



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-00504

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel

For Applicant: *Pro se*

08/05/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns regarding financial considerations. Eligibility to occupy a public trust position is denied.

Statement of the Case

On August 10, 2012, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On August 1, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, pursuant to DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to make

¹ GE 1 (e-QIP, dated August 10, 2012).

an affirmative finding under the Directive that it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on August 15, 2015. In a sworn statement, dated September 1, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On December 10, 2015, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on January 7, 2016. A Notice of Hearing was issued on January 20, 2016. I convened the hearing, as scheduled, on February 4, 2016. At the commencement of the hearing, Applicant submitted an Amended Answer to the SOR.²

During the hearing, five Government exhibits (GE 1 through GE 5), eight Applicant exhibits (AE A through AE H), and one administrative exhibit were admitted into evidence without objection. Applicant and one witness testified. The transcript (Tr.) was received on February 16, 2016. I kept the record open to enable Applicant to supplement it. Applicant failed to take advantage of that opportunity. The record closed on February 22, 2016.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (§§ 1.d. through 1.y.) of the SOR. She supplemented that Answer with an Amended Answer to the SOR and altered some of her positions. She changed her responses from "admit" to "deny" for the following allegations: §§ 1.d., 1.r., 1.s., 1.t., 1.v., and 1.x., and she changed her response from "admit" to "unknown" for § 1.o. Upon the motion by Department Counsel that the SOR be amended by withdrawing the allegation in SOR § 1.w., and there being no objection, the motion was granted and the SOR was amended.³ Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 47-year-old employee of a defense contractor. She has been a full-time claims processor for a defense contractor since August 1996. She is seeking to retain her eligibility for occupying a public trust position to support a contract with the DOD, which was initially granted to her in 2002.⁴ She served honorably on active duty with the U.S. Air Force from April 1988 until May 1990.⁵ During that period, Applicant

² Amended Answer to the SOR, dated February 4, 2016.

³ Tr. at 11-12.

⁴ GE 1, *supra* note 1, at 23.

⁵ GE 1, *supra* note 1, at 11.

received no awards and decorations. She is a 1986 high school graduate with about one year of college credits.⁶ Applicant was married in February 1996 and widowed in June 2014.⁷ She has a daughter, born in 2001.⁸

Financial Considerations⁹

There was nothing unusual about Applicant's finances until April 2010. She and her husband were both employed, and they generally maintained all their accounts in a current status. Things changed in April 2010 when her husband lost his job due to illness. It was six to eight months before he could start drawing unemployment compensation. The unemployment compensation eventually ceased. Her husband was able to obtain new employment in February 2011, but the salary was about 50 percent less than before. He maintained that position for two years, but because of a continuing illness, he lost that job in February 2013. This time there was no unemployment compensation. In November 2013, Applicant's husband entered the hospital, and he never left: he died in June 2014. During that entire period, Applicant took a combined two months of leave without pay. Fortunately, all of Applicant's husband's medical bills were paid by an unidentified benefactor at the hospital because Applicant's husband did not have health insurance. As a result of his condition, the reduction in family income, the emotional stress, and the eventual loss of his income, Applicant's ability to maintain her accounts was strained to the maximum. She was forced to prioritize her accounts, and she chose to address necessities and living expenses first, with other accounts next. Accounts became delinquent and were placed for collection, charged off, or went to judgment. Many were sold to debt purchasers.¹⁰

The SOR originally identified 25 purportedly continuing delinquent accounts, totaling approximately \$50,391,¹¹ as reflected by the August 2012 credit report,¹² the December 2014 credit report,¹³ and the September 2015 credit report.¹⁴ Those debts and their respective current status, according to the credit reports, other evidence

⁶ GE 2 (Personal Subject Interview, dated September 13, 2012), at 1; Tr. at 6-7.

⁷ GE 1, *supra* note 1, at 15; AE D (Death Certificate, dated June 26, 2014).

⁸ GE 1, *supra* note 1, at 16.

⁹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, *supra* note 1; GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 30, 2012); GE 3 (Equifax Credit Report, dated December 22, 2014); GE 5 (Equifax Credit Report, dated September 24, 2015); GE 2, *supra* note 6; AE C (TransUnion Credit Report, dated January 29, 2016); Amended Answer to the SOR, *supra* note 2. More recent information can be found in the exhibits furnished and individually identified.

¹⁰ AE E (Statement, undated); GE 2, *supra* note 6, at 2; GE 1, *supra* note 1, at 27; Tr. at 40-41, 70-71.

¹¹ As noted above, SOR ¶ 1.w. (an account in the amount of \$198), was withdrawn.

¹² GE 4, *supra* note 9.

¹³ GE 3, *supra* note 9.

¹⁴ GE 5, *supra* note 9.

submitted by the Government and Applicant, and Applicant's comments regarding same, are described below:

SOR ¶ 1.a.: This is a bank credit card with a credit limit of \$13,500 and a past-due and unpaid balance of \$15,493 that was placed for collection and charged off. Applicant claimed that in February 2016 the creditor advised her that a Form 1099-C (Cancellation of Debt) would be furnished to her.¹⁵ As of the closing of the record, no such document had been submitted to me by Applicant. The account remains unresolved.

SOR ¶ 1.b.: This is a bank credit card with a credit limit of \$6,000 and an unpaid balance of \$7,610 that was placed for collection and charged off. Applicant claimed that in February 2016 the creditor advised her that a Form 1099-C would be furnished to her.¹⁶ As of the closing of the record, no such document had been submitted to me by Applicant. The account remains unresolved.

SOR ¶ 1.c.: This is a credit card with a credit limit of \$5,000 and an unpaid balance of \$5,875 that was placed for collection and charged off. A Form 1099-C was issued to her in January 2016.¹⁷ The account has been resolved.

SOR ¶¶ 1.d. and 1.q.: This is a department store charge account with a credit limit of \$1,700, initial high credit of \$2,253 and past-due balance of \$699 that was placed for collection and sold to a debt purchaser. That debt purchaser increased the high credit to \$2,254 and the past-due amount initially to \$2,197, then to \$2,661, and eventually to \$2,778.¹⁸ Applicant acknowledged responsibility for the named account, but not the debt purchaser's listing, and indicated that she was unable to commence payments until other accounts on her priority list were satisfied.¹⁹ The account remains unresolved.

SOR ¶¶ 1.e. and 1.p.: This is a department store charge account with a credit limit of \$2,418, initial high credit of \$2,163 and past-due balance of \$860 that was placed for collection. The balance of \$2,651 was charged off, and the account was sold to a debt purchaser.²⁰ Applicant contacted the credit purchaser to set up a repayment

¹⁵ Amended Answer to the SOR, *supra* note 2, at 1.

¹⁶ Amended Answer to the SOR, *supra* note 2, at 1.

¹⁷ AE A (Form 1099-C, dated January 22, 2016).

¹⁸ GE 4, *supra* note 9, at 6; GE 3, *supra* note 9, at 2-3; GE 5, *supra* note 9, at 4. A cursory review of the credit reports reveals that the account numbers listed are identical, thus indicating there was only one account and the separate allegations referred to "snapshots" along the timeline of the same account.

¹⁹ Amended Answer to the SOR, *supra* note 2, at 1, 3; Tr. at 58.

²⁰ GE 4, *supra* note 9, at 4; GE 3, *supra* note 9, at 2; GE 5, *supra* note 9, at 3. A cursory review of the credit reports reveals that the account numbers listed are identical, thus indicating there was only one account and the separate allegations referred to "snapshots" along the timeline of the same account. Department Counsel conceded the two allegations were duplicates. See Tr. at 68-69.

plan. She made her initial \$10 payment under that plan on February 3, 2016, and she intends to continue making monthly payments until the account is resolved.²¹ The account is in the process of being resolved.

SOR ¶ 1.f.: This is a bank charge account for a warehouse store with a balance of \$1,697 that was placed for collection and sold to a debt purchaser.²² It was apparently transferred to a law firm. Applicant contacted both the debt purchaser as well as the law firm in an effort to set up a repayment plan, but, to date, her efforts have been unsuccessful.²³ The account remains unresolved.

SOR ¶¶ 1.g. and 1.s.: This is an unspecified type of bank charge account with a credit limit of \$5,000, high credit of \$1,031, and past-due balance of \$658 that was placed for collection.²⁴ Applicant contacted the credit purchaser to set up a repayment plan. She made her initial \$11 payment under that plan on February 3, 2016, and she intends to continue making monthly payments until the account is resolved.²⁵ The account is in the process of being resolved.

SOR ¶¶ 1.h. and 1.n.: These are two hospital accounts with unpaid balances of \$810 and \$220 that were placed for collection with the same collection agency.²⁶ Applicant contacted the collection agency to set up a repayment plan. The accounts were combined, and Applicant made her initial \$25 payment under that plan on February 3, 2016. She intends to continue making monthly payments until the accounts are resolved.²⁷ The accounts are in the process of being resolved.

SOR ¶ 1.i.: This is a clothing store charge account with a credit limit of \$530 and unpaid balance of \$617 that was placed for collection and charged off in December 2011. The account was either sold or otherwise assigned to another collection agent.²⁸ Applicant acknowledged responsibility for the named account and indicated that she

²¹ Amended Answer to the SOR, *supra* note 2, at 1, 3; AE B (Account Activity, dated February 3, 2016).

²² GE 4, *supra* note 9, at 8, 10, 12; GE 3, *supra* note 9, at 2; GE 5, *supra* note 9, at 4. A cursory review of the credit reports reveals that the account numbers listed are identical, thus indicating there was only one account and the separate allegations referred to “snapshots” along the timeline of the same account.

²³ Amended Answer to the SOR, *supra* note 2, at 1; Tr. at 53-54.

²⁴ GE 4, *supra* note 9, at 7; GE 3, *supra* note 9, at 2; GE 5, *supra* note 9, at 3. A review of the credit reports reveals that there was only one account and the separate allegations referred to “snapshots” along the timeline of the same account.

²⁵ Amended Answer to the SOR, *supra* note 2, at 2; AE B, *supra* note 21.

²⁶ AE C, *supra* note 9, at 7.

²⁷ Amended Answer to the SOR, *supra* note 2, at 2-3; AE B, *supra* note 21.

²⁸ AE C, *supra* note 9, at 2-3; GE 3, *supra* note 9, at 2.

was unable to commence payments until other accounts on her priority list were satisfied.²⁹ The account remains unresolved.

SOR ¶ 1.j.: This is a department store charge account with a credit limit of \$500 and unpaid balance of \$464 that was placed for collection and charged off in November 2011. The account was either sold or otherwise assigned to an unidentified collection agent.³⁰ Applicant acknowledged responsibility for the named account and indicated that she was unable to commence payments until other accounts on her priority list were satisfied.³¹ The account remains unresolved.

SOR ¶ 1.k.: This is a credit card account with a credit limit of \$300 and unpaid balance of \$403 that was placed for collection and sold to a debt purchaser.³² Applicant contacted the credit purchaser to set up a repayment plan. She made her initial \$134.46 payment under that plan on February 3, 2016, and she intends to continue making monthly payments until the account is resolved.³³ The account is in the process of being resolved.

SOR ¶¶ 1.l. and 1.u.: This is a home improvement store credit card account with a credit limit of \$500 and unpaid balance of \$322 that was placed for collection and charged off in October 2011. The account was subsequently sold to a debt purchaser who now reports the unpaid balance as \$323.³⁴ Applicant contacted the credit purchaser to set up a repayment plan. She made her initial \$12.53 payment under that plan on February 3, 2016, and she intends to continue making monthly payments until the account is resolved.³⁵ The account is in the process of being resolved.

SOR ¶¶ 1.m. and 1.x.: These are two medical accounts (one is for an anesthesiologist and the other is unspecified) with unpaid balances of \$244 and \$110 that were placed for collection. The collection agency for only one of the accounts has been identified.³⁶ Applicant contended that she contacted the collection agency to set up a repayment plan for all of her medical accounts, and that the accounts were combined, and she made her initial \$25 payment under that plan on February 3, 2016.³⁷ There is no documentation to support her contention that all of the medical

²⁹ Amended Answer to the SOR, *supra* note 2, at 2; Tr. at 54-55.

³⁰ AE C, *supra* note 9, at 6-7; GE 4, *supra* note 9, at 8; Tr. at 55.

³¹ Amended Answer to the SOR, *supra* note 2, at 2; Tr. at 55.

³² GE 4, *supra* note 9, at 8; GE 5, *supra* note 9, at 4; AE C, *supra* note 9, at 15.

³³ Amended Answer to the SOR, *supra* note 2, at 2-3; AE B, *supra* note 21; Tr. at 55.

³⁴ GE 4, *supra* note 9, at 8; GE 5, *supra* note 9, at 3; AE C, *supra* note 9, at 14. A review of the credit reports reveals that there was only one account and the separate allegations referred to "snapshots" along the timeline of the same account. Department Counsel conceded the two allegations were duplicates. See Tr. at 69.

³⁵ Amended Answer to the SOR, *supra* note 2, at 3-4; AE B, *supra* note 21; Tr. at 56, 61-62.

³⁶ AE C, *supra* note 9, at 15; GE 4, *supra* note 9, at 13; GE 5, *supra* note 9, at 2.

³⁷ Amended Answer to the SOR, *supra* note 2, at 3-4; Tr. at 56-58, 62-63.

accounts were combined. Under the circumstances, it is impossible to conclude that these two accounts were included in her repayment plan. The resolution status of these two accounts is unclear.

SOR ¶ 1.o.: This is a judgment in the amount of \$1,387 obtained by a debt purchaser in March 2013 for an unspecified type of account.³⁸ The plaintiff who obtained the judgment is the same debt purchaser revealed in SOR ¶¶ 1.d. and 1.q. above, and its name does not appear in any of the credit reports discussed above with the exception of these entries. Applicant claimed to have no knowledge of the judgment, and she has not contacted the listed plaintiff to learn more about the judgment or the identity of the original creditor.³⁹ There is no evidence that she ever attempted to contest the matter with the court in which the judgment was obtained. The account remains unresolved.

SOR ¶ 1.r.: This is an unspecified type of account with an unpaid and past-due balance of \$1,747 that was placed for collection and sold to the listed debt purchaser.⁴⁰ The account does not appear in Applicant's 2014, 2015, or 2016 credit reports. Applicant claims she disputed the account, but acknowledged that she had not yet attempted to contact the listed collection agent/debt purchaser.⁴¹ She failed to submit any documentation to support the existence of a dispute. The account remains unresolved.

SOR ¶¶ 1.t. and 1.v.: This is a department store charge account with a credit limit of \$250 and unpaid balance of \$468 that was placed for collection and charged off. The account was sold to a debt purchaser.⁴² Applicant initially acknowledged responsibility for the named account, but subsequently denied such responsibility because the account was no longer in her most recent credit report.⁴³ The account remains unresolved.

SOR ¶ 1.y.: This is a medical account with unpaid balance of \$84 that was placed for collection.⁴⁴ Applicant indicated that the entire balance would be paid the day after the hearing which was also her pay day.⁴⁵ Although she was offered the

³⁸ AE C, *supra* note 9, at 1; GE 5, *supra* note 9, at 1.

³⁹ Amended Answer to the SOR, *supra* note 2, at 3; Tr. at 58.

⁴⁰ GE 4, *supra* note 9, at 6.

⁴¹ Amended Answer to the SOR, *supra* note 2, at 4; Tr. at 59-60.

⁴² GE 4, *supra* note 9, at 7; GE 3, *supra* note 9, at 3. A cursory review of the credit reports reveals that the account numbers listed are identical, thus indicating there was only one account and the separate allegations referred to "snapshots" along the timeline of the same account.

⁴³ GE 4, *supra* note 9, at 7; GE 5, *supra* note 9, at 7; Amended Answer to the SOR, *supra* note 2, at 4.

⁴⁴ AE C, *supra* note 9, at 7.

⁴⁵ Amended Answer to the SOR, *supra* note 2, at 4; Tr. at 63-64.

opportunity to do so, she failed to submit any documentation to support the existence of any such payment. The account remains unresolved.

Applicant's take-home pay per month is \$840. In addition, she and her daughter apparently also receive benefits from Applicant's late husband's social security. Her parents periodically supply some financial aid to her when they can. Shortly after her husband's death, she received a \$10,000 payment from his life insurance.⁴⁶ Applicant does not maintain a budget. She has never met with a financial counselor.⁴⁷ As of February 3, 2016 – two days before her pay day – she had \$31.46 in her checking account.⁴⁸ Applicant purportedly realized the severity of her financial mess nearly 30 months after she was interviewed by an investigator of the U.S. Office of Personnel Management (OPM) and 5 months after the SOR was issued because she feared losing her job.⁴⁹ However, when afforded the opportunity to supplement the record with documentation supporting her contentions that repayment plans had been established; that Forms 1099-C had been furnished; that payments, other than those minimum ones made on February 3, 2016, were made to creditors both listed in the SOR as well as other unlisted creditors; that disputes had been filed; that additional contacts with creditors had been made; that a budget and personal financial statement had been created; or that financial counseling had been received, she failed to follow up on that opportunity. In addition, she failed to submit her DD Form 214. It appears that Applicant's financial problems are not any closer to becoming under control.

Work Performance and Character References

Over the years, Applicant was awarded several certificates in recognition of her work performance and superior achievements.⁵⁰ Her actual work performance ratings were not submitted for consideration. Applicant's mother characterized Applicant as a hard worker with a good reputation for honesty, integrity, and trustworthiness. Applicant was also described as a good daughter (because she does unspecified things for her mother) and a good mother (because she takes her daughter to sports activities).⁵¹

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."⁵² As Commander in Chief,

⁴⁶ Tr. at 42.

⁴⁷ Tr. at 46, 71-73.

⁴⁸ AE B, *supra* note 21.

⁴⁹ Tr. at 48.

⁵⁰ AE F (Certificates, various dates).

⁵¹ Tr. at 25-29.

⁵² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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. Positions designated as ADP-I and ADP-II are classified as “sensitive positions.”⁵³ “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.”⁵⁴ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.⁵⁵

When evaluating an applicant’s suitability for a public trust position, 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 a public trust position.

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 common sense 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.”⁵⁶ 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.⁵⁷

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

⁵³ Regulation ¶¶ C3.1.2.1.1.7, C3.1.2.1.2.3, and C3.1.2.2. See also Regulation app. 10, ¶ 10.2.

⁵⁴ Regulation ¶ C6.1.1.1.

⁵⁵ Regulation ¶ C8.2.1.

⁵⁶ “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).

⁵⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.⁵⁸ 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 trustworthiness 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 trustworthiness 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 trustworthiness concerns. Applicant's initial financial problems arose in 2010 and deteriorated, with some periods of stability, over the next few years. She had insufficient money to maintain all of her monthly payments. Various accounts, both SOR and non-SOR, became delinquent and were placed for collection, charged off, or sent to judgment. Some accounts were sold to debt purchasers. AG ¶¶ 19(a) and 19(c) have been established.

The guideline also includes examples of conditions that could mitigate trustworthiness 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 trustworthiness concerns may be mitigated where "the conditions that resulted in the financial problem were largely beyond the

⁵⁸ *Egan*, 484 U.S. at 531.

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."⁵⁹ In addition, AG ¶ 20(e) may apply if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the basis of the dispute or provides evidence of actions to resolve the issue."

AG ¶¶ 20(a) and 20(b) partially apply. AG ¶ 20(d) minimally applies. AG ¶¶ 20(c) and 20 (e) do not apply. The nature, frequency, and recency of Applicant's continuing financial difficulties since 2010 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." It is clear that Applicant's husband's illness and associated employment problems, along with his eventual demise, created a financial situation from which Applicant failed to recover. Because of the loss of her husband's income, Applicant was unable to maintain her accounts in a current status. She was forced to prioritize her accounts, and she chose to address necessities and living expenses first, with other accounts next. She received \$10,000 from his life insurance policy. Nevertheless, accounts became delinquent and were placed for collection, charged off, or went to judgment. Many were sold to debt purchasers.

For the vast majority of her delinquent accounts, both SOR and non-SOR, Applicant offered no documentary evidence of a good-faith effort to resolve them. She contended she paid a number of non-SOR accounts, but failed to submit any documentation such as receipts, cancelled checks, account records, etc., to support her contentions. As far as the SOR accounts, Applicant failed to take any positive action to resolve the vast majority of such accounts until February 1, 2016, nearly 30 months after she was interviewed by an OPM investigator and 5 months after the SOR was issued. She was finally motivated to take some action because she feared losing her job. On February 3, 2016, she paid various collection agents a total of \$192.99. She offered no documentation to support the existence of subsequent payments to any creditors, debt purchasers, or collection agents. Over the years, at least until February

⁵⁹ 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)).

2016, she failed to pay or resolve accounts with balances as low as \$84, \$110, \$220, and \$244.

It is apparent that several of the SOR accounts are duplicates. But, because of her inattention to her accounts, with few exceptions, Applicant was unaware of most of the duplications. Without even superficial examination of the accounts, Applicant merely disputed them because accounts with a particular identified creditor, debt purchaser, or collection agent were not recognized