DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 11-08254
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

05/06/2013

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Decision

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GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On November 3, 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 Department of Defense (DOD) issued her a set of interrogatories. She responded to the interrogatories on July 6, 2012.[2] On another unspecified date, the DOD issued her a request for a subject interview verification. She responded to the request on July 6, 2012.[3] The DOD issued a Statement of Reasons (SOR) to her on July 30, 2012, under Executive Order 10865,

[1] Item 4 (SF 86, dated November 3, 2011).

[2] Item 18 (Applicant's Answers to Interrogatories, dated July 18, 2012).

[3] Item 17 (Applicant's Response to the Request for a Subject Interview Verification, dated July 18, 2012).

Safeguarding Classified Information within Industry (February 20, 1960), as amended and modified; DOD 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) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find 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 received the SOR on August 7, 2012. In a sworn statement, dated July 30, 2012,[4] Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on February 28, 2013, and she was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on March 12, 2013, but, as of April 19, 2013, she had not submitted a response to the FORM. The case was assigned to me on April 23, 2013.

Findings of Fact

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

Applicant is a 54-year-old full-time employee of a defense contractor who, since February 1977, has been serving as an office administrator. She has also held a part-time, weekend, position with a medical center as a unit secretary, since July 2000. She has never served in the U.S. military.[5] She was granted a top secret security clearance in 2002.[6]

A 1976 high school graduate, Applicant received an associate's degree in an unspecified discipline in May 1990. She was married in August 1979, and was divorced in December 1998.[7] She has two children, a daughter and a son, born in 1981 and 1984, respectively.

[4] Item 2 (Applicant's Answer to the SOR, dated July 30, 2012).

[5] Item 4, *supra* note 1, at 12.

[6] Item 4, *supra* note 1, at 25.

[7] Item 4, *supra* note 1, at 14.

Financial Considerations

There was nothing unusual about Applicant's finances until April 16, 1997, when she filed a voluntary petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, listing $162,350 in assets (claimed as exempt) and $282,079.98 in liabilities.[8] The major assets were two residences worth $155,000. Nevertheless, the bankruptcy trustee concluded that the assets were inconsequential or were encumbered beyond value. The total value of Applicant's personal property was reflected as $7,350, of which $1,750 was a motor vehicle, and $5,600 was for household goods, jewelry, and wearing apparel.[9] The 15 listed creditor accounts were for mortgages, equity loans, lines of credit, retail accounts, credit cards, personal loans, and dental care.[10] Applicant's unsecured non-priority debts were discharged on August 18, 1997.[11] Although Applicant attributed her financial situation to her divorce,[12] without further explanation or elaboration, it should be noted that she was not divorced until December 1998, or approximately 20 months after she filed her bankruptcy petition.

Applicant's financial situation during the early years following the discharge of her debts is unclear. In November 2001, she indicated that two of her credit cards were "maxed out" the previous April.[13] In November 2001, she also submitted a confusing financial statement essentially reflecting a net monthly income of $2,744.43, including her salary from both employers, alimony, and anticipated child support.[14] She claimed $2,242.15 in monthly expenses and debt payments.[15] Using her reworked numbers, she had $2.28 left over each month for discretionary spending or savings. In the four and one-half years since her bankruptcy discharge, Applicant's assets increased dramatically. She listed $10,000 in jewelry, clothing, and tools; $45,000 in automobiles; and $205,000 in stocks and bonds.[16]

By the early and mid-2000's, however, some accounts were past due, placed for collection, or charged off.[17] During her interview with an investigator from the U.S. Office of Personnel Management (OPM) in January 2012, Applicant denied being aware of

[8] Item 7 (Bankruptcy File, various dates); Item 6 (Bankruptcy Docket, dated August 18, 1997).

[9] Item 7, *supra* note 8, at 79-81.

[10] Item 7, *supra* note 8, at 77-87.

[11] Item 7, *supra* note 8, at 70.

[12] Item 2, *supra* note 4, at 2.

[13] Item 9 (Statement of Subject, dated November 8, 2001).

[14] Item 9 (Financial Statement, dated November 8, 2001).

[15] Item 9 (Financial Statement), *supra* note 13.

[16] Item 9 (Financial Statement), *supra* note 13.

[17] Item 10 (Combined Experian, TransUnion, Equifax Credit Report, dated September 7, 2006); Item 13 (Combined Experian, TransUnion, Equifax Credit Report, dated December 9, 2010); Item 14 (Combined Experian, TransUnion, Equifax Credit Report, dated November 17, 2011).

any financial problems until October 2007, when a wage garnishment judgment was filed against her.[18] She attributed her financial problems to two $5,000 loans that she obtained in about 2001 or 2002 to assist a friend, whose identity she declined to reveal. The friend was supposed to repay the loans with monthly payments of $100, but after about six months, the payments stopped.[19] As a single mother with two children in private school, following the garnishment, Applicant was unable to make payments on the loans.[20] There is no evidence that Applicant ever took any legal action against her "friend" for defaulting on the loans, and claims that she is no longer in touch with the friend and has no way of contacting her.[21] Exacerbating her financial situation were two additional events. A second garnishment was filed in September 2008, and renters in her rental property started missing their monthly rental payments.[22]

There is also evidence that on one occasion in June 2010, Applicant visited a casino and made three deposits of $25,000 each, for a total deposit of $75,000.[23] Applicant denied ever engaging in any such transactions, but did acknowledge that in June 2010, she hit a slot machine jackpot for $2,500, which she purportedly reported as income with the Internal Revenue Service (IRS).[24] As correctly noted by Department Counsel, the law requires casinos to report transactions involving either "cash in" or "cash out," of more than $10,000.[25] "Cash out" transactions include redemptions of chips, tokens, tickets, etc., payments on bets, cashing of checks, and payment of contests and other promotions. "Cash in" transactions include the purchase of chips, tokens, bets of currency, etc. Jackpots received from slot machines or video lottery terminals need not be reported. Applicant's explanations in this regard are unsupported by any documentation, and contrary to the information appearing in the public business records of the FinCEN of the U.S. Department of the Treasury. It is unclear as to what the source of the $75,000 might have been, or why it was not used to resolve delinquent debts.

In July 2012, Applicant submitted a personal financial statement reflecting a net monthly income of $2,100; $800 in monthly expenses, as well as $907 in debt payments; with $393 left over each month for discretionary spending or savings.[26] In the

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[18] Item 17 (Personal Subject Interview, dated January 11, 2012), at 1.

[19] Item 17, *supra* note 18, at 1.

[20] Item 17, *supra* note 18, at 1.

[21] Item 12 (Adverse Information Report, dated October 12, 2010).

[22] Item 17, *supra* note 18, at 1-2.

[23] Item 15 (Financial Crimes Enforcement Network (FinCEN) Report, dated November 17, 2011), at 1-4.

[24] Item 17, *supra* note 18, at 4.

[25] Item 19 (31CFR §§ 103.22(b)(2)(i) and 103.22(b)(2)(ii)). Effective March 1, 2011, the 31 CFR Part 103 sections were transferred to 31 CFR Ch. X, §§ 1021.311(a)–(c).

[26] Item 18 (Personal Financial Statement, dated July 5, 2012).

decade since her 2001 financial statement, Applicant's assets decreased dramatically. She listed $20,000 in automobiles; and $17,185.47 in stocks and bonds.[27]

Applicant did not receive any financial counseling or debt consolidation counseling after her bankruptcy.[28] In January 2012, Applicant indicated she intended to address and resolve all of her delinquent accounts.[29]

The SOR identified ten purportedly continuing delinquencies, totaling approximately $67,070. There is a loan in the amount of $5,000 (supposedly for the unidentified friend), placed for collection with an unspecified past due balance, that went to judgment in the amount of $6,177 (SOR ¶ 1.a.).[30] The creditor obtained a wage garnishment for $11,022.75 in August 2010.[31] The balance was finally paid off in August 2011.[32] The account has been resolved.

There is a loan in the amount of $5,000 (supposedly for the unidentified friend), placed for collection with an unspecified past due balance, that went to judgment in the amount of $12,827 (SOR ¶ 1.b.).[33] Applicant speculated the amount covered both of the loans, noted that the two creditors had merged, and contended she had paid off one half of the account.[34] She offered no documentation to support her contention that the two loans were covered by the same judgment or that she had made payments on this particular judgment. During her OPM interview, Applicant acknowledged she had recently received a garnishment notice informing her that, effective January 23, 2012, a wage garnishment would commence in the amount of $450.[35] In her Answer to the SOR, she made no mention of any wage garnishment, but noted that she was working with her bank, but had no documentation from the creditor to support her claim.[36] The account remains unresolved.

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[27] Item 18 (Item 18 (Personal Financial Statement), *supra* note 26.

[28] Item 17, *supra* note 18, at 4.

[29] Item 17, *supra* note 18, at 4.

[30] Item 14, *supra* note 17, at 5; Item 13, *supra* note 17, at 16.

[31] Earnings Withholding Order, dated August 31, 2010, attached to Applicant's Answer to the SOR (Item 2); Item 11 (Incident History, dated November 9, 2010; Item 12, *supra* note 21.

[32] Memorandum of Returned Funds, dated August 29, 2011, attached to Item 2.

[33] Item 14, *supra* note 17, at 5; Item 13, *supra* note 17, at 16.

[34] Item 17, *supra* note 18, at 2.

[35] Item 17, *supra* note 18, at 2.

[36] Item 2, *supra* note 4, at 1.

There is a loan with the same creditor with a high credit of $8,639 and a past due unpaid balance of $11,557 that was placed for collection and charged off (SOR ¶ 1.c.).[37] Applicant admitted the SOR allegation, but added that the case had been settled,[38] without offering any further explanation. She submitted no documentation to support her contention. The account remains unresolved.

There is a home mortgage with a high credit of $89,370, a past due balance of $7,035, and an unpaid balance of $67,491, that went into a foreclosure status (SOR ¶ 1.d.).[39] During her OPM interview, Applicant indicated she was waiting for a foreclosure notice from the mortgage lender to enable her to obtain an emergency loan from her 401(k) retirement account to pay off her past due balance.[40] The mortgage lender calculated the necessary reinstatement amount of $13,101.47 on May 8, 2012.[41] On May 17, 2012, she withdrew $14,706.79 from her 401(k),[42] and on May 23, 2012, she wired the mortgage lender $13,102.[43] The foreclosure was rescinded on May 25, 2012.[44] The account has been resolved.

There is a credit card account with a high credit of $786, and a past due balance of $824, that was placed for collection and charged off (SOR ¶ 1.e.).[45] During her OPM interview, Applicant indicated she fell behind in her monthly payments in January 2011,[46] but she was actually 30 days past due in August 2006,[47] and on at least three more occasions in 2010.[48] She indicated the creditor had offered to settle the account for $100 within a month, and she was going to make the payment.[49] In August 2012, eight months after Applicant's promise to pay the balance, and having failed to do so, the creditor offered her three payment options to resolve the account which by then had

[37] Item 14, *supra* note 17, at 7; Item 13, *supra* note 17, at 6; Item 16 (Equifax Credit Report, dated May 7, 2012), 1.

[38] Item 2, *supra* note 4, at 1.

[39] Item 14, *supra* note 17, at 8.

[40] Item 17, *supra* note 18, at 3.

[41] Reinstatement Calculation, dated May 8, 2012, attached to Item 2.

[42] Statement of Account Distribution, dated May 17, 2012, attached to Item 2.

[43] Western Union Quick Collect, dated May 23, 2012, attached to Item 2.

[44] Notice of Rescission of Declaration of Default and Demand for Sale and of Notice of Default and Election to Sell, dated May 25, 2012, attached to Item 2.

[45] Item 14, *supra* note 17, at 9.

[46] Item 17, *supra* note 18, at 3.

[47] Item 10, *supra* note 17, at 8.

[48] Item 13, *supra* note 17, at 8.

[49] Item 17, *supra* note 18, at 3.

a balance of $849.35.[50] Applicant claimed that she accepted the first option, to pay $339.74 by August 22, 2012, and she wrote a note saying she had made the payment, but she did not submit any documentation to support her contention. Department Counsel noted the absence of documentary evidence in the FORM, but Applicant still did not submit any documentation. The account remains unresolved.

There is a rental property mortgage with a high credit of $223,319, a past due balance of $24,497, and an unpaid balance of $218,498, that went into foreclosure (SOR ¶ 1.f.).[51] In 2010, the mortgage lender reclaimed the collateral to settle the defaulted mortgage.[52] Nevertheless, Applicant's 2012 Equifax credit report continued to erroneously report that there was a deficiency or past due balance of $24,000.[53] Applicant is not liable for the deficiency, for under California law, there is a provision called the Anti-Deficiency Statute,[54] which states in relevant part:

> No deficiency judgment shall lie in any event after a sale of real property or an estate for years therein for failure of the purchaser to complete his or her contract of sale, or under a deed of trust or mortgage given to the vendor to secure payment of the balance of the purchase price of that real property or estate for years therein, or under a deed of trust or mortgage on a dwelling for not more than four families given to a lender to secure repayment of a loan which was in fact used to pay all or part of the purchase price of that dwelling occupied, entirely or in part, by the purchaser.

Under this section, generally if there is a foreclosure on a dwelling and there is a deficiency, the lender has no recourse regarding "purchase money loans," also called "non-recourse loans," the amount set forth in the mortgage used to finance the purchase of the dwelling. The collateral or dwelling is considered full satisfaction. However, there is a caveat, for the protection is afforded only if the borrower actually dwells in the property, a fact which has not been met for the rental property in this instance. However, there is another pertinent law, called the One Form of Action Rule,[55] which states in relevant part: "There can be but one form of action for the recovery of any debt, or the performance of any right secured by mortgage upon real property." Accordingly, the comment in the 2011 combined credit report that the mortgage lender reclaimed the collateral to settle the defaulted mortgage[56] is an accurate reflection of the facts, and there is no longer a deficiency. The account has been resolved.

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[50] Letter, dated August 7, 2012, attached to Item 2.

[51] Item 14, *supra* note 17, at 8.

[52] Item 14, *supra* note 17, at 8.

[53] Item 16, *supra* note 37, at 2.

[54] Cal. Code Civ. Proc. § 580(b).

[55] Cal. Code Civ. Proc. § 726(a).

[56] Item 14, *supra* note 17, at 8.

There are four separate telephone accounts with the same creditor with past due unpaid balances of $139 (SOR ¶ 1.h.), $182 (SOR ¶ 1.i.), $209 (SOR ¶ 1.j.), and $190 (SOR ¶ 1.j.), that were placed for collection in 2009 or 2010.[57] During her OPM interview, Applicant attributed the delinquencies to the possibility that her children had failed to make the monthly payments on the phones for which she had "co-signed."[58] However, the credit reports indicate these were "individual" rather than "joint" accounts.[59] Applicant admitted the SOR allegations, but added that the accounts, totaling $720, had been settled for $360.[60] She also wrote a note saying she had made the agreement and the case is closed, but made no mention of a payment, and she did not submit any documentation to support her contention. Department Counsel noted the absence of documentary evidence in the FORM, but Applicant still did not submit any documentation. The four accounts remain unresolved.

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."[61] 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."[62]

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

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[57] Item 13, *supra* note 17, at 11-12; Item 14, *supra* note 17, at 6-7; Item 16, *supra* note 37, at 2. There were also two accounts with the same creditor, with different account numbers and different balances that were charged off in 2006. *See* Item 10, supra note 17, at 15. Without further information, it is impossible to determine if they are related to the ones alleged in the SOR.

[58] Item 17, *supra* note 18, at 2-3.

[59] Item 13, *supra* note 17, at 11-12; Item 14, *supra* note 17, at 6-7.

[60] Item 2, *supra* note 4, at 2.

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

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

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."[63] 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.[64]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[65]

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."[66] 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.

[63] "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).

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

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

[66] *See* Exec. Or. 10865 § 7.

Analysis

Guideline F, Financial Considerations

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

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "*inability or unwillingness to satisfy debts*" is potentially disqualifying. Similarly, under AG ¶ 19(c), "*a history of not meeting financial obligations*" may raise security concerns. Applicant has a lengthy history of recurring financial problems commencing in 1997. Her unsecured non-priority debts were discharged in 1997, but by April 2001, she was again experiencing financial problems. Applicant had insufficient funds to make all of her monthly account payments. As a result, some accounts started to become delinquent, and were placed for collection or charged off. Garnishments followed judgments, one rental property was foreclosed, and another was in a foreclosure status before it was rescinded. Other accounts remain unresolved. AG ¶¶ 19(a) and19(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*."[67]

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

> In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person

AG ¶ 20(a) does not apply. The nature, frequency, and relative recency of Applicant's continuing financial difficulties since 1997 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." In light of her substantial period of continuing financial problems, the repeated promises to resolve her delinquent debts, the unsubstantiated contentions that accounts had been resolved and paid, and the substantial inaction that followed those promises, it is unlikely that they will be resolved in the short term, and they are likely to continue. Under the circumstances, Applicant's actions do cast doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies. Applicant generally attributed her initial financial problems to a divorce that took place approximately 20 months after she filed for bankruptcy. She failed to indicate exactly how the divorce may have contributed to those earlier financial problems. Her more recent financial problems were attributed, in part, to the failure of her renters to continue making rent payments, and to the garnishment of her wages. The garnishment might have been avoided had Applicant taken some responsible action in addressing the delinquent account before the account went to judgment. There are also substantial unanswered questions regarding Applicant's loans to the unidentified friend, the casino transactions, and the $205,000 in stocks and bonds she claimed to possess in November 2001. Under these circumstances it is unclear if Applicant acted responsibly.[68]

AG ¶ 20(c) does not apply because Applicant did not receive any financial counseling after her 1997 bankruptcy in money management, debt management, debt repayment, or budgeting. Furthermore, considering Applicant's general inaction following several promises, over several years, to resolve her accounts, the indications are that the financial problems have not been resolved and are not under control.

AG ¶ 20(d) does not apply. Other than the one loan account that was resolved involuntarily by garnishment, following a judgment; one account that was resolved involuntarily by foreclosure; and the sole account for which Applicant furnished documentation to support her contention that her home mortgage was removed from foreclosure by her payment, out of her 401(k) account, of the past due balance, there is little evidence to indicate that Applicant initiated a voluntary or good-faith effort to repay her overdue creditors or otherwise resolve her debts. As described above, Department Counsel noted the absence of documentary evidence in the FORM, but Applicant still

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> acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that she or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

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

[68] "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.

did not submit any of the suggested documentation. Applicant's statements regarding her future intent to resolve her debts, without corroborating documentary evidence supporting actual action to do so, are entitled to little weight. Her declarations of future intention to resolve her debts, after so much time where little positive efforts were voluntarily taken, do not qualify as a "good-faith" effort.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[69]

There is some evidence in favor of mitigating Applicant's conduct. She resolved the deficiency on her home mortgage and saved it from foreclosure. She has acknowledged responsibility for her delinquent debts and promised to resolve them.

The disqualifying evidence under the whole-person concept is more substantial. Of the three accounts that were resolved, one loan account was resolved involuntarily by garnishment, following a judgment; and one account was resolved involuntarily by foreclosure. There are unanswered questions regarding Applicant's loans to the unidentified friend, the casino transactions, and the $205,000 in stocks and bonds she claimed to possess in November 2001. Applicant has never explained how or why her portfolio decreased to $17,185.47 in one decade; the casino transactions totaling $75,000 in one day; or the loans to her friend. The record is filled with guesstimates and general statements by Applicant as to when her general financial problems commenced; when specific accounts became delinquent; and that accounts had been settled, without submitting documentation to support her contentions. There is little evidence to indicate that Applicant initiated a voluntary or good-faith effort to repay her

[69] *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).

overdue creditors or otherwise resolve her debts. Applicant's continuing inaction under the circumstances confronting her does cast doubt on her current reliability, trustworthiness, or good judgment. Her reputation in the workplace is unknown.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[70]

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

Applicant has demonstrated the absence of a "meaningful track record" of debt reduction and elimination. There are delinquent debts, repeated promises of action to resolve those debts, and inaction by Applicant to do so. Instead, there are the bankruptcy, judgments, involuntary garnishment, and the involuntary foreclosure. Overall, the evidence leaves me with 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 financial considerations. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

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

Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge