



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-12190

Appearances

For Government: Richard Stevens, Esquire, Department Counsel

For Applicant: *Pro se*

07/17/2013

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On June 9, 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 December 21, 2012.² On another unspecified date, the DOD issued her a set of interrogatories. She responded to the interrogatories on December 21, 2012.³ On February 1, 2013, the DOD issued a Statement of Reasons (SOR) to her, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February

¹ GE 1 ((SF 86), dated June 9, 2011).

² GE 2 (Applicant's Answers to Interrogatories, dated December 21, 2012).

³ GE 3 (Applicant's Answers to Interrogatories, dated December 21, 2012).

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 March 7, 2013. In a sworn undated statement, Applicant responded to the SOR allegations and requested a decision by an administrative judge, but failed to indicate whether or not she wanted a hearing. On April 7, 2013, she requested a hearing. Department Counsel indicated the Government was prepared to proceed on May 6, 2013. The case was assigned to me on May 22, 2013. A Notice of Hearing was issued on June 7, 2013, and I convened the hearing, as scheduled, on June 24, 2013.

During the hearing, five Government exhibits (GE 1 through GE 5) and nine Applicant exhibits (AE A through AE I) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on July 2, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She submitted two voluminous sets of additional documents, which were marked as exhibits (AE J and AE K) and admitted into evidence without objection. The record closed on July 8, 2013.

Findings of Fact

In her Answer to the SOR, Applicant admitted, with an explanation, three of the factual allegations pertaining to financial considerations (§§ 1.a., 1.c., and 1.d.). She denied the remaining allegation. 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 50-year-old employee of a defense contractor who, since May 2011, has served as a full-time help desk support service specialist. She was previously employed by the local school system as a computer lab technician, as well as part-time with an office supply company.⁴ She has never served with the U.S. military,⁵ and she has never held a security clearance.⁶ Applicant received a Bachelor of Science degree

⁴ GE 1, *supra* note 1, at 11-13; GE 2 (Personal Subject Interview, dated July 7, 2011), at 1, attached to Applicant's Answers to Interrogatories.

⁵ GE 1, *supra* note 1, at 14.

⁶ GE 1, *supra* note 1, at 23.

in June 1990, and an Associate of Applied Science degree in information technology, with highest honors, in June 2011.⁷ She has never been married.⁸

Financial Considerations

There was nothing unusual about Applicant's finances until about 2000.⁹ Applicant's mother had been a teacher who retired with a pension and social security in the mid-1990s, and her father had been a minister and bishop who retired with social security in about 2000.¹⁰ Applicant's father was physically unable to continue working at the time he retired, and he eventually needed convalescent care. Applicant moved in with her parents to assist them with their personal and financial needs. She also assisted her mother in providing unspecified care for her grandmother. Although Applicant's mother had some money saved at the time, there was no health insurance for Applicant's father, and the shortages as well as some household expenses had to be paid by Applicant and her mother.¹¹

In mid-2005, Applicant's mother had several mini-strokes followed by a massive stroke, and she was moved to a local nursing and rehabilitation center.¹² Medicare was to cover a substantial portion of the expenses, with Medicaid serving as a "payer (sic) of last resort."¹³ All of her mother's savings, life insurance, and health insurance were signed over to the nursing facility.¹⁴ A representative from an independent utilization review committee for the facility was designated as the representative for Applicant's mother.¹⁵ Nearly all of the required paperwork, including a durable power of attorney, pertaining to the admission and treatment for Applicant's mother was signed by Applicant as her mother's representative.¹⁶ However, on an unspecified date, in order to admit her mother into the nursing facility, believing she was using her mother's power of attorney authority and position,¹⁷ Applicant signed a form furnished by the nursing

⁷ GE 1, *supra* note 1, at 9-10; Tr. at 13, 25-26; AE F (Transcript, undated); AE G (Certificates, various dates).

⁸ GE 1, *supra* note 1, at 16.

⁹ Tr. at 56-57. Although Applicant did not have perfect credit before 2000, she was routinely paying her debts.

¹⁰ Tr. at 27-28, 57.

¹¹ Tr. at 28-29.

¹² AE J (Nursing Center Records, various dates); Tr. at 48.

¹³ AE J (Medicare Authorization, dated June 9, 2005); AE J (Medicare Part B - Assignment of Benefits, undated).

¹⁴ Tr. at 29, 49.

¹⁵ AE J (Appointment of Representative, undated).

¹⁶ See, AE J (Durable Power of Attorney, dated April 15, 2003).

¹⁷ Tr. at 49-52.

facility, called a Guarantor's Agreement. Under the terms of the Agreement, she personally guaranteed the payment of all charges incurred by or on behalf of her mother at the nursing facility.¹⁸

As a direct result of Applicant's parents' medical conditions, any medical expenses for them that were not covered by private health insurance, Medicare, Medicaid, or Applicant's mother's savings, were paid, to the extent possible, by Applicant from her own personal savings. The monthly costs were between \$3,000 and \$5,000.¹⁹ As a result of that unanticipated additional financial burden, Applicant was unable to keep up with the monthly payments of her own bills. Some bills became delinquent and were placed for collection. When Applicant's mother passed away in 2006, the only asset she still owned was the family residence in which Applicant was residing. Applicant inherited the mortgage-free residence which she estimated was worth less than \$70,000.²⁰

Throughout the entire period of her parents' illnesses, but especially during 2005-06, Applicant was overwhelmed by the daily circumstances of worrying about her mother, trying to work, attending classes, trying to care for her mother, paying bills, and going back and forth between the house and the nursing facility.²¹ She failed to file her 2005 federal and state income tax returns in April 2006.²² In May 2006, an unspecified collection agency generically called "medical payment data", on behalf of the nursing facility, obtained a default judgment against Applicant and her mother in the amount of \$26,775.58.²³

At some point, believed by Applicant to be in late 2010, she engaged the professional services of a financial counseling company to assist her with a debt management plan to resolve her credit problems and start repaying her debts through a structured repayment plan.²⁴ The company assessed her financial situation and set up a debt management plan, listing a number of Applicant's delinquent accounts. In addition to the initial set-up charge and a \$32 monthly fee, Applicant's monthly deposit of \$181 was to be distributed to her creditors.²⁵ By November 2012, \$2,254 had been disbursed to various creditors,²⁶ and by May 2013, the amount had increased to \$3,148.²⁷ As a

¹⁸ AE J (Guarantor's Agreement, undated).

¹⁹ Tr. at 29-30; GE 2 (Personal Subject Interview), *supra* note 4, at 5.

²⁰ Tr. at 29-31.

²¹ Tr. at 32, 44-47.

²² Tr. at 32.

²³ GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 21, 2011), at 5.

²⁴ Tr. at 39.

²⁵ GE 3 (Account Summary, dated November 19, 2012), attached to Applicant's Answers to Interrogatories; Tr. at 54-55.

²⁶ GE 3 (Account Summary), *supra* note 25; GE 3 (Payments to Creditors, dated December 6, 2012), attached to Applicant's Answers to Interrogatories.

result, three of her non-SOR accounts were paid off, and a fourth was in the process of being resolved.²⁸

In response to the DOD interrogatories, in December 2012, Applicant provided a personal financial statement reflecting a monthly net salary of \$1,716.34; monthly household, utility, transportation, and food expenses of \$910; and monthly debt repayments of \$773.08; leaving a monthly remainder of \$33.26 available for discretionary savings or expenditures.²⁹ During the hearing, Applicant revised that figure upward to between \$150 and \$200.³⁰

The SOR identified five purportedly continuing delinquencies. There is the judgment on behalf of the nursing facility in the amount of \$26,775.58 (**SOR ¶ 1.a.**).³¹ Although a special process server certified that he or she had personally delivered a copy of the summons and complaint to Applicant's mother on March 13, 2006, and a different special process server certified that he or she had personally delivered a copy of the summons and complaint to Applicant on March 20, 2006,³² Applicant denied ever being aware of the service or the judgment until several years later when she was being interviewed by an investigator from the U.S. Office of Personnel Management (OPM) regarding her application for a security clearance.³³

On May 3, 2006, the court entered separate default judgments against both Applicant and her mother in the amount of \$26,775.58, including the principal balance of \$23,283.12, and \$3,492.46 in attorney fees.³⁴ The nursing facility filed a writ of garnishment in June 2006, seeking \$27,261.58, including the default judgment amount and \$486 in costs.³⁵ That same month, the garnishee, Applicant's employer, made payment arrangements with the nursing facility, and the garnishment was released.³⁶ When she was interviewed by OPM in July 2011, Applicant indicated she would contact the collection agent to discuss the matter with them,³⁷ but in December 2012, Applicant

²⁷ AE A (Account Summary, dated May 19, 2013).

²⁸ AE A, *supra* note 27, at 2.

²⁹ GE 3 (Personal Financial Statement, undated).

³⁰ Tr. at 43.

³¹ GE 4, *supra* note 23, at 5.

³² AE K (Returns of Service, various dates).

³³ Tr. at 50-52; GE 2 (Personal Subject Interview), *supra* note 4, at 3.

