial obligations (¶¶ 2.a., 2.i., and 2.j.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. She denied the remaining allegations (¶¶ 2.b. through 2.h., and 2.k. through 2.m.) of the SOR. 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 39-year-old employee of a defense contractor, currently serving as a financial analyst.[4] She is seeking to obtain a security clearance. She has never previously held a security clearance.[5] An August 1990 high school graduate,[6] she has been enrolled in several colleges and universities over the years and received an

[4] Government Exhibit 1, *supra* note 1, at 14.

[5] *Id.* at 25.

[6] Tr. at 64.

associate degree in an unspecified discipline in July 2010.[7] Applicant has never served with the U.S. military.[8]

While in high school, Applicant worked part-time as a cashier at a fast-food restaurant, and earned money baby-sitting. Following graduation, she held a variety of positions with different organizations. She was a counter-person at a jewelry store from November 1990 until late 1993; a dispatcher for a trucking company from 1993 until late 1996; an administrative assistant for a medical center from 1997 until 1999; a human resources assistant for an advertising agency from 1999 until 2000; an executive assistant for an investment firm from 2000 until 2001; an administrative assistant for a non-profit foundation from May 2001 until July 2005; and a financial analyst with two different companies form October 2005 until October 2006 and from October 2006 until January 2011. She joined her current employer in January 2011.[9] She also went through a period of voluntary unemployment (July 2005 to October 2005) while moving from one city to another.[10]

Applicant was married the first time in August 1995, and divorced in May 2004.[11] She and her first husband had two daughters, born in July 1993 and August 1996, respectively.[12] As part of the divorce, she was awarded physical custody of both children, while both parents shared legal custody.[13] Applicant married her second husband in June 2004.[14] She and her second husband separated in April 2009, but reconciled in September 2010.[15]

Criminal Conduct

In June 2009, while separated from her husband, Applicant met another individual (Ralph), who told her that he had been falsely accused of sodomy with a 16-year-old female when he was 30 years old, and that he was fighting the charges.[16] Applicant attempted to verify his story with the state police, but could not do so because

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[7] Government Exhibit 1, *supra* note 1, at 12.

[8] *Id.* at 19.

[9] *Id.* at 13-18; Tr. at 64-67.

[10] Government Exhibit 1, at 17.

[11] *Id.* at 22.

[12] *Id.* at 24-25.

[13] Tr. at 33-34.

[14] Government Exhibit 1, *supra* note 1, at 21.

[15] Tr. at 69.

[16] *Id.* at 23; Government Exhibit 2 (Personal Subject Interview, dated February 2, 2011), at 3, attached to Applicant's Answers to Interrogatories.

the records were sealed.[17] She spoke with Ralph's mother, sister, and pastor, and they all agreed that Ralph was wrongly accused.[18] She accepted their comments and was inclined to believe Ralph because he had two daughters and granddaughters.[19] She also confirmed with a state trooper that Ralph had no restrictions.[20] Applicant began dating Ralph in November 2009.[21] In May 2010, Applicant left her youngest daughter alone to drive her older daughter from church. Ralph came over to her house unannounced and asked the younger child if he could paint her toes. She agreed. While he was painting her toes, Ralph pulled the child's foot to his groin two times when she objected. He stopped the entire process.[22] Applicant was not aware of the situation until the child told social services in August 2010.[23]

Applicant's ex-husband, her sister, and mother, learned of the episode as well as Ralph's true status as a sex offender. They informed the authorities, while keeping Applicant in the dark about it. Subsequently, Ralph was arrested in August 2010 for violation of his restrictions related to being around children.[24] Despite what Applicant had previously been told about him, Ralph had, in fact, molested young girls on three other occasions, and he was a designated sex offender with restrictions.[25]

In June 2011, Applicant was charged with two counts each of gross, wanton, or reckless care for child, reduced to contributing to delinquency, abuse of child, commonly referred to as contributing to the delinquency of a minor, a misdemeanor.[26] She was arrested a week later. Custody of the children was taken from Applicant and given to her ex-husband.[27] Applicant eventually entered a plea of guilty, and in July 2011, she was sentenced to a total of 24 months in jail, with 24 months suspended, two years of supervised probation, completion of a parenting class, participation in individual or family counseling, and payment of court costs. Moreover, the Court ordered her to have no contact with her younger child until deemed appropriate by Applicant's treating therapist or the court, and to have no contact with her older child until deemed

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[17] Government Exhibit 2.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] Government Exhibit 2, *supra* note 15, at 3.

[23] *Id.*

[24] *Id.*; Tr. at 29-31.

[25] *Id.*

[26] Government Exhibit 3 (Court File, various dates), attached to Applicant's Answers to Interrogatories; Tr. at 31-32.

[27] Tr. at 33.

appropriate by the court or the child turns 18 years of age.[28] She commenced parenting classes in July 2011, and successfully completed the parenting program in September 2011.[29] Applicant's supervised probation ends in July 2013, unless terminated earlier by the court.

Financial Considerations

There was nothing unusual about Applicant's finances until about 2002. Although Applicant's divorce took place in May 2004, Applicant claims she was separated and going through a divorce from her first husband at the time and was earning as little as $25,000 to $27,000 per year. His debts supposedly became her debts.[30] She was supporting herself and her two daughters, and was unable to make her monthly payments. Accounts became delinquent. On February 8, 2002, she filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, and on May 15, 2002, her 36 debts, with an unspecified total balance, were discharged.[31] Following the discharge of her debts, Applicant was debt-free. Nevertheless, within a few short years, Applicant's financial situation began to deteriorate once again. Accounts became delinquent and were placed for collection or charged off, a vehicle was voluntarily repossessed, and tax liens were filed.

In August 2011, nearly four months before the SOR was issued, Applicant engaged the professional services of a credit repair company to assist her in resolving 14 of her delinquent accounts.[32] The company disputed those accounts purportedly because they were either outstanding or outdated on her credit report, and was prepared to work on settlements for each of the accounts.[33] Several accounts were apparently resolved as a result of the dispute process, but Applicant has not submitted any documentation to reflect payments to creditors by the company.

The SOR identified 12 delinquent accounts in collection and one deficiency related to the repossession of a vehicle, in the total amount of approximately $15,648, as reflected by three credit reports. Those accounts listed in the SOR, and their respective current status, according to the evidence, are properly consolidated and categorized, as follows: those which are not resolved, and those which have been resolved.

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[28] Government Exhibit 3 (Court File), *supra* note 26.

[29] Applicant Exhibit A (Letter and Certificate, dated September 16, 2011).

[30] Tr. at 39.

[31] Government Exhibit 7 (Bankruptcy Court file, various dates).

[32] Government Exhibit 3 (Letter from company, dated August 18, 2011), attached to Applicant's Answers to Interrogatories.

[33] *Id.*

Among those accounts which have not been resolved are the following: There is a medical account for an unspecified medical provider, in the amount of $100 (SOR ¶ 2.b.), that was placed for collection with a collection attorney.[34] The account was initially disputed because Applicant did not recognize it.[35] As of February 16, 2012, an investigation by the credit reporting agency was in progress.[36] She subsequently contended the account had been paid, and referred me to a letter from a collection attorney.[37] Her contention is erroneous, for the letter actually refers to another delinquent medical account, discussed below (SOR ¶ 2.e.). There is no evidence that the delinquent $100 account has been resolved.

There is an unspecified account with a partially identified bank in the amount of $966 (SOR ¶ 2.c.), that was placed for collection with a collection agency.[38] The account was initially disputed because Applicant claimed it did not belong to her.[39] As of August 5, 2011, an investigation by the credit reporting agency was in progress.[40] However, a subsequent Equifax credit report restored the listing as unpaid.[41] There is no evidence that the delinquent account has been resolved.

There is a medical account for an unspecified medical provider in the amount of $100 (SOR ¶ 2.d.), that was placed for collection.[42] The account was initially disputed because Applicant did not owe anything.[43] As of August 5, 2011, an investigation by the credit reporting agency was in progress.[44] She subsequently contended the account had been paid, and referred me to the same letter from a collection attorney, as discussed above.[45] Her contention is erroneous, for the letter actually refers to another delinquent medical account, discussed below (SOR ¶ 2.e.). While the account no longer appears on Applicant's 2012 credit report, there is no evidence that the delinquent $100 account has been resolved.

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[34] Government Exhibit 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 22, 2011), at 13.

[35] Government Exhibit 3, *supra* note 3, at 15.

[36] Government Exhibit 4 (Equifax Credit Report, dated February 16, 2012), at 1.

[37] Applicant Exhibit B (Letter from attorney, dated October 28, 2011); Tr. at 39-40.

[38] Government Exhibit 5 (Equifax Credit Report, dated August 5, 2011), at 1.

[39] Government Exhibit 3, *supra* note 3, at 15.

[40] Government Exhibit 5, *supra* note 28, at 1.

[41] Government Exhibit 4, *supra* note 36, at 1.

[42] Government Exhibit 5, *supra* note 38, at 2.

[43] Government Exhibit 3, *supra* note 3, at 16.

[44] Government Exhibit 5, *supra* note 28, at 2.

[45] Applicant Exhibit B, *supra* note 37; Tr. at 41-42.

There is an account with DirecTV in the amount of $267 (SOR ¶ 2.f.), that was placed for collection with a collection agency.[46] The account was initially disputed because Applicant did not owe the amount cited and claimed the account was unknown to her.[47] As of August 8, 2011, an investigation by the credit reporting agency was in progress.[48] She subsequently contended the account had been resolved when she advised the creditor that she had returned the cable equipment and received a receipt.[49] Although Applicant indicated she would furnish me that receipt, as of this date, she has not done so. While the account no longer appears on Applicant's 2012 credit report, there is no evidence that the delinquent account has been resolved.

There are two credit card accounts in the respective amounts of $494 and $513 that were placed for collection and charged off (SOR ¶¶ 1.g. and 1.h.).[50] The accounts were initially disputed because Applicant claimed that she had previously paid the accounts in full, but the creditor was unable to find the accounts in order to furnish her receipts.[51] Applicant's 2012 credit report lists one of the accounts as having been paid for less than full balance and paid charge off, and the other as simply charged off.[52] Applicant subsequently acknowledged the accounts had not been paid because the creditor was unable to find records of them and she did not have sufficient money to pay them.[53] She later changed her claim and stated the accounts had been paid off. Although Applicant indicated she would furnish me receipts, as of this date, she has not done so. There is no evidence that the delinquent accounts have been resolved.

There is a gasoline credit card in the amount of $669 (SOR ¶ 1.i.), that was placed for collection.[54] Applicant initially acknowledged the account and explained that she simply did not have sufficient funds to pay the bill.[55] She claimed to have an agreement with the creditor to make a full payment by February 14, 2011.[56] Applicant later claimed that she did not make a payment because the creditor did not know to

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[46] Government Exhibit 5, *supra* note 38, at 2.

[47] Government Exhibit 3, *supra* note 3, at 17.

[48] Government Exhibit 5, *supra* note 28, at 2.

[49] Tr. at 43-44.

[50] Government Exhibit 6, *supra* note 34, at 11-12.

[51] Government Exhibit 3, *supra* note 3, at 17; Tr. at 44.

[52] Government Exhibit 4, *supra* note 36, at 2.

[53] Tr. at 44-45.

[54] Government Exhibit 6, *supra* note 34, at 18.

[55] Government Exhibit 2, *supra* note 16, at 4.

[56] *Id.*

which company the account had been transferred.[57] She disputed the account. As of August 8, 2011, an investigation by the credit reporting agency was in progress.[58] She subsequently contended the account had been paid.[59] Although Applicant indicated she would furnish me a receipt, as of this date, she has not done so. While the account no longer appears on Applicant's 2012 credit report, there is no evidence that the delinquent account has been resolved.

There is a telephone account in the amount of $1,493 (SOR ¶ 1.j.), that was placed for collection and charged off.[60] Applicant initially acknowledged the account and explained that she may have missed a payment and forgotten to pay the bill.[61] She claimed she paid the bill in full in February 2009.[62] Applicant later denied owing $1,493 and disputed the account.[63] As of August 8, 2011, an investigation by the credit reporting agency was in progress.[64] A reinvestigation was still in process as of February 16, 2012.[65] Applicant subsequently acknowledged that she was working on a possible settlement and was prepared to pay up to $700 to resolve the account.[66] She did not furnish any documentary evidence to support her claim that negotiations were taking place, and there is no evidence that the delinquent account is being resolved or has been resolved.

There is an automobile loan account, with a high credit of $17,101 and an unpaid balance of $9,527 (SOR ¶ 1.k.), on a vehicle that was voluntarily repossessed.[67] Applicant initially acknowledged voluntarily returning the vehicle after she purchased another vehicle, and wanted to use the first vehicle as a trade-in. The creditor refused to release the vehicle's title and Applicant arranged for the creditor to sell it.[68] Applicant contended there was an unpaid $2,933 balance at the time, but that amount was actually the past due balance.[69] Applicant claimed to have made arrangements to make

[57] Government Exhibit 3, *supra* note 3, at 18.

[58] Government Exhibit 5, *supra* note 28, at 2.

[59] Tr. at 46.

[60] Government Exhibit 6, *supra* note 34, at 16.

[61] Government Exhibit 2, *supra* note 16, at 7.

[62] Tr. at 46.

[63] Government Exhibit 3, *supra* note 3, at 19.

[64] Government Exhibit 5, *supra* note 28, at 3.

[65] Government Exhibit 4, *supra* note 36, at 2.

[66] Tr. at 46-47.

[67] Government Exhibit 6, *supra* note 34, at 9.

[68] Government Exhibit 2, *supra* note 16, at 5.

[69] *Id.*; Government Exhibit 6, *supra* note 34, at 9.

monthly payments starting March 2011, with a final pay-off after she received her income tax refund.[70] She has not furnished any documentation to support any such arrangement or any such payments. The account was disputed because Applicant claimed she did not owe $9,527.[71] As of August 5, 2011, an investigation by the credit reporting agency was in progress.[72] The dispute was apparently denied for the debt was restored to her 2012 credit report as unpaid.[73] Applicant subsequently explained that a dispute took place over the unpaid balance, a pay-off amount, a penalty for an early pay-off, and the auction sale price, and she will continue to dispute the account until it is resolved.[74] She has not submitted any documentation to support her contention that she has a reasonable basis to dispute the legitimacy of the debt or to substantiate the basis of the dispute. There is no evidence that the delinquent account has been resolved.

There is a loan with a community college in the amount of $422 (SOR ¶ 2.l.), that was placed for collection with a collection attorney on behalf of the state.[75] Applicant initially denied knowing anything about the account, but indicated she would look into it and resolve it if it was hers.[76] She subsequently disputed the account and contended that it had been satisfied.[77] However, the documentation she submitted refers to a December 2002 judgment obtained by the state, in the amount of $1,017.64, plus attorney fees of $164.56, with no reference to the particular college.[78] The account listed in the January 2011 credit report refers to an account that was opened in April 2005.[79] There is no documentation to indicate that the paperwork regarding the judgment refers to the account listed in the SOR. Accordingly, I conclude that there is no evidence that the delinquent account has been resolved.

There are only two SOR-related accounts that have apparently been resolved: a medical account and an account stemming from a payday loan. The medical account with an orthopedic surgery center for service provided in September 2009, totaling approximately $192 (SOR ¶ 2.e.), was placed for collection with a collection attorney.[80]

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[70] Government Exhibit 2, at 5.

[71] Government Exhibit 3, *supra* note 3, at 19.

[72] Government Exhibit 5, *supra* note 28, at 5.

[73] Government Exhibit 4, *supra* note 36, at 3.

[74] Tr. at 47-49.

[75] Government Exhibit 6, *supra* note 34, at 15.

[76] Government Exhibit 2, *supra* note 16, at 7.

[77] Government Exhibit 3, *supra* note 3, at 21.

[78] Government Exhibit 3 (Case Information, downloaded August 18, 2011), attached to Applicant's Answers to Interrogatories.

[79] Government Exhibit 6, *supra* note 34, at 15.

The account was initially disputed because Applicant did not owe $192.[81] As of August 8, 2011, an investigation by the credit reporting agency was in progress.[82] Applicant finally paid the account in full on October 27, 2011.[83] The account has been resolved.

The payday loan account (SOR ¶ 2.m), totaling $905, was placed for collection and charged off. Applicant has consistently denied having any knowledge of the account,[84] but was aware that it was for a payday loan.[85] This account was one of those disputed by Applicant's credit repair company, and it no longer appears on her 2012 credit report. The account has apparently been resolved.

In August 2011, Applicant completed a Personal Financial Statement reflecting a net monthly family income of $7,794.82; monthly expenses of $2,628, not including child support to her ex-husband of $696;[86] and debt repayments of $1,093.[87] She estimated she has a monthly remainder of $4,073.82 (or actually $3,377.82 once the child support is deducted) available for discretionary spending.[88]

Applicant has never received any "formal" financial counseling or debt management guidance either as part of her bankruptcy or elsewhere.[89] She did, however, receive some financial guidance from her pastor who is an accountant.[90] Although Applicant indicated she would obtain a letter from her pastor to confirm her financial counseling,[91] as of this date, she has not done so.

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[80] Government Exhibit 6, *supra* note 34, at 13; Government Exhibit 5, *supra* note 28, at 2.

[81] Government Exhibit 3, *supra* note 3, at 16.

[82] Government Exhibit 5, *supra* note 28, at 2.

[83] Applicant Exhibit B, *supra* note 37.

[84] Government Exhibit 2, *supra* note 16, at 8; Tr. at 51.

[85] Tr. at 51.

[86] Tr. at 36-37.

[87] Government Exhibit 3 (Personal Financial Statement, undated), attached to Applicant's Answers to Interrogatories.

[88] *Id.*

[89] Tr. at 72-74.

[90] *Id.* at 73.

[91] *Id.*

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."[92] 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."[93]

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."[94] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[95]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

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

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

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

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

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."[96]

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."[97] 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, Criminal Conduct

The security concern under the guideline for Criminal Conduct is set out in AG ¶ 30:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), "*a single serious crime or multiple lesser offenses*" is potentially disqualifying. Similarly, under AG ¶ 31(d), where an "*individual is currently on parole or probation*," may raise security concerns. As noted above, Applicant was convicted of two counts each of contributing to the delinquency of a minor, a misdemeanor, and was sentenced to a total of 24 months in jail, with 24 months suspended, and two years of supervised probation. The period of probation ends in July 2013, unless terminated earlier by the court. AG ¶¶ 31(a) and 31(d) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where "*so much time has elapsed since the criminal behavior*

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

[97] *See* Exec. Or. 10865 § 7.

happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Similarly, AG ¶ 32(d) may apply where "*there is evidence of successful rehabilitation: including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*."

AG ¶¶ 32(a) and 32(d) only partially apply. Applicant was convicted in July 2011 for actions that contributed to the delinquency of her two minor children. She lost physical custody of her daughters and remains on supervised probation until July 2013, unless terminated earlier by the court. It appears that Applicant has already complied with some of the court-imposed sentence, and is currently complying with her probation requirements. She has avoided any participation in additional criminal enterprises, but has offered minimal evidence of successful rehabilitation, a good employment record, or constructive community involvement. It has been less than one year since her conviction, a period too brief a period to conclude that such conduct will not recur.

Guideline F, Financial Considerations

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

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "*inability or unwillingness to satisfy debts*" is potentially disqualifying. Similarly, under AG ¶ 19(c), "*a history of not meeting financial obligations*" may raise security concerns. As noted above, there was nothing unusual about Applicant's finances until about 2002, when her debts were discharged under a Chapter 7 bankruptcy. Following the discharge of her debts, Applicant was debt-free, but within a few short years, her financial situation began to deteriorate once again. Accounts became delinquent and were placed for collection or charged off, a vehicle was voluntarily repossessed, and tax liens were filed. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "*the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of*

employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Evidence that "*the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*."[98] Also, AG ¶ 20(e) may apply where "*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*."

AG ¶ 20(a) does not apply. Applicant's initial financial problems commenced sometime in 2002. However, in that year, her debts were discharged in bankruptcy. She became debt-free, but within a few short years, her financial situation again began to deteriorate, with accounts becoming delinquent. She joined her current employer in January 2011, with a substantial salary. Applicant's financial difficulties, regardless of causation, commenced in 2002, and with the exception of a brief debt-free period, have continued to the present. While she has attributed those difficulties in general terms to insufficient funds, she never fully described why she could not maintain her monthly payments. In the absence of more specific explanations, and considering her minimal attention to most of her accounts, her financial problems are likely to recur. The combination of factors casts doubt on her current reliability, trustworthiness, or good judgment.[99]

AG ¶ 20(b) partially applies because there were several conditions beyond Applicant's control that may have had a negative impact on Applicant's financial situation. She went through a separation and divorce from her first husband, a temporary separation from her second husband, the loss of custody of her children, and the trauma of an arrest and conviction. It is unclear why Applicant's first husband's debts became her debts, as she never explained the situation. The basic question is whether or not Applicant eventually acted responsibly to address the debts that resulted. Based on the evidence supported by documentation, the answer is no.

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

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

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

[99] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

AG ¶ 20(c) minimally applies because Applicant supposedly received informal financial counseling from her pastor, but failed to submit any documentation to support her claim. There is evidence that Applicant sought assistance in making strategic disputes regarding all of her delinquent accounts, but there is no clear evidence that Applicant's financial problems are being resolved and are under control. Moreover, although she has presented a personal financial statement, there is little evidence that she is following any repayment plans in reducing her delinquencies.

AG ¶ 20(d) partially applies. Nearly four months before the SOR was issued, Applicant engaged the professional services of a credit repair company to assist her in resolving 14 of her delinquent accounts. The purpose of the effort was not to simply resolve legitimate accounts, but rather to make strategic disputes against all the accounts purportedly because they were either outstanding or outdated on her credit report. Several non-SOR accounts were apparently resolved as a result of the dispute process, but Applicant has not submitted any documentation to reflect payments to the creditors listed in the SOR other than to the one medical provider. Applicant's monthly remainder available for discretionary spending is substantial. Yet, rather than initiating a good-faith effort to repay her overdue creditors or otherwise resolve her debts, she has relied on the dispute process and made numerous inconsistent statements regarding each of the accounts and their current status. She indicated some accounts had been paid, but failed to furnish supporting documentation; then acknowledged they had not been paid; then claimed that because they were no longer on a current credit report, they had been paid. Over the years, Applicant had resolved some non-SOR accounts, but with the exception of the one medical account discussed above, she has not attempted to do so regarding the SOR accounts.[100] Applicant has served as an administrative assistant, a human resources assistant, an executive assistant, and a financial analyst. Armed with financial knowledge from those positions, she should have exercised better judgment in addressing her debts.

AG ¶ 20(e) does not apply. As noted above, Applicant, through her credit repair company, strategically disputed her debts but failed to furnish documentation to substantiate the basis for each dispute or provide evidence of actions to resolve the issue. Some accounts were disputed and deleted from her credit report. Other debts were disputed but remained.

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):

[100] "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.

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

There is some evidence in favor of mitigating Applicant's conduct. Applicant has a history of financial delinquencies commencing in 2002. She went through a separation and divorce from her first husband, a temporary separation from her second husband, the loss of custody of her children, and the trauma of an arrest and conviction. In 2011, she engaged the professional services of a credit repair company to assist her in resolving her delinquent accounts. Some of her non-SOR accounts were resolved. In addition, following her conviction, she complied with some of the court-imposed sentence, and is currently complying with her probation requirements.

The disqualifying evidence under the whole-person concept is more substantial. Applicant was convicted of two counts each of contributing to the delinquency of a minor, a misdemeanor, and was sentenced to a total of 24 months in jail, with 24 months suspended, and two years of supervised probation. The period of probation ends in July 2013, unless terminated earlier by the court. Applicant's debts were discharged in bankruptcy in 2002. She became debt-free, but within a few short years, her financial situation again began to deteriorate, with accounts becoming delinquent. She sought assistance in making strategic disputes regarding all of her delinquent accounts, but failed to establish a meaningful effort to resolve her SOR debts. 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.[101] There is a continuing period of supervised probation, as well as a relative lack of good-faith efforts to actually resolve her delinquent debts. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[102]

> In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is

[101] *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).

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

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

Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her criminal conduct and financial considerations.

Formal Findings

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	Against Applicant
Subparagraph 2.g:	Against Applicant
Subparagraph 2.h:	Against Applicant
Subparagraph 2.i:	Against Applicant
Subparagraph 2.j:	Against Applicant
Subparagraph 2.k:	Against Applicant
Subparagraph 2.l:	Against Applicant
Subparagraph 2.m:	For 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