



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



In the matter of:)
)
) ISCR Case No. 14-05971
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

10/28/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant became seriously delinquent on several debts due to repeated unemployment. Three creditors obtained financial judgments against her. She made some debt payments when she could afford to do so, but she lacks a track record of consistent payments to enable a positive predictive judgment that her financial problems are behind her. Clearance is denied.

Statement of the Case

On April 19, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant,¹ 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 security clearance eligibility for her. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

¹ The SOR was issued in this case to Applicant under a hyphenated surname (her maiden name and married name) because she included both names on her security clearance application. Applicant legally uses her married name only, as reflected in the caption. (Tr. 4.)

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On May 26, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On February 23, 2016, 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. On February 25, 2016, I scheduled a hearing for March 22, 2016.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) and ten Applicant exhibits (AEs A-J) were admitted into evidence without objection. Applicant and one witness testified, as reflected in a transcript (Tr.) received on March 31, 2016.

I held the record open for one month after the hearing for Applicant to supplement the record. On April 19, 2016, Applicant submitted nine exhibits, which were entered into the record as AEs K-S. Department Counsel filed no objection by the May 2, 2016 deadline for comment, and the record closed on that date.

Findings of Fact

The SOR alleges under Guideline F that Applicant owed collection debts totaling \$10,319 (SOR ¶¶ 1.a-1.b, 1.d-1.g, and 1.o-1.r), delinquent medical debts totaling \$2,251 (1.c and 1.h-1.j), two charged-off debts of \$76 (SOR ¶ 1.n) and \$995 (SOR ¶ 1.s), and three judgment debts of \$2,877 (SOR ¶ 1.k), \$2,844 (SOR ¶ 1.l), and \$1,149 (SOR ¶ 1.m). Additionally, Applicant is alleged to have failed to file her state income tax returns for tax years 2010 and 2011 as of April 19, 2015 (SOR ¶ 1.t). When Applicant answered the SOR, she admitted the debts but denied the failure to file her state income tax returns for the years alleged. She indicated that she had filed joint returns with her spouse.

After considering the pleadings, exhibits, and transcript, I find that the debt in SOR ¶ 1.g is duplicated in SOR ¶ 1.r and that the debt in SOR ¶ 1.s is a more recent balance of the judgment in SOR ¶ 1.m. Additional findings of fact follow.

Applicant is a 36-year-old high school graduate who completed a two-month computer course in September 2002 and later cosmetology school in October 2006. (GE 1; Tr. 48.) She requires a DOD secret clearance for a position with a defense contractor. (AE A.)

Applicant and her spouse have been married since August 2010. (GE 1; Tr. 60.) They have a son born in 2010 and a daughter born in 2013. (Tr. 47.) Applicant also has a 14-year-old daughter whom they are raising. (GE 1; AEs G, I; Tr. 51.) She has a stepson born in 2006. (AE G; Tr. 47, 51.)

Applicant was unemployed and lived with her parents after high school. At age 21, she became a single mother. When her daughter was one year old, Applicant was placed as a case specialist at \$12.50 an hour at a district court from February 2003 to April 2003.

(Tr. 41, 49-50.) After she was fired for calling in sick a third time because of child-care issues, she was unemployed until July 2003, when she found full-time work in customer service with an insurance agency earning \$13.50 an hour. (GE 1; AE C; Tr. 50.) She had a state voucher for daycare and was able to meet her financial obligations. She took out an automobile loan for \$2,712 that she paid off according to established terms. (GE 4; AE A.) In October 2003, Applicant moved into her first apartment with assistance from a local housing authority for low income residents. When her daughter's father failed to pay court-ordered child support, she had his wages garnished for child support. (Tr. 50-51; 85.)

Applicant started cosmetology school in December 2004 while also working for the insurance agency. Applicant proved to be a trusted and valued employee, and she earned the respect of her co-workers and of the insurance agency's principal owner. In May 2005, Applicant was laid off from her job with the insurance agency because child-care obligations prevented her from attending the training to secure the insurance license required to maintain her employment. (AE B; Tr. 52-53.)

After she lost her job in May 2005, she collected unemployment for about seven months. (Tr. 53.) From December 2005 to February 2006, she earned \$10 an hour as a temporary worker for her father's employer before another six months of unemployment. (AE C; Tr. 53.) She collected unemployment until August 2006 while finishing cosmetology school in October 2006. (Tr. 54.)

From August 2006 to March 2007, Applicant earned \$10 an hour in a temporary position at a call-in center. (AE C; Tr. 54.) She left for a better opportunity through a staffing agency with a defense contractor at \$16.50 an hour. In December 2007, she became a direct hire of the defense contractor at \$18 an hour. Applicant was apparently granted an interim secret clearance for her duties. (Tr. 54-55.) In February 2008, she tested positive for an amphetamine in a random drug screen, which she attributed to diet pills. (Tr. 41-42.) Applicant served a one-week suspension and met with a therapist who cleared her of any drug problem, but she was eventually laid off in March 2008. (GE 1; AE C; Tr. 55-56.)

Applicant lost her daycare voucher, which made it more difficult for her to look for work. (Tr. 57.) She was unemployed until April 2009, when she began working as an assembler full time. (Tr. 57-58.) Applicant was fired from her position in November 2009. Seven months pregnant when she was terminated, she successfully appealed her termination for cause. (Tr. 41.) She collected unemployment until October 2010, when she secured a seasonal position at \$10 an hour for a 26-hour work week. (GE 1; AE C.)

Applicant was supported by her spouse and she did not work outside the home from December 2010 to September 2011. She began working as an assembler at \$15 an hour, but the company laid her off in November 2011. Over the next ten months, she looked for work and cared for her children. (GE 1; AE C.)

In September 2012, Applicant was placed by a staffing agency in a temporary position with a defense contractor (defense contractor X) at \$19.80 an hour. Needing a

security clearance for that position, she completed and certified to the accuracy of a Questionnaire for National Security Positions incorporated within an Electronic Questionnaire for Investigations Processing (e-QIP). In response to an inquiry concerning any financial judgments against her in the last seven years, Applicant disclosed a \$1,149 credit card judgment (SOR ¶ 1.m) from August 2006 on which she had previously made \$25 payments but stopped because of insufficient income (SOR ¶ 1.s). She also listed outstanding medical collection debts of \$72, \$158, \$102 (SOR ¶ 1.i), \$41 (SOR ¶ 1.j), \$163 (SOR ¶ 1.h), \$102 (SOR ¶ 1.p), and \$1,945 (SOR ¶ 1.c), and an unpaid electric utility debt of \$547 from April 2009 (SOR ¶ 1.o). Additionally, Applicant disclosed four bad debts totaling \$1,047 that have been paid or settled and a \$2,051 debt for delinquent rent that she was repaying at \$35 a month. (GE 1.)

Applicant's October 3, 2012 credit report included unidentified collection balances of \$1,623 from June 2010 (SOR ¶ 1.q, same debt in SOR ¶ 1.b)² and \$217 from June 2012 (SOR ¶ 1.g, same debt in ¶ 1.r); a \$76 retail charge card debt in collection from November 2006 (SOR ¶ 1.n); and a student loan of \$4,000 that came due in June 2006 that had been placed for collection for \$3,242 in August 2012 (SOR ¶ 1.a). The account was transferred in September 2012 and was in deferment. The balance of the past-due debt in SOR ¶ 1.s was reportedly \$995 as of September 2007. (GE 4.)

On November 21, 2012, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). She indicated about her financial problems that rent had taken priority, although after reviewing her credit, she discovered that her debt was less than she had feared. She expressed an intention to satisfy all her debt within a year. Applicant now believes in hindsight that she was not realistic about her ability to repay her debt. (Tr. 59.)

Applicant's hopes of becoming a direct hire of defense contractor X ended when she stopped working for maternity reasons in June 2013. (AE A.) In October 2013, she began working at \$18.50 an hour at company Y, but after the first month, her hourly wage decreased to \$14 for not working fast enough. In January 2014, Applicant was placed at a technology company at \$19.80 an hour. In August 2014, she received an offer from a subcontractor to return to defense contractor X for weekend work at \$30 an hour. The job opportunity, which would eliminate the need for daycare, is contingent on her obtaining a secret clearance. (AEs A, C; Tr. 66-69.)

A credit check in September 2014 for her background investigation revealed an additional collection debt of \$2,737 (SOR ¶ 1.b) from January 2012, which Applicant now understands was for wireless telephone services (Tr. 38-39), and two judgments for unpaid rent in July 2009 (SOR ¶ 1.l) and in January 2011 (SOR ¶ 1.k). About the debt in SOR ¶ 1.l, Applicant claimed that she had paid the rent by money order, but the landlord had no

² As of the close of the record, Applicant had been unable to verify the collection balance in SOR ¶ 1.q. Available credit records show that the same collection agency held two debts, of \$1,623 and \$217 as of August 2012. The \$217 debt is to be removed from her credit profile. The collection agency confirmed one outstanding debt of \$2,737 for wireless phone services, which could be an updated balance of the \$1,623 debt on her credit record as of August 2012. However, the account numbers do not match.

record of her payments and she could not produce receipts in court. (Tr. 46-47.) Payment records on the other judgment (SOR ¶ 1.k) show that the creditor obtained a \$3,013 judgment in January 2011. Applicant made monthly payments ranging from \$30 to \$70 in 2011 and \$35 per month from January 2012 to June 2012. She made only one payment in 2013, of \$100 in May 2013, and only two payments totaling \$150 in 2014. (AE Q.) Applicant made no payments toward medical debts in collection totaling \$2,251 (SOR ¶¶ 1.c and 1.h-1.j). Debts of \$760 from June 2013 (SOR ¶ 1.d), \$676 from April 2013 (SOR ¶ 1.e), and \$340 from July 2013 (SOR ¶ 1.f) owed to telecommunications/cable companies were in collection status. Applicant disputed the \$217 collection debt (SOR ¶ 1.g, same debt in ¶ 1.r) on her credit record. Applicant's student loan was in forbearance with a \$5,682 balance. Her credit report also showed a new automobile loan obtained in September 2014 for \$17,992, to be repaid at \$399 per month. (GE 3.)

In October 2014, Applicant was placed with another employer in a second-shift job paying \$24.25 an hour. (AE C; Tr. 69.) On April 19, 2015, the DOD CAF issued an SOR to Applicant because of the outstanding delinquencies on her credit record and alleging that Applicant had yet to file her state income tax returns for tax years 2010 and 2011 (SOR ¶ 1.t). In response, Applicant asserted that she had filed state returns jointly with her spouse, a landscaper, for those years. State tax returns for the years at issue show that Applicant's and her spouse's joint state tax return for 2010 was signed by a professional tax preparer on February 5, 2011.³ They reported unemployment compensation of \$16,979 on income totaling \$37,733, and owed \$302 in state taxes for that year. (AE H.) Their state income tax return for tax year 2011 was prepared for them on March 20, 2012. On income totaling \$35,484, they owed \$40. (AE J.) Applicant's spouse currently owes \$495 in state taxes for tax year 2013, apparently because some of his debt has been cancelled. (AE S; Tr. 63.)

From May 2015 to at least March 2016, Applicant was employed at \$23.50 an hour. (AE C.) Even with this income, Applicant fell behind in her automobile loan payments from October 2014 through January 2015 and again from August 2015 through October 2015. In November 2015, she paid \$1,600 to bring her loan current. A wireless telephone debt of \$310 from March 2015 was placed for collection in July 2015. As of September 2015, the unpaid balance was \$339. (GE 2.) She made only one payment in 2015, of \$50 in July 2015, toward the judgment debt in SOR ¶ 1.k. (AE Q.)

Applicant's spouse was laid off from his job as a landscaper at \$18 an hour in November 2015. His unexpected job loss placed pressure on Applicant to ensure that the household bills are paid. (Tr. 52, 59, 71.) As of March 2016, her spouse was seeking customers for his own landscaping and masonry business for the upcoming season. (Tr. 52.) In December 2015 or January 2016, he began collecting unemployment at \$330 a week. (Tr. 72.) Applicant has not had to pay daycare since her spouse lost his job, but they

³ Applicant presented a copy of her and her spouse's joint federal returns for tax years 2010 and 2011. (AEs G, I.) Their federal return for tax year 2010 bears a date stamp by their tax preparer of December 27, 2011, but it also shows that the IRS rejected their initial return because they had claimed Applicant's stepson as a dependent when someone else did as well. Their joint federal income tax return for tax year 2011 was prepared on August 10, 2012, but Applicant testified that their tax preparer requested an extension of time to file. (Tr. 62.) They overpaid their federal income taxes by \$2,975 for 2010 (AE G) and \$1,752 for 2011. (AE I.)

pay a sitter \$8.75 an hour when her spouse is obtaining estimates for landscape work. (Tr. 73.) By March 2016, they had paid their sitter about \$400. (Tr. 74.)

Applicant's student loan (SOR ¶ 1.a), which had a \$5,872 balance as of November 2015 (GE 2), was coming out of deferment with her first monthly payment of \$99.78 due on or before April 6, 2016. (AE F; Tr. 29.) As for the \$2,737 wireless phone debt in collection (SOR ¶ 1.b, same debt in SOR ¶ 1.q), Applicant arranged to pay \$25 per month for three consecutive months starting in April 2016 required by the creditor to agree to settle the debt for 60% of the balance.⁴ (AEs K, L; Tr. 38-39.) An account itemization for SOR ¶ 1.c shows that Applicant incurred a \$1,945 medical debt for her daughter in December 2007. (AE M.) She recently arranged to repay the debt at \$10 a month, although she presented no record of any payments. (AEs K, M.) Concerning the \$760 telephone debt in SOR ¶ 1.d, Applicant has not yet made any contact with the creditor. (AE K.) Applicant returned cable television equipment to lower the \$626 collection balance of the debt in SOR ¶ 1.e to \$207. Her bank account was debited on March 25, 2016, and on April 1, 2016, to satisfy the debt. (AEs K, N; Tr. 37, 64.) Applicant had yet to contact the cable television provider in SOR ¶ 1.f. (AE K; Tr. 64.) In an effort to eliminate bills, they cancelled their cable television services in 2013. (Tr. 75.) The collection agency in SOR ¶ 1.g (duplicated in SOR ¶ 1.r) agreed to have the credit entry removed from Applicant's credit record because it could not verify the debt. (AE O; Tr. 38.)

On February 29, 2016, Applicant paid \$787 by credit card to satisfy medical debts in collection, including the accounts in SOR ¶¶ 1.h-1.j and 1.p. (AEs D, K, P; Tr. 36.) Applicant resumed repayment of the judgment debt in SOR ¶ 1.k with a \$40 payment on March 11, 2016. She committed to paying \$50 a month. She paid \$50 on March 18, 2016, and on April 8, 2016. Due to interest and fees on the unpaid balance, the debt totaled \$3,954 as of April 2016. (AE Q; Tr. 37.) She arranged with the judgment creditor in SOR ¶ 1.l to settle her \$2,844 debt for three payments of \$870 (AE K), although she presented no evidence of any payments. As of March 19, 2016, Applicant owed \$893 on the debt in SOR ¶ 1.m (duplicated in SOR ¶ 1.s).⁵ She agreed to repay the debt at \$298 per month. (AE R.)

On April 5, 2016, Applicant paid \$76 to resolve the debt in SOR ¶ 1.n. She had paid half of the \$547 in old electric utility debt in SOR ¶ 1.o so that she could have service in her name in June 2013. (AE K.)

⁴ Applicant apparently confused the telephone debts in SOR ¶ 1.b and ¶ 1.c in that she provided the same information when asked about the debt in SOR ¶ 1.d. (Tr. 63.) After her hearing, she admitted that she had yet to establish a payment plan for the debt in SOR ¶ 1.d. (AE K.)

⁵ Applicant testified that the judgment in SOR ¶ 1.m is the same debt in SOR ¶ 1.s. (Tr. 43.) Available credit information in her October 2012 credit report (GE 4) indicates that she had a credit card account that was charged off in October 2006 for \$1,219. Applicant indicated on her e-QIP that a credit card account with the creditor went to judgment and that she was required to pay \$25 a month. There is a separate trade line on her October 2012 credit report of a collection account opened by the creditor in September 2006 for \$1,220 on which payments were made through July 2007 to reduce the balance to \$995. The evidence tends to indicate that the debt in SOR ¶ 1.s is a more recent balance of the credit card account that went to judgment. Contradicting her hearing testimony, Applicant now claims that she paid off the debt in SOR ¶ 1.s in 2007, as reflected on her e-QIP. However, the account she cites was for overdraft fees.

Applicant's ultimate goal is to clear up all her past-due debts. She plans on tackling her remaining debts one by one when she is financially able to do so. After her husband lost his job, she sought credit counseling. (Tr. 40, 60.) With the help of the counseling service, Applicant prepared a household budget using her current income and her spouse's previous income when he was employed. Provided her spouse regains employment at similar income and she receives \$424 in monthly child support for her daughter,⁶ Applicant estimated that they should have about \$5,333 in income per month to pay their household bills, such as \$600 for childcare, \$1,400 for rent, \$420 for her car payment, \$200 for cell phones, \$260 for utilities, and \$200 to her judgment creditors. She estimated disposable income of \$483 per month, but her budget does not account for any payments toward her student loans or her medical collection debt. (AE E.)

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 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

⁶ The budget incongruously lists child support income of \$22.63 per week but \$424.34 monthly. The monthly figure is likely more accurate. If not, Applicant would have only about \$160 in disposable income when she is obligated to pay almost \$100 a month toward her student loan.

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 concerns about financial considerations are 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.

As a young single mother, Applicant received public assistance with daycare costs and housing. She made timely payments on an automobile loan when she was employed, but she struggled financially when she was unemployed or when she earned low wages in temporary positions. In August 2006, a \$1,149 credit card judgment was entered against her (SOR ¶ 1.m, same debt in SOR ¶ 1.s). A retail charge balance of \$76 from November 2006 went unpaid (SOR ¶ 1.n). In 2008, Applicant defaulted on student loan debt obtained for cosmetology schooling in June 2006 (SOR ¶ 1.a). Judgments were entered against her in 2009 for \$2,844 (SOR ¶ 1.l) and in 2011 for \$3,031 (SOR ¶ 1.k) for nonpayment of rent. In July 2008, a \$1,945 medical debt for her daughter’s care was placed for collection (SOR ¶ 1.c). As of August 2012, several smaller medical debts were also in collection (SOR ¶¶ 1.h-1.j, 1.p). Cable television, telephone, and electric bills totaling \$5,060 went into collections (SOR ¶¶ 1.b, 1.d-1.f, 1.o). Two disqualifying conditions, AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The Government failed to establish its *prima facie* case with respect to the alleged failure by Applicant to file her state income tax returns for tax years 2010 and 2011 as of April 19, 2015 (SOR ¶ 1.t). Applicant denied the alleged failure to file when she responded to the SOR. Available copies of her returns show that they were prepared in a timely manner. This does not prove that they were filed timely, but I have no reason to doubt her assertion that they were filed. Applicant and her spouse had to refile their federal return for tax year 2010 after the IRS rejected their return because someone else had claimed Applicant’s stepson as a dependent. There is no evidence that they had to refile their state

return for that tax year. AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,” is not established.

Concerning mitigation of her delinquent debts, AG ¶ 20(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,” cannot reasonably apply. Three financial judgments have not been satisfied. As shown on her December 2015 credit report, her student loan was in default from June 2015 through September 2015 before it was placed in forbearance for another six months. A wireless phone debt from March 2015 was placed for collection in July 2015 for \$310. That debt cannot provide a basis for disqualification because it was not alleged in the SOR. However, this recent delinquency shows Applicant’s financial problems did not happen so long ago to no longer cast doubt on her security clearance eligibility.

AG ¶ 20(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,” applies in that Applicant’s financial problems are largely attributable to repeated unemployment, to unexpected medical costs, and to periods of low income. The credit card account in SOR ¶ 1.m went to judgment in August 2006, after she had been unemployed for seven months in 2005 and six months in 2006. Applicant was unemployed for 13 months from March 2008 to April 2009 after a layoff. She defaulted on her student loan (SOR ¶ 1.a) around March 2008. The \$1,945 medical debt for her daughter (SOR ¶ 1.c) went to collection in July 2008. She had only been employed three months, at \$15 an hour, when the judgment in SOR ¶ 1.l was obtained by a former landlord in July 2009. Between November 2009 and September 2011, Applicant was employed for only a brief two months in a part-time job paying only \$10 an hour. The housing debt that went to judgment in January 2011 (SOR ¶ 1.k) was placed for collection in May 2010 when she was unemployed. The wireless phone debt in SOR ¶ 1.b (same debt in SOR ¶ 1.q) went to collection in June 2010. Presumably she could count on her spouse for financial support after their marriage in August 2010, if not before then, given their first child was born in January 2010. Her spouse earned a living wage, as the evidence shows that their federal adjusted gross income was \$36,403 in 2010 and \$34,211 in 2011, but they also had the expenses of caring for an infant. Applicant held a temporary position for three months at \$15 an hour during the last quarter of 2011, but she was out of work again from November 2011 to September 2012. The utility debt in SOR ¶ 1.o was placed for collection during that time.

For AG ¶ 20(b) to fully mitigate the financial considerations concerns, an applicant is required to act responsibly toward his or her creditors. Applicant has been consistently employed since October 2013. Since October 2014, she has earned at least \$23 an hour, and yet she made only one payment in 2015 toward the judgment in SOR ¶ 1.k. There is no evidence that she made any payments in 2015 on the other two judgments, despite being placed on notice by the SOR of the security concerns about her finances. She had ongoing daycare obligations around \$600 a month which understandably took priority. However, that expense was largely eliminated with her spouse’s layoff in November 2015,

except for paying for a sitter when her spouse is seeking future landscaping jobs. Applicant should have been more proactive in contacting her creditors.

In her favor, Applicant has taken steps since February 2016 to address some of her old debts. Applicant returned the cable box and made two payments to fully resolve the cable television debt in SOR ¶ 1.e in April 2016. In late February 2016, she paid off \$787 in medical collection debts, including SOR ¶¶ 1.h-1.j and 1.p. Applicant satisfied the \$76 debt in SOR ¶ 1.n on April 5, 2016. AG ¶ 20(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 AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” are applicable to those debts that have been satisfied. Applicant showed some good faith by resuming her payments on the housing judgment from 2011 (SOR ¶ 1.k). She made a \$40 payment on March 11, 2016, and she is committed to repaying the \$3,954 balance at \$50 per month. The creditor’s statement of account (AE Q) shows that she made cash payments of \$50 each on March 18, 2016, and April 8, 2016. Additionally, Applicant agreed to make three \$25 payments toward the collection debt in SOR ¶ 1.b toward settling the debt for 60% of its balance. She arranged to repay the medical debt in SOR ¶ 1.c at \$10 a month and the \$893 balance of SOR ¶ 1.m at \$298 per month. Applicant has yet to make any repayment arrangements for the debts in SOR ¶¶ 1.d and 1.f. Neither AG ¶ 20(c) nor AG ¶ 20(d) applies to those debts.

It is unclear whether Applicant owes a separate balance of \$1,623 as alleged in SOR ¶ 1.q. The collection agency that held the debt in August 2012 reported two debts in August 2012, of \$1,623 and of \$217 (SOR ¶ 1.g, duplicated in SOR ¶ 1.r). It was able to verify only the debt in SOR ¶ 1.b and agreed to remove the debt in SOR ¶ 1.g from her credit record. AG ¶ 20(e) provides:

(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.

AG ¶ 20(e) is also applicable to the debts that are duplicate listings in the SOR, e.g. SOR ¶ 1.s as duplicative of SOR ¶ 1.g.

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).⁷ The analysis under Guideline F is incorporated in my whole-

⁷ 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

person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Unemployment was indisputably a significant cause of Applicant's financial struggles over the years. Applicant understandably gave priority to providing necessities, such as housing, and medical care for her daughter. Debt balances owed to telecommunications and cable companies are more difficult to justify, although she made a positive change in cancelling her cable television service in 2013.

Applicant is not required to establish that she has paid off each debt in the SOR, or even that the first debts paid be those in the SOR.⁸ However, there must be adequate assurances that her financial problems are not likely to persist. As of the close of the record, Applicant was the sole income provider for her household. In addition to the approximately \$12,372 in unresolved delinquency,⁹ Applicant is legally obligated to pay \$99.78 per month on her student loan, which had a \$5,872 balance as of November 2015. It is difficult to conclude that her financial problems are being resolved or are under control without evidence of consistent payments. The DOHA Appeal Board has consistently held that promises to pay debts do not substitute for a track record of timely payments and other financially responsible behavior. See e.g., ISCR Case No. 14-14565 (App. Bd. Sep. 18, 2015), citing ISCR Case No. 14-03069 (App. Bd. Jul. 30, 2015). Doubts exist about whether Applicant can afford to make all the payments promised to her creditors, especially given her spouse's unemployment. The household budget prepared with the assistance of

pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

⁸ The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that [she] has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that [she] has "... established a plan to resolve [her] financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and [her] actions in evaluating the extent to which that applicant's plan for the reduction of [her] 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

⁹ Assuming that Applicant made the three \$25 payments promised on the debt in SOR ¶ 1.a and that the creditor is willing to settle for 60% of the balance, she will have to pay \$1,597 to settle that debt. As of the close of the record, she owed \$1,945 on SOR ¶ 1.c, \$760 on SOR ¶ 1.c, \$340 on SOR ¶ 1.f, \$3,954 on SOR ¶ 1.i, a settlement balance of \$2,610 on SOR ¶ 1.l, \$893 on SOR ¶ 1.m, and about \$273 on SOR ¶ 1.o.

a credit counselor showed net monthly disposable income of \$483, but it was based in part on her spouse's income when he was employed. It included debt payments totaling \$400 a month toward the judgment debts, and she is being asked to pay only \$50 a month on the judgment in SOR ¶ 1.k. However, she committed to repaying the balance of the judgment in SOR ¶ 1.m at \$298 a month and to making three payments of \$870 toward the judgment in SOR ¶ 1.l. Her budget also did not account for her student loan payment. Her student loan was past due from July 2015 to September 2015 before it was placed in forbearance. She made no payments on her car loan from August 2015 until November 2015, when she paid \$1,600 to bring her loan current. It is unclear whether those funds came from savings, an income tax refund, or another source.

A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. For the reasons already noted, concerns persist about Applicant's present financial stability to where I am unable to conclude that it is clearly consistent with the national interest to grant her 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
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g-1.j:	For Applicant
Subparagraphs 1.k-1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.q-1.t:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge