



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



In the matter of:)
)
) ISCR Case No. 12-01755
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: Terrence Palmer, Personal Representative

01/29/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has struggled financially because of lost income due to her spouse’s medical disability and her own medical issues. However, she also issued insufficient funds checks and defaulted on several consumer credit accounts. In October 2014, she began paying \$391 a month under a Chapter 13 bankruptcy filed in August 2014. She has yet to demonstrate that she can handle her financial affairs fully responsibly. Clearance is denied.

Statement of the Case

On March 7, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) forwarded an undated Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue a security clearance for her. The DOD CAF issued the SOR under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on May 6, 2014. She did not indicate whether she wanted a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA) or a decision based on the written record. By letter dated August 4, 2014, Department Counsel provided discovery of the potential Government exhibits (GEs) to Applicant, noting that Applicant had requested a hearing. On August 28, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Caseload considerations led to a delay in scheduling her hearing. On October 3, 2014, I scheduled a hearing for October 22, 2014.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and 26 Applicant exhibits (AEs A-Z) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on November 6, 2014.

Summary of SOR Allegations

The SOR alleges under Guideline F that in April 2012, Applicant filed a Chapter 13 bankruptcy that was dismissed in March 2013 (SOR 1.a) and that she was previously granted a Chapter 7 bankruptcy discharge in February 1991 (SOR 1.b). Additionally, Applicant allegedly owed delinquent debt that had been charged off or placed for collection totaling \$42,391 on 11 accounts (SOR 1.c-1.m). When she answered the SOR allegations, Applicant admitted the bankruptcy filings and Chapter 7 discharge. She admitted that she owes the delinquent debts in SOR 1.g (\$567), 1.h (\$1,098), and 1.m (\$963). Applicant denied the remaining debts as paid (SOR 1.d-1.f), included in her spouse's bankruptcy (SOR 1.c), or included in her mortgage modification process (SOR 1.i-1.l). Applicant explained that her current financial hardship was directly attributable to her spouse's medical condition, which has left him unable to work.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 56-year-old high school graduate. She has worked for a defense contractor in assembly since January 1978 with the exception of 18 months between 2000 and 2002. After being laid off by the defense contractor in 1999, Applicant worked in the county sheriff's office for 1.5 years until the defense contractor recalled her to work. She has held a confidential-level security clearance since 2001. Applicant was married to her first husband from June 1978 to June 1983. She married her current spouse in August 1986. They were separated from approximately November 2011 to December 2012 when they reconciled. Applicant had two children before her second marriage, a daughter now age 33 and a son age 28. (GEs 1, 2; Tr. 20.) Her spouse has two adult children from his first marriage. (GE 2.) In August 1987, Applicant and her spouse had a daughter, who was born prematurely. Applicant had to take extended maternity leave from work for the pregnancy. (Tr. 30-31.)

On October 28, 1990, Applicant and her spouse filed a Chapter 7 bankruptcy petition to discharge debt that both brought into their marriage. They became overwhelmed financially due to the costs of raising their children, his child support obligation, and medical bills. They saw no alternative to bankruptcy to alleviate their debt burden.¹ In February 1991, they were granted a discharge. (GE 2.)

After the bankruptcy, Applicant and her spouse retained their present home, which they had purchased around May 1987. Available credit records show that they opened a joint mortgage of \$225,000 in November 2000. In August 2001, they took on a second mortgage of \$32,074, which they refinanced in November 2001 through a new loan of \$59,344. (GE 4.)

Applicant and her spouse worked for the same defense contractor. He was an instructor earning more than \$30 an hour. (Tr. 38.) Sometime between 2004 and 2006, he stopped working due to medical disability. Their household income dropped precipitously. His disability income was approximately \$2,200 a month.² Applicant and her spouse began falling behind on their mortgage and on consumer credit obligations incurred after their 1991 bankruptcy discharge. (GE 4.) Applicant's spouse was responsible for paying the household bills because he was not working. (GE 2.) He paid some debts on time, but other accounts, including debts solely in Applicant's name, became delinquent. (GE 4.) By October 2008, Applicant had settled a collection debt of \$1,767.57.³ (AEs D, F-H.) As of September 10, 2008, Applicant or her spouse had made payments to reduce a \$3,064 collection debt to \$2,846.63. (AE C, E; Tr. 45.) On January 30, 2009, Applicant co-signed a \$9,637.49 personal loan for her spouse. The loan payments were \$43.49 per month. (AE W.) On October 2009, Applicant issued an insufficient funds check of \$1,259.40 to a home improvement retailer (SOR 1.m) for windows for her son's business. (AE R; Tr. 72.) Around January 2010, Applicant issued an insufficient funds check of \$484.24 to a wholesale club. (AE S.)

On November 15, 2011, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant responded negatively to the financial record inquiries. (GE 1.)

A check of Applicant's credit on November 22, 2011, revealed several delinquent accounts. A VISA card account and two MasterCard accounts reportedly had zero balances (SOR 1.i-1.k) after being referred for collection and sold in 2006. Between August

¹ The evidentiary record does not show the nature or amount of the debt discharged in the 1991 bankruptcy.

² Applicant's uncorroborated testimony is that her spouse had earned as much as \$100,000 to \$150,000 annually. (Tr. 38-39.) She also testified that his hourly wage was more than \$30. (Tr. 38.) At \$30 an hour, his annual income would have been around \$62,400. There is no evidence that he worked a substantial amount of overtime. The full impact of her spouse's disability cannot be determined without accurate information about his previous earnings.

³ AE D shows that the debt was paid in full in October 2008. Nonetheless, Applicant included the debt in an August 2014 Chapter 13 bankruptcy. (AE Y.)

2006 and October 2006, two retail charge accounts were charged off in the amounts of \$185 (not alleged)⁴ and \$273 (SOR 1.e). As of May 2010, Applicant owed \$1,284.40 to the home improvement retailer for the insufficient funds check. She paid \$321.10 in May 2010 to reduce the balance to \$963.30 (SOR 1.m). (GE 4; AE R.) A telecommunications debt of \$567 from October 2009 was in collection (SOR 1.g). A joint installment loan was reportedly placed for collection in June 2011 for \$13,683 (SOR 1.c, duplicated in SOR 1.I). As of January 2012, the collection agency was reporting a balance of \$17,506.76. (AE T.) Applicant and her spouse's primary mortgage was reportedly \$56,310 past due with a balance of \$236,031. No payments had been made on the loan since March 2010. A charge account with a jeweler was closed by the lender after it had been 30 days past due four times, although Applicant was making payments on the \$470 balance as of October 2011 (SOR 1.d). (GE 4.) Timely payments were being made on the \$9,637 personal loan co-signed by Applicant in January 2009 (\$7,358 balance), on a \$5,200 auto loan with a \$2,744 balance, and on a \$14,750 auto refinance (\$10,629 balance) loan opened by Applicant for a truck in September 2009. (GE 4; AEs Y, W; Tr. 58-59.)

Applicant and her spouse separated in late November 2011 following an argument over their finances. Applicant, her older daughter, and her son remained in the home. (GE 2.)

On January 6, 2012, a collection agency offered to settle a \$3,825.26 credit card debt for \$1,338.84 on receipt of three monthly payments of \$446.28 starting on January 27, 2012. Alternatively, the creditor agreed to settle for \$1,530.12, payable in six installments of \$225.02. As of March 7, 2012, Applicant's payment was past due on a balance of \$3,868.68. (AE I.) There is no evidence Applicant made any payments to settle the debt.

On January 13, 2012, Applicant was interviewed about her previously undisclosed debts by an authorized investigator for the Office of Personnel Management (OPM). At the time, Applicant was on medical disability following surgery in 2011. Applicant indicated that after she completed her e-QIP, she learned about the mortgage delinquency. She had assumed that her spouse was paying their household bills on time. Applicant expressed her intent to contact the mortgage lender and establish a repayment plan. Applicant denied knowledge of any other bills or debts referred for collection. At the close of the interview, Applicant was informed that other delinquencies had surfaced during her background investigation. She did not dispute any of the debts on her credit record and indicated that she would contact her creditors to arrange repayment terms. Applicant attributed the debts to her spouse gambling with funds that should have gone to their bills. She described her current financial situation as stable and indicated that there would be no recurrence or continuation of her current financial difficulties. (GE 2.)

By April 2012, Applicant and her spouse, from whom she was separated, owed \$290,292.81 on their primary mortgage and \$95,312.03 on a second mortgage. The home was valued around \$132,850. In an effort to save their home, Applicant and her spouse filed a joint Chapter 13 bankruptcy petition on April 5, 2012. Their case was dismissed at

⁴ Applicant paid that debt by check on February 24, 2012. (GE 2.)

their request around April 18, 2012. (GEs 2, 3.) Five days after her bankruptcy filing, Applicant entered into an installment sales agreement to repay a \$1,180 loan for a vacuum at \$109.87 per month starting April 27, 2012 (SOR 1.h). A \$1,098 balance was charged off around July 2012. (GEs 2, 3; Tr. 68-70.)

Following the dismissal of her and her spouse's joint bankruptcy, Applicant filed an individual Chapter 13 bankruptcy petition on April 27, 2012.⁵ In addition to the mortgages, she listed as secured claims a joint water bill of \$992.26 and the truck loan of \$9,127.75. Unsecured non-priority claims totaling \$3,084.25 consisted of a \$280 jewelry debt (SOR 1.d), a \$1,192.68 dental debt, a \$300 hospital debt, a \$585 timeshare fee from 2012, a \$351.57 natural gas utility debt, and a \$375 joint credit debt. (GE 5; AE J; Tr. 33.) Applicant described the payment plan as "just totally outrageous." (Tr. 33.)

Applicant and her spouse reconciled in December 2012. (GE 2.) In January 2013, Applicant's younger daughter and her daughter's husband financed a 2012 model-year compact car for Applicant. They are repaying the loan at \$359.25 per month. Applicant pays her daughter \$360 bi-weekly to cover the cost of the car and insurance for the vehicle. (GE 2.) In March 2013, Applicant's Chapter 13 bankruptcy was dismissed. (GE 3.) Applicant could not afford the Chapter 13 bankruptcy payments because her son, who had assured her of his financial help, was laid off shortly after she made her first payment under the plan. Additionally, Applicant was out of work after surgery. (GE 2.)

As of May 16, 2013, Equifax reported that the debt in SOR 1.c (duplicated in SOR 1.l) had been included in a Chapter 7 bankruptcy. Applicant's and her spouse's primary mortgage (refinanced in 2004) was \$9,447 past due. (GE 3.) Applicant had several charged-off or collection balances on her credit record: \$315 (SOR 1.d), \$223 (SOR 1.e), \$65 (SOR 1.f), \$567 (SOR 1.g), \$1,098 (SOR 1.h), and \$963 (SOR 1.m). (GEs 2, 3.) The credit card debts alleged in SOR 1.i-1.k were not on her credit record. Applicant believes that the accounts were listed on her spouse's Chapter 7 bankruptcy. (Tr. 70.)

In response to DOD CAF inquiries about her delinquent accounts, Applicant indicated on June 19, 2013, that she and her spouse were working to resolve all their existing debts. Her spouse's debts had been discharged in an individual bankruptcy. She planned to address any unresolved debt after their home loan was modified. Applicant provided evidence showing that she had paid \$315.86 on May 30, 2013, to satisfy the jewelry debt in SOR 1.d. After the dismissal of her bankruptcy, Applicant had been "slowly" making payments to her creditors. Applicant indicated that she had arranged to make payments or was making monthly payments of \$109.87 on the installment loan in SOR 1.h and of \$1,603.29 on her primary mortgage. She had paid off the \$5,200 car loan taken out in the fall of 2009. The creditor holding the truck loan pursued Applicant for the balance after her spouse's bankruptcy. She provided evidence of arrangements to pay \$431.90 per month starting June 5, 2013, on the truck loan, which had been delinquent since February 2013. Applicant submitted a personal financial statement showing approximately \$1,200 in monthly net income after paying her and her spouse's expenses. Their estimated

⁵ Applicant indicates that he spouse filed a Chapter 7 petition (Tr. 33, 35), and that his debts were discharged. (GE 2.) Records of his bankruptcy were not submitted in evidence.

household income included her spouse's \$2,134 social security disability benefit and \$500 in contributions from her two children still living in the home, although she also indicated that her children's contributions varied from \$200 to \$600 a month. The \$401 in listed car expense did not include \$720 that Applicant was paying her younger daughter per month for the car financed for her in January 2013 and its insurance coverage. (GE 2.)

After almost a year of trying (Tr. 33-34), Applicant and her spouse were successful in modifying their primary mortgage. Their monthly payment was lowered from \$1,889.58 to \$1,603.29 starting July 1, 2013. (GE 2.)

Applicant went on family medical leave from work in November 2013 to care for her spouse. She requested a year of leave. Her employer approved 480 hours of leave to late May 2014 and required her to use paid leave during that time. (AE Z.) Applicant's spouse was hospitalized for two days in February 2014 for medical issues. Applicant and her spouse's share of the medical costs was \$683.90. (AE K.) In January 2014, Applicant incurred \$1,330 in medical charges at a local hospital. Applicant was responsible for only \$91.06. There is no evidence that Applicant paid the debt by the February 27, 2014 due date. (AE M.) On March 24, 2014, the hospital billed Applicant \$88.88, indicating, "Prompt payment in full or immediate communication is required." (AE P.) Applicant incurred debts of \$156.08 (AE N) and \$76.49 (AE O) for radiology services in March 2014. The record does not reflect whether the debts were paid.

Applicant failed to make the \$431.90 payments on a regular basis on the truck loan taken out in September 2009. On January 12, 2014, the truck was repossessed and sold for \$1,800. With fees, Applicant owed a deficiency balance of \$2,125.76 on that loan as of February 21, 2014. (AE X.) On March 8, 2014, Applicant was informed that court action would follow to collect the \$6,375.22 balance of the January 2009 personal loan unless she made a payment within 30 days or contacted the collection agent. On April 18, 2014, the creditor filed for a judgment to recover the deficiency balance of the truck loan and the balance of the personal loan. On June 19, 2014, the court issued a judgment against Applicant for \$8,601.96. (AE W.) On April 1, 2014, a dental provider requested payment of a \$124.70 balance within 10 days or her account would be turned over for collections. (AE L.) As of June 2014, Applicant and her spouse were \$632.89 past due on their water and sewer bill on which they owed \$811.33. (AE Q.)

Applicant received unemployment of \$679 in May and again in June 2014. (AE Y.) On July 21, 2014, Applicant was injured at work. In early August 2014, she began receiving workers' compensation at \$669.11 weekly. Applicant had not returned to work by October 22, 2014. (AE Z; Tr. 82-83.)

On August 26, 2014, Applicant filed an individual Chapter 13 bankruptcy, after completing a credit-counseling course in August. She paid \$2,550 to file for bankruptcy, \$2,245 of which was her attorney's fee. Applicant listed total liabilities of \$379,472.15: \$333,361.73 in secured claims consisting of her home loan and the September 2009 truck loan, \$9,948.73 of which was unsecured; an \$813.20 unsecured priority claim for water and sewer services; and \$45,297.22 in unsecured non-priority claims. Among the non-priority

claims, Applicant listed a \$1,767.57 collection debt (not alleged); a \$750 cash advance debt (not alleged) that she obtained when she and her spouse were separated (Tr. 74); \$963.30 owed the creditor in SOR 1.m; a \$17,506.76 debt in collection (SOR 1.c, duplicated 1.i);⁶ a \$3,868.68 collection balance (not alleged); a \$8,366.14 balance on the personal loan in default (not alleged); \$2,293 in overdraft fees to a bank (not alleged); the \$567 telephone debt (SOR 1.g); \$4,677.01 in delinquent electric/gas utility debt (not alleged), and the installment loan debt of \$1,098 (SOR 1.h). Under the Chapter 13 plan, Applicant is required to pay \$391 per month starting October 2014 to address the \$20,269.05 pre-petition arrearage on her first mortgage and the \$813.20 in past-due water and sewer fees. Her unsecured creditors will receive nothing under the plan. Applicant made her first payment under the plan as of her security clearance hearing. (Tr. 74, 81.) Her August 2014 bankruptcy showed monthly net household income of \$191 after expenses, including a reported \$125 in medical and dental expenses. (AE Y.)

Applicant reported lottery winnings of \$2,000 in 2012. Applicant and her spouse's joint income was \$63,661 in 2013. For the first eight months of 2014, her employment income was \$28,289. She had \$1,234 in unemployment income. Her spouse's social security disability income was \$17,344. Applicant reported zero cash on hand and no savings or checking deposits. Applicant was listed as president of her son's landscaping business, which was insolvent at the time of the bankruptcy filing. She incurred a \$2,100 debt to the United States Department of Labor for worker's compensation for her son's business. She listed the debt on her August 2014 bankruptcy. (AE Y; Tr. 81.) Applicant borrowed \$300 to \$400 from her 401(k) to pay some bills in 2013. She still owes \$120, but repayment is through automatic deduction from her pay when she is working. (Tr. 90.)

Applicant has been a dependable employee with an excellent work ethic. For more than three years, she worked for a product manager in a high intensity and pressure-filled environment. This manager found Applicant to be a "top-flight employee and an asset to [his] team." A former group leader likewise found Applicant to be honest and reliable. She gave Applicant the most difficult jobs in the department because Applicant could "be counted on to get a job done right and on time." (AE B.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines

⁶ Efforts to collect a \$17,506.76 balance on the account (AE T) show that it is the same debt in SOR 1.c, which was placed for collection for \$13,683. Applicant indicated in her Answer to the SOR that the debt had been discharged in her spouse's bankruptcy, although if so, one has to question why she included the debt in her bankruptcy.

are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern about financial considerations is set forth 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 SOR alleges 11 delinquent accounts, totaling \$42,391 in outstanding debt as of the issuance of the SOR, which Applicant accrued after being afforded a financial fresh

start by a 1991 bankruptcy discharge. The evidence establishes the 1991 discharge (SOR 1.b) and a Chapter 13 bankruptcy petition filed in late April 2012, which was dismissed in March 2013 for failure to make the required payments (SOR 1.b). Applicant does not dispute that she owed the delinquent balances on the accounts identified in SOR 1.g, 1.h, and 1.m totaling \$2,793. About those debts denied by Applicant, the evidence shows that the \$13,683 collection debt in SOR 1.c had accrued to \$17,506.76 (SOR 1.l) as of January 2012. (AE T.) Applicant asserts that the debt was included on her spouse's bankruptcy, and her May 2013 credit report (GE 3) indicates that it was included in a Chapter 7 bankruptcy. However, Applicant provided no evidence showing the debt has been discharged, and she included the debt in her August 2014 bankruptcy. Her May 2013 credit report shows that she owed additional past-due balances of \$315 (SOR 1.d), \$223 (SOR 1.e), and \$65 (SOR 1.f). Creditor documentation confirms payment of SOR 1.d on May 30, 2013, but it is unclear whether the other two debts had been paid. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply because of Applicant's record of financial delinquency.

Applicant also denied owing the debts alleged in SOR 1.i (\$3,136), 1.j (\$2,022) and 1.k (\$3,278). She inexplicably asserted in her Answer to the SOR that the debts had been covered by her mortgage modification. Although the same lender held all three accounts as well as her mortgage, Applicant's November 2011 credit report (GE 4) indicates that these three credit card balances had been placed for collection in 2006. A \$3,278 balance placed with an assignee in August 2006, which is likely the debt in SOR 1.k, was paid in October 2008. None of the three debts was on Applicant's credit record as of May 2013. Applicant included some collection debts in her August 2014 bankruptcy that were not alleged in the SOR, including a \$3,866.68 consumer credit debt in collection,⁷ but there is no evidence linking the debts in SOR 1.i-1.k with any of the debts on her latest bankruptcy. AG ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue," applies in that the evidence falls short of showing that Applicant owed the debts in SOR 1.i, 1.j, or 1.k as of the SOR. Furthermore, AG ¶ 20(e) also applies in that the debt in SOR 1.d was paid on May 30, 2013, and the debt in SOR 1.c is the original balance of the debt in SOR 1.l and does not represent an additional delinquent balance.

Concerning the debts on Applicant's credit record which were seriously delinquent and have not been proven as paid or discharged in bankruptcy (SOR 1.e-1.h and 1.l-1.m), four mitigating conditions under AG ¶ 20 are partially applicable to a greater or lesser extent:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

⁷ Applicant testified that she settled the debt for \$1,082. (Tr. 78.) However, collection records indicate that the lender wanted \$3,046 to settle the debt. (AE C.) It appears that Applicant settled another account with the same collection agency rather than the account referenced in AEs C and E.

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) applies only in that the debts in the SOR were not recently incurred. They became delinquent in or before 2011. However, with limited exception, the debts were not paid as of August 2014. Furthermore, the evidence establishes that Applicant's financial problems are more extensive than alleged in the SOR.⁸ Most notably, Applicant and her spouse's home loan was \$20,269.05 in arrears when she filed for Chapter 13 bankruptcy in late August 2013. A credit union was awarded a financial judgment of \$8,601.96 in mid-June 2014, which she has not paid. Included in Applicant's recent bankruptcy filing are \$509.24 for an insufficient funds check to a wholesale club and \$2,293 in overdraft fees to a bank.

AG ¶ 20(b) is implicated in that Applicant and her spouse have had medical issues that have negatively affected their finances. Her spouse stopped working around 2006 because of his disability, which reduced their household income. Applicant has also had medical issues in that past that led to lost income. More recently, she was on 480 hours of approved medical leave from work from November 2013 to May 2014 to care for her spouse. Then on July 21, 2014, she was injured at work. She had not returned to duty as of mid-October 2014. She was not without some income in that she was paid worker's compensation of \$669.11 per week starting in August 2014, after receiving unemployment of \$679 in May and again in June 2014. Her August 2014 bankruptcy showed monthly net household income of \$191 after expenses, including a reported \$125 in medical and dental expenses. Applicant presented separate evidence of medical expenses incurred between October 2013 and March 2014 for which she was billed a total of \$536.66, exclusive of \$683.90 incurred for her spouse's hospitalization in February 2014. (AEs K-P.) Recent medical expenses appear to exceed the \$125 per month, and some medical debts have not been paid. In October 2013, Applicant incurred a \$124.70 bill for endodontic services that she listed in her August 2014 bankruptcy. (AEs L, Y.)

⁸ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). The delinquencies not alleged in the SOR but included in her latest bankruptcy cannot provide separate bases for disqualification, but they are still relevant to assessing Applicant's financial judgment generally and to assessing whether Applicant's financial problems are not likely to persist.

Even so, AG ¶ 20(b) does not fully mitigate the concerns about Applicant's financial judgment. As of November 2012, Applicant's mortgage was \$9,447 past due. On her August 2014 bankruptcy, she reported a pre-petition arrearage of \$20,269.05. She was making no attempt to catch up on her mortgage. Yet, during the 90 days preceding her filing, Applicant and her spouse had paid \$1,290 on his car loan (\$430.16 per month). Applicant listed \$2,000 in lottery winnings in 2012. Applicant was not asked about that income. On her April 2012 bankruptcy, she listed \$585 in unpaid timeshare maintenance fees from 2012. It is unclear whether those fees have been paid or when she acquired the timeshare, although one has to question whether she could afford a timeshare in light of her history of financial problems. The \$2,293 in bank account overdraft fees included in her August 2014 bankruptcy shows mismanagement of her finances.

Applicant is credited under AG ¶ 20(c) and AG ¶ 20(d) with paying off the debt in SOR 1.d. Her August 2014 bankruptcy filing is a legal means to address her other delinquent debt. As required to file for bankruptcy, Applicant attended an approved financial training program in August 2014, so she satisfies the counseling component of AG ¶ 20(c). Nonetheless, the concept of good faith under AG ¶ 20(d) requires a showing that a person acts in a way that shows reasonableness or adherence to duty or obligation. Reliance on a legally available option such as a Chapter 13 bankruptcy does not carry the same mitigating weight as repayment arrangements or negotiated settlements, especially where her unsecured, non-priority debts will apparently receiving nothing under her plan.

As of her security clearance hearing, Applicant had made her first bankruptcy payment. It is not enough to mitigate the financial concerns under either AG ¶ 20(c) or AG ¶ 20(d). Given the dismissal of her April 2012 bankruptcy in March 2013; the recent default of the personal and truck loans; the serious delinquency of her home water and electric/gas utility accounts; and her lack of personal assets (i.e., no cash on hand, no checking or saving deposits), a sustained record of timely payments under the bankruptcy is needed to show that she can be counted on to handle her finances responsibly going forward.

Whole-Person Concept

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

Applicant and her spouse brought debt into their marriage that was discharged in a Chapter 7 bankruptcy. After their February 1991 Chapter 7 discharge, they were extended

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

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

credit that they could afford until he stopped working because of medical disability. In October 2009, Applicant issued an insufficient funds check for windows for her son's business. In March 2010, Applicant and her spouse stopped paying on their home loan. In 2011, several accounts were referred for collection. Applicant filed a Chapter 13 bankruptcy in April 2012, which did not include all of her delinquent accounts. After the bankruptcy was dismissed in March 2013, Applicant made little effort to resolve her past-due accounts until August 2014, when she filed another Chapter 13 bankruptcy in an effort to save her home, and after a creditor obtained an \$8,601.92 judgment against her. While factors outside of her control negatively affected her finances, Applicant has not yet demonstrated that she has a good handle on her financial affairs.

Applicant has been a dependable worker for her employer for the last 37 years. She needs her employment income to make her \$391 monthly payments under her present bankruptcy. Nevertheless, it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990.). Her inability to show that she can be counted on to make timely payments on such important debts as her home loan, vehicle loans, and utilities makes it difficult to conclude with a reasonable degree of certainty that her financial problems are not likely to persist. Based on the record before me and the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility at this time.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge