DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

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

Appearances

For Government: Christopher Morin, Esquire, Department Counsel
For Applicant: *Pro se*

01/03/2014

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 November 15, 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 April 26, 2013, the Department of Defense (DOD) issued her a set of interrogatories. She responded to the interrogatories on May 31, 2013.[2] On September 17, 2013, the DOD issued a Statement of Reasons (SOR) to her, under Executive Order 10865, *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

[1] GE 1 ((SF 86), dated November 15, 2011).

[2] GE 2 (Applicant's Answers to Interrogatories, dated May 31, 2013).

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.

It is unclear when Applicant received the SOR, because there is no signed receipt in the case file. In a sworn statement, dated October 16, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on November 14, 2013. The case was assigned to me on November 15, 2013. A Notice of Hearing was issued on December 3, 2013, amended on December 6, 2013, and I convened the hearing, as scheduled, on December 18, 2013.[3]

During the hearing, 4 Government exhibits (GE 1 through GE 4) and 12 Applicant exhibits (AE A through AE L) were admitted into evidence without objection. Applicant and one other witness testified. The transcript (Tr.) was received on January 2, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She submitted 13 additional documents, which were marked as exhibits (AE M through AE Y) and admitted into evidence without objection. The record closed on December 30, 2013.

Findings of Fact

In her Answer to the SOR, Applicant admitted six of the factual allegations pertaining to financial considerations (¶¶ 1.a., 1.c. through 1.e., 1.g., and 1.j.). Applicant's explanations 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 63-year-old employee of a defense contractor (her cohabitant/ fiancée/employer/driving partner) who, since March 1987, has served as a long haul truck driver, hauling freight, including military supplies and weapons.[4] She never served in the U.S. military.[5] She has held a secret security clearance since 1989. Applicant graduated from high school in May 1968,[6] and attended college for six months. She was

[3] The Directive established that notification as to the time and place of a hearing be furnished to an applicant at least 15 days in advance of the time of the hearing. *See*, Directive, Encl. 3, § E3.1.8. In this instance, Department Counsel and Applicant were in discussions regarding the potential time and location long before the actual Notice of Hearing was issued. Nevertheless, because the period between the issuance of the Notice and receipt of the Notice was less than 15 days, I inquired of Applicant if the period of notice was sufficient, and Applicant specifically waived the 15-day notice requirement. *See*, Tr. at 19-21.

[4] GE 1, *supra* note 1, at 9; GE 2 (Personal Subject Interview, dated December 16, 2011), at 2.

[5] GE 1, *supra* note 1, at 11.

[6] GE 1, *supra* note 1, at 9.

married in February 1969, separated in January 1984, and divorced in November 1984.[7] She has been cohabiting with her fiancée/employer/driving partner since March 1987.[8] Applicant and her ex-husband have two children, a daughter born in 1969, and a son born in 1974.[9]

Financial Considerations

There was nothing unusual about Applicant's finances until about November 2006. Although her ex-husband did not furnish her any alimony or child support after they separated and eventually divorced, and she supported herself and her two children as a single parent, she was able to meet her minimum monthly payments. She helped pay for her children's college education and at least partially supported her children and grandchildren.[10] By 2006, she had approximately $50,000 in credit card debt, but her accounts were all current.

Commencing in 2001, and continuing through 2013, Applicant's cohabitant and Applicant were periodically unable to work as a team for several months at a time.[11] Health issues arose, including surgeries for bladder, prostate, gall-bladder, eyes, and hernia, as well as injuries from accidents, including broken foot, broken ribs, and a shoulder injury. In addition, there were times when the truck and trailer needed repairs.[12] Those various issues sometimes kept them off the road up to 12 weeks at a time.[13] When they were not on the road hauling freight, they earned no salary.[14] When the national economy started to deteriorate, Applicant's cohabitant was confronted with higher fuel prices and lower contract rates, essentially reducing Applicant's income.[15]

Credit card issuers started raising their interest rates on her credit cards, and because of the increases, Applicant was unable to pay all of her monthly minimum amounts. One bank induced her to accept another of its credit cards at a reduced interest rate, but instead of substituting the new card for the older card, she was left with an additional credit card, making it even more difficult for her to remain current on all of

[7] GE 1, *supra* note 1, at 13; GE 2 (Personal Subject Interview), *supra* note 4, at 2.

[8] GE 1, *supra* note 1, at 13-14.

[9] GE 1, *supra* note 1, at 16-17.

[10] GE 2 (Personal Subject Interview), *supra* note 4, at 3; AE R (Letter, dated December 29, 2013), at 4.

[11] GE 2 (Personal Subject Interview), *supra* note 4, at 3; AE R, *supra* note 10, at 2.

[12] Applicant's Answer to the SOR, dated October 16, 2013, at 2; AE R, *supra* note 10, at 2.

[13] Applicant's Answer to the SOR, *supra* note 12, at 2.

[14] Applicant's Answer to the SOR, *supra* note 12, at 2. As a co-driver, Applicant is her cohabitant's subcontractor, and she receives a salary and a Form 1099-MISC (Miscellaneous Income) at the end of each year. *See*, Applicant's Answer to the SOR, *supra* note 12, at 2.

[15] Applicant's Answer to the SOR, *supra* note 12, at 2.

her accounts.[16] Another credit card issuer furnished her convenience checks to use in paying her bills, but those checks contributed to the increase in that card's balance.[17] One of the convenience checks bounced when, in the middle of the transaction, the issuer lowered Applicant's credit limit, causing a problem with the creditor to whom Applicant had intended to pay.[18] As a result of the increased finance charges and additional accounts, various accounts became past due, placed for collection, charged off, or transferred or sold to other collection agents or debt buyers. One account went to judgment.

In November 2006, as part of her effort to establish a repayment program, Applicant received financial counseling from the consumer Credit Counseling Service (CCCS). That effort failed when CCCS informed her that she had insufficient income to establish the minimum payment plan, and referred her back to her creditors.[19]

In April 2007, Applicant contacted a law firm doing business as a debt settlement and consolidation company in an effort to assist her in resolving her delinquent debts. The firm was supposed to negotiate with the creditors on Applicant's behalf by settling her unsecured debts at amounts less than that actually owed to the creditors. Applicant was told to stop paying her credit card debts and, with their assistance, Applicant's debts would be resolved in three years.[20] Pursuant to the debt settlement and consolidation program, Applicant made $600 monthly payments for four months. In July 2007, because of various regulations, there were a number of legal disagreements between regulators and the debt settlement industry, and that particular law firm/debt consolidation company was not legally permitted to operate in Applicant's state.[21] As a result of state intervention, Applicant's payments were refunded to her.[22] By then, Applicant was too far behind on her credit card balances to catch up.[23]

At some point, Applicant believed the interest and late penalties on the cards became greater than the principal owed. She started receiving calls from her creditors offering to settle the accounts for reduced amounts provided she made large lump sum payments. Those amounts were still too large for Applicant to afford.[24] She discussed the matter with another attorney who promised to discuss debt consolidation with the

[16] GE 2 (Personal Subject Interview), *supra* note 4, at 3.

[17] GE 2 (Personal Subject Interview), *supra* note 4, at 3.

[18] GE 2, *supra* note 2, at 46-48.

[19] AE K (Letter, dated November 27, 2006).

[20] GE 2, *supra* note 2, at 48; Applicant's Answer to the SOR, *supra* note 12, at 4.

[21] AE I (Letter from State Attorney General, dated July 2, 2007).

[22] AE J (Status Report, undated); AE U (Letter, dated July 27, 2007).

[23] GE 2, *supra* note 2, at 49; Applicant's Answer to the SOR, *supra* note 12, at 4.

[24] GE 2 (Personal Subject Interview), *supra* note 4, at 3.

creditors, but he subsequently failed to call Applicant back. She then went to another attorney who advised her about the statute of limitations law regarding credit card accounts. He said that after three years of inaction, the creditors could no longer obtain judgments against her on the accounts.[25] Applicant's delinquent credit card debts are old debts on which the statute of limitations has lapsed,[26] and, as noted by Applicant, should be dropped from her credit report in 2014.[27]

Applicant has not applied for any credit during the past six years. Her residence is mortgage-free, her automobile is owned outright, and the truck and trucking equipment are all paid for.[28] Furthermore, Applicant's residence, motor vehicle, household goods, and burial plot have been designated as exempt property by the state.[29] She is current on all other financial obligations.[30] With respect to Applicant's delinquent accounts, after years of harassment calls from collection agents, she no longer receives any such calls.[31] Various credit card issuers still send her applications to open new credit card accounts, but she cuts them up and throws them away.[32]

Within the limits of her available financial resources, Applicant made many efforts to resolve her delinquent accounts. Nevertheless, her efforts were generally thwarted by two pieces of guidance. Although her efforts to pay her accounts were restricted by insufficient income, the guidance received in 2007 from one of her attorneys was a major consideration in her eventual inaction. The legal advice about the statute of limitations was accurate and led her to believe that once the creditors could not obtain judgments against her for the delinquent accounts, she would no longer have any concern about her finances or her security clearance. Applicant also received periodic guidance from her assistant facility security officer (FSO) in which she was advised to avoid bankruptcy at all costs because resolution of delinquent debts by bankruptcy would be the basis to revoke her security clearance.[33] Applicant is financially naive. Afraid to file for bankruptcy, and unable to make the necessary minimum monthly payments, Applicant relied in her attorney's advice to do nothing until the statute of limitations expired. Some of her non-SOR accounts were paid off, while others were

[25] GE 2 (Personal Subject Interview), *supra* note 4, at 3; AE L (Statute of Limitations, dated April 28, 2010); AE S (Letter, dated September 21, 2007).

[26] Applicant's Answer to the SOR, *supra* note 12, at 5.

[27] GE 2, *supra* note 2, at 44; Applicant's Answer to the SOR, *supra* note 12, at 5.

[28] Applicant's Answer to the SOR, *supra* note 12, at 6.

[29] AE A (Order Designating Exempt Property, dated February 20, 2009).

[30] Applicant's Answer to the SOR, *supra* note 12, at 4.

[31] GE 2, *supra* note 2, at 50.

[32] GE 2, *supra* note 2, at 49-50.

[33] AE T (Letter, dated December 19, 2013).

resolved with the issuance of a Form 1099-C (Cancellation of Debt), and Applicant's paying the income tax of the cancelled amounts.[34]

In May 2013, Applicant provided a personal financial statement reflecting a monthly net income, including social security, of $1,618; monthly household, business, utility, transportation, and food expenses of $996; and monthly debt payments of $199; leaving a monthly remainder of $423 available for discretionary savings or expenditures.[35] In December 2013, Applicant provided an updated personal financial statement reflecting a monthly net income, including social security, of $1,492; monthly household, business, utility, transportation, and food expenses of $1,101; and monthly debt payments of $197; leaving a monthly remainder of $194 available for discretionary savings or expenditures.[36]

The SOR identified ten delinquent debts totaling $92,112 that had been placed for collection, charged off, or went to judgment, as generally reflected by a 2011 credit report[37] and a 2013 credit report.[38] Some accounts listed in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit reports, in some instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Several accounts are listed with only partial account numbers. Those debts listed in the SOR, some of which are also duplicates of other accounts alleged, and their respective current status, according to the credit reports, evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶¶ 1.a., 1.b., 1.f., and 1.i.) There is one credit card account with a credit limit of $4,500 that was placed for collection and charged off in the amount of $5,561.[39] The account was sold by the original creditor (the one alleged in SOR ¶ 1.a.) to another lender (the one alleged in SOR ¶ 1.f.), which increased the balance to $12,942.[40] The account was subsequently sold *seriatim* three additional times. It was sold to one company (the one alleged in SOR ¶ 1.i.),[41] as well as another company whose name does not appear in the SOR.[42] It also appears that it was repurchased by one of the

[34] GE 2 (Form 1099-C, dated September 13, 2009); GE 2 (Form 1099-C, dated December 31, 2011).

[35] GE 2 (Personal Financial Statement, dated May 31, 2013).

[36] AE V (Personal Financial Statement, dated December 28, 2013).

[37] GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated November 19, 2011).

[38] GE 8 (Equifax Credit Report, dated April 24, 2013).

[39] GE 3, *supra* note 37, at 5, 8; AE D (TransUnion Credit Report Extract, dated June 27, 2013); AE E (Equifax Credit Report Extract, dated June 3, 2011); AE F (Experian Credit Report Extract, dated July 12, 2013); AE G (Equifax Credit Report Extract, dated June 3, 2011).

[40] GE D, *supra* note 39.

[41] GE F, *supra* note 39.

[42] GE F, *supra* note 39.

earlier purchasers (the one alleged in SOR ¶ 1.i.).[43] Adding to the confusion, the account was apparently transferred to another agency that obtained a judgment in the amount of $6,005.99 against Applicant in November 2008.[44] In July 2009, the balance was $7,780.55, plus interest, and by October 2009, the balance was increased to $8,095.[45] Based on all of the above, I conclude that the four allegations actually refer to the same account in various stages of development as reflected in various credit reports. SOR ¶¶ 1.b., 1.f., and 1.i. are considered duplicates of SOR ¶ 1.a. and the only unpaid balance is that set forth in the judgment. The various listings are expected to be automatically removed from the credit reports in April, June, and August 2014.[46] Nevertheless, that account has still not been resolved.

(SOR ¶ 1.c.) There is a credit card account with a credit limit of $2,000 and a high balance and past due balance of either $2,335 or $2,373 that was placed for collection and charged off.[47] The listing is expected to be automatically removed from the credit reports in January 2014.[48] The account has not been resolved.

(SOR ¶ 1.d.) There is a credit card account with a credit limit of $3,300, a high balance of $3,605, and a past due balance of either $3,567, $3,578, or $3,605, that was placed for collection and charged off.[49] The listing is expected to be automatically removed from the credit reports in January 2014.[50] The account has not been resolved.

(SOR ¶ 1.e.) There is a credit card account with a credit limit of $6,200, a high balance of $7,192, and a past due balance of either $7,150, $7,154, or $7,192, that was placed for collection and charged off.[51] The listing is expected to be automatically removed from the credit reports in January 2014.[52] The account has not been resolved.

[43] GE D, *supra* note 39.

[44] AE E, *supra* note 39; AE B (Affidavit of Claim, dated February 27, 2008).

[45] AE E, *supra* note 39; AE X (Letter, dated July 29, 2009).

[46] AE D, *supra* note 39; AE F, *supra* note 39.

[47] GE 3, *supra* note 37, at 7; AE G, *supra* note 39; GE 2 (TransUnion Credit Report, dated June 3, 2011), at 4; GE 4 (Equifax Credit Report, dated April 24, 2013), at 2. GE 2, GE 3, and AE G refer to the past-due amount as $2,373, while GE 4, the most recent credit report, reflects the amount as $2,335.

[48] GE 2 (TransUnion Credit Report), *supra* note 47, at 4.

[49] GE 3, *supra* note 37, at 7; AE G, *supra* note 39; GE 2 (TransUnion Credit Report), *supra* note 47, at 3; GE 4 (Equifax Credit Report), *supra* note 47, at 2. GE 2 and AE G refer to the past-due amount as $3,578; GE 4 refers to the past-due amount as $3,567; while GE 3 reflects the amount as $3,605.

[50] GE 2 (TransUnion Credit Report), *supra* note 47, at 3.

[51] GE 3, *supra* note 37, at 6; GE 2 (TransUnion Credit Report), *supra* note 47, at 3; GE 4 (Equifax Credit Report), *supra* note 47, at 2. GE 2 refers to the past-due amount as $7,150; GE 4 refers to the past-due amount as $7,154; while GE 3 reflects the amount as $7,192.

[52] GE 2 (TransUnion Credit Report), *supra* note 47, at 3.

(SOR ¶ 1.g.) There is a credit card account with a credit limit of $12,800 and a high balance of $12,816 that was placed for collection, charged off in the amount of $12,816, and sold to an unidentified debt purchaser.[53] The unpaid balance is reflected as zero in the most recent credit reports, and neither the identity of the debt purchaser nor the account is currently listed. The listing of the original account is expected to be automatically removed from the credit reports in June 2014.[54] The account has not been resolved.

(SOR ¶ 1.h.) There is a credit card account with a credit limit of $26,104 and a high balance of $29,487 that was placed for collection, charged off, and sold to an unidentified debt purchaser.[55] The unpaid balance is reflected as zero in the most recent credit reports, and neither the identity of the debt purchaser nor the account is currently listed. The listing of the original account is expected to be automatically removed from the credit reports in April 2014.[56] The account has not been resolved.

(SOR ¶ 1.j.) There is a credit card account with a credit limit of $6,500, a high balance of $3,362, and a past-due amount of $3,358, that was placed for collection and charged off.[57] The listing of the account is expected to be automatically removed from the credit reports in April 2014.[58] The account has not been resolved.

Work Performance

The president, as well as the director of government operations/assistant FSO, are both enthusiastically supportive of Applicant's application to retain her security clearance. Applicant has always "presented herself well and performed her job duties in the utmost professional manner." She has moved arms, ammunition, and explosives for the troops in a timely and orderly manner. Applicant's work ethics are considered outstanding. Several customers and government installations have praised Applicant's excellent performance.[59] As noted by the Director, Navy Operational Logistics Support Center, "Our young sailors sure count on you! Thanks!"[60] A social friend, who has known Applicant since 1986, described Applicant's "loyalty to her family, friends, and

[53] GE 3, *supra* note 37, at 7; GE 2 (TransUnion Credit Report, dated May 22, 2013), at 3; GE 4 (Equifax Credit Report), *supra* note 47, at 3.

[54] GE 2 (TransUnion Credit Report), *supra* note 53, at 3; GE 4 (Equifax Credit Report), *supra* note 47, at 3.

[55] GE 3, *supra* note 37, at 8; GE 2 (TransUnion Credit Report), supra note 53, at 4; GE 4 (Equifax Credit Report), *supra* note 47, at 3.

[56] GE 2 (TransUnion Credit Report), *supra* note 53, at 4; GE 4 (Equifax Credit Report), *supra* note 47, at 3.

[57] GE 3, *supra* note 37, at 12; GE 2 (TransUnion Credit Report), supra note 53, at 5; GE 4 (Equifax Credit Report), *supra* note 47, at 3.

[58] GE 2 (TransUnion Credit Report), *supra* note 53, at 5.

[59] AE N (Character Reference, dated December 12, 2013); AE Q (Letter, dated December 9, 1997); AE T, *supra* note 33.

[60] AE M (Letter, dated September 28, 2006).

country." She also noted that Applicant, a compassionate person, volunteers in her community helping veterans in need.[61]

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."[62] 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."[63]

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."[64] 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.[65]

[61] AE O (Letter, dated December 16, 2012); AE P (Certificate of Appreciation and Gratitude, undated).

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

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

[64] "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).

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

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."[66]

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."[67] 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 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. Commencing in 2006, Applicant started experiencing some financial

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

[67] *See* Exec. Or. 10865 § 7.

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 credit card accounts. Those accounts eventually became delinquent and were placed for collection. One account went to judgment. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*. Evidence that *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.[68] In addition, if *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 to resolve the issue*, AG ¶ 20(e) may apply.

AG ¶ 20(b) applies, AG ¶¶ 20(c), 20(d), and 20(e) partially apply, and AG ¶ 20(a) does not apply. The nature, frequency, and relative recency of Applicant's financial difficulties since 2006 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 not spend beyond her means. Instead, her financial problems were largely beyond Applicant's control. Her cohabitant developed bladder cancer, and he and Applicant were unable to work as a driver team for several months. Each of them had additional health issues, including surgeries for bladder, prostate, gall-bladder, and hernia, as well as injuries from accidents, including broken foot, broken ribs, and a shoulder injury. At times, the truck and trailer needed repairs. Those various issues sometimes kept them off the road up to 12 weeks at a time, and when they were not on the road hauling freight, they earned no salary. The deteriorating

[68] 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)).

national economy caused higher fuel prices and lower contract rates. Adding to her financial woes, Applicant supported her children and grandchildren.

Applicant tried working with her creditors, who were less than helpful, to reduce her balances; with CCCS, which was unable to assist her to establish a repayment program because she had insufficient income to establish a minimum payment plan; with a law firm/debt settlement and consolidation company to settle and resolve accounts, only to be informed that the attorney was functioning illegally within the state; with another attorney to enter a debt consolidation plan; and another attorney who advised her not to make any payments and simply wait until the state of limitations had expired. She explored bankruptcy, but was frightened off when her assistant FSO advised her to avoid bankruptcy at all costs because resolution of delinquent debts by bankruptcy would be the basis to revoke her security clearance.

Applicant attempted to act responsibly by addressing her delinquent accounts.[69] She either paid off, settled, or otherwise resolved all of her non-SOR accounts, and is current on all of her newer accounts. The only accounts continuing to be delinquent are the 7 (out of 10) accounts appearing in the SOR. Of those seven accounts, some have been sold to unidentified debt purchasers, and none of the creditors continue to call or write her seeking payment. Although the seven delinquent accounts, totaling $65,514 rather than the $92,112 alleged, are significant, nevertheless, there are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting her, following the conflicting guidance from her attorneys and the assistant FSO, do not cast doubt on her current reliability, trustworthiness, or good judgment.[70]

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

[69] "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.

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

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.[71]

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 charged off. In one instance, an account went to judgment. She failed to: make minimum monthly payments, enter into repayment plans, resolve any of the seven remaining delinquent credit card accounts, or file for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. Instead, she awaited the expiration of the statute of limitations, and now awaits the dates when the accounts will be automatically removed from her credit reports.

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 her means. Rather, her problems were largely beyond Applicant's control because of her repeated and sometimes lengthy layoffs due to health issues and vehicle repair issues, as well as support of her children and grandchildren as a single parent with no child support or alimony from her ex-husband. Applicant is financially naive. Nevertheless, she paid off, settled, or otherwise resolved all of her non-SOR accounts, and is current on all of her newer accounts. Only 7 of the 10 accounts appearing in the SOR continue to be delinquent. As noted above, three of the purported delinquencies appearing in the SOR are actually duplicates of the same account in various stages of development. Nevertheless, there are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting her, following the conflicting guidance from her attorneys and the assistant FSO, do not cast doubt on her current reliability, trustworthiness, or good judgment. Applicant has had a clearance since 1989, and her financial problems have existed since 2006. Her legal responsibility for the debts, except for the single judgment account, under the statute of limitations, has expired. The listings of those delinquent debts will be automatically removed from her credit reports within the next few months, and the overall security concern should be resolved. 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. Furthermore, it is interesting to note, that although Applicant has a history of delinquent accounts, various credit card issuers are still pursuing her in an effort to offer her additional credit cards.

[71] *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).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[72]

> 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 efforts. Applicant has made some significant timely efforts to resolve her non-SOR accounts. Unfortunately, she was unable to resolve the remaining delinquent accounts due to insufficient funds and the combination of legal advice and assistant FSO guidance. This decision should serve as a warning that her failure to continue her debt resolution efforts or the accrual of new delinquent debts will adversely affect her future eligibility for a security clearance.[73] 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

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

[73] While this decision should serve as a warning to Applicant, the decision, including the warning, should not be interpreted as being contingent on future monitoring of Applicant's financial condition. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach conditions to an applicant's security clearance. *See, e.g.*, ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant (duplicates 1.a.)
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant (duplicates 1.a.)
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant (duplicates 1.a.)
Subparagraph 1.j:	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