³⁴ AE K (Application, Affidavit, and Entry of Default, dated April 27, 2006); AE K (Default Judgment Entered by Court, dated May 3, 2006).

³⁵ AE K (Process of Garnishment, dated June 19, 2006).

³⁶ AE K (Garnishee Release, dated June 29, 2006).

³⁷ GE 2 (Personal Subject Interview), *supra* note 4, at 3.

indicated she had not yet taken any actions to resolve the debt.³⁸ She added that her plan was to pay off all of her credit card debt, and possibly obtain a loan or sell her house to address her other debts, including the judgment, because she had insufficient funds now to make a lump-sum payment.³⁹ The debt has not yet been resolved.

There is an account with a past-due balance of \$96 that was placed for collection **(SOR ¶ 1.b.)**.⁴⁰ Applicant initially did not recognize the account or the creditor, but indicated she would try to contact the collection agent to discuss the matter with them.⁴¹ The account was subsequently included in Applicant's debt management plan, but her initial payment of \$10 was rejected by the collection agent.⁴² When Applicant called the collection agent, they indicated they no longer had the account, and when she attempted to call the creditor directly, all she got was an unanswered ringing telephone.⁴³ The account was subsequently sold to a debt buyer in 2011.⁴⁴ The account was subsequently paid off through Applicant's structured repayment plan,⁴⁵ and it is no longer listed in her most recent credit report.⁴⁶ The account has been resolved.

Applicant's 2011 credit report reflects six student loans in varying amounts with the SLM Corporation, commonly referred to as Sallie Mae, all of which were in a deferred status. Four of the loans had been transferred to another lender.⁴⁷ A seventh student loan, also in a deferred status, was listed with the U.S. Department of Education.⁴⁸ Her 2012 credit report reflects 11 student loans in varying amounts with the Sallie Mae, four of which had been transferred or sold to another lender, and 7 of which were current.⁴⁹ Two other student loans with the U.S. Department of Education were also transferred or sold to another lender.⁵⁰ There is a student loan account with an unpaid balance of \$17,176 that was placed for collection with the collection subsidiary of

³⁸ GE 3, *supra* note 3, at 2.

³⁹ Tr. at 42.

⁴⁰ GE 4, *supra* note 23, at 10.

⁴¹ GE 2 (Personal Subject Interview), *supra* note 4, at 4.

⁴² AE A, *supra* note 27, at 2.

⁴³ Tr. at 60.

⁴⁴ GE 4, *supra* note 23, at 11. Although the original creditors listed on the 2011 credit report are different, the account number for both listings are nearly identical.

⁴⁵ AE A, *supra* note 27, at 2.

⁴⁶ See GE 5 (Equifax Credit Report, dated October 15, 2012).

⁴⁷ GE 4, *supra* note 23, at 7-8.

⁴⁸ GE 4, *supra* note 23, at 11.

⁴⁹ GE 5, *supra* note 46, at 2-3.

⁵⁰ GE 5, *supra* note 46, at 3.

Sallie Mae (**SOR ¶ 1.c.**)⁵¹ In about December 2011 or before, Applicant and the collection agent agreed to a repayment plan, and commencing on December 22, 2011, over a year before the SOR was issued, Applicant made preauthorized monthly payments of \$103.97 for at least six months.⁵² Those payments continued until money got tight for her, and the payments were reduced to \$50 per month in about July 2012.⁵³ She managed to make increased monthly payments on occasion (May and June 2013, when she made payments of \$75 each month), but generally maintained the rate of \$50 per month.⁵⁴ The account is in the process of being resolved.

As noted above, Applicant failed to file her 2005 federal and state income tax returns in April 2006 (**SOR ¶ 1.d.**). In May 2013, Applicant completed and submitted her 2005 federal and state income tax returns.⁵⁵ The federal return reveals an adjusted gross income of \$20,558, tax withheld totaling \$1,325, and an estimated tax still owed, without penalties and interest, of \$166.⁵⁶ Her state return reveals an estimated tax still owed, without penalties and interest, of \$95.⁵⁷ Applicant made several payments to the Internal Revenue Service (IRS) in 2011 and 2012,⁵⁸ for the tax years 2005 and other years,⁵⁹ and her \$1,700 refund for 2011 or 2012 was, in part applied to the 2005 federal income tax.⁶⁰ When she spoke with the IRS agent in December 2012, she was advised that the debt had been paid in full.⁶¹ Applicant did not submit a payment to the state because she did not have sufficient funds to do so.⁶² As to the 2005 federal income tax, the account has been resolved; as to the state income tax, the account is in the process of being resolved.

Character References and Work Performance

The regional operations manager of her current employer, the interim principal of the local elementary school, a professor at her school of information technology, her senior pastor, her 4th grade teacher and eventual colleague, and friends are highly

⁵¹ GE 5, *supra* note 46, at 1.

⁵² AE D (Account Statement, dated December 12, 2011); Tr. at 38-39.

⁵³ AE D (Account Statement, dated July 20, 2012); Tr. at 38.

⁵⁴ AE E (Checking Account Transactions, dated June 14, 2013); AE D (Account Statements, various dates).

⁵⁵ Tr. at 33; AE B (Form 1040A, undated); AE C (State Income Tax Return, undated).

⁵⁶ AE B, *supra* note 55, at 1-2.

⁵⁷ AE C, *supra* note 55, at 1.

⁵⁸ GE 3 (MoneyGram Money Order Receipts, various dates).

⁵⁹ Tr. at 34.

⁶⁰ Tr. at 34.

⁶¹ GE 3, *supra* note 3, at 4-5.

⁶² Tr. at 35.

supportive of Applicant's application for a security clearance. They have characterized her in glowing terms, referring to her following qualities: a giving and loving person, unselfish, trustworthy, responsible, mature, logical, practical, honest, dependable, intelligent, knowledgeable, skilled, and motivated.⁶³ Applicant's work performance with the school system over a period of six years has generally been considered very good to superior, although she saw a slight decline in her overall performance while working two jobs and attending school.⁶⁴

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."⁶⁵ 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."⁶⁶

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."⁶⁷ The Government initially has the burden of producing evidence to establish

⁶³ AE I (Character References, various dates).

⁶⁴ AE H (Evaluation Forms, various dates).

⁶⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁶⁷ "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).

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.⁶⁸

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."⁶⁹

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."⁷⁰ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

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

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

⁶⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁶⁹ *Egan*, 484 U.S. at 531

⁷⁰ See Exec. Or. 10865 § 7.

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. In addition, under AG ¶ 19(g), *failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same* is potentially disqualifying. Commencing in 2000, but essentially since 2005, Applicant started experiencing some financial difficulties. Over the next few years, those difficulties increased to the point where she was unable to make routine monthly payments for a number of accounts. Her accounts eventually started becoming delinquent and were placed for collection or went to judgment. She failed to file her 2005 federal and state income tax returns. AG ¶¶ 19(a), 19(c), and 19(g) 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*.⁷¹

AG ¶¶ 20(b), 20(c), and 20(d) apply. AG ¶ 20(a) partially applies. The nature, frequency, and relative recency of Applicant's financial difficulties since 2005 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant's financial problems were not caused by frivolous or irresponsible spending, and she did

⁷¹ 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)).

not spend beyond her means. Instead, her financial problems were largely beyond her control.

Applicant acted responsibly by addressing her delinquent accounts.⁷² She engaged the professional services of a financial counseling company to assist her with a debt management plan to resolve her credit problems and start repaying her debts through a structured repayment plan. By May 2013, \$3,148 had been disbursed to various creditors, and as a result, three of her non-SOR accounts had been paid off, and a fourth was in the process of being resolved. All but one of her SOR and non-SOR delinquencies has either been resolved or is in the process of being resolved. She filed her federal and state income tax returns and resolved her federal tax liability. She no longer has any other delinquent debts. There are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting her do not cast doubt on her current reliability, trustworthiness, or good judgment.⁷³

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.⁷⁴

⁷² "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.

⁷³ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁷⁴ 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).

There is some evidence against mitigating Applicant's conduct. Her handling of her finances permitted a number of accounts to become delinquent. As a result, accounts were placed for collection or sold, and one account went to judgment. She also failed to file her federal and state income tax returns for 2005 when she was required to do so.

The mitigating evidence under the whole-person concept is more substantial. Applicant's financial problems were not caused by frivolous or irresponsible spending, and she did not spend beyond his means. Rather, Applicant's problems were largely beyond her control because of her parents' medical conditions and the actions of a nursing facility in having Applicant accept personal responsibility for her mother's nursing care instead of permitting Medicaid take responsibility for the expenses. Throughout the entire period of her parents' illnesses, but especially during 2005-06, Applicant was overwhelmed by her mother's medical condition, treatment, and eventual death, along with financial issues, working, and attending classes. Applicant hired a financial counseling company to assist her with a debt management plan to resolve her credit problems and start repaying her debts through a structured repayment plan. The result was positive. She resolved a number of accounts, including non-SOR accounts. The entire situation occurred under such circumstances that it is unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁷⁵

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 a "meaningful track record" of debt reduction and elimination. Applicant has made some significant timely efforts to resolve her accounts.

⁷⁵ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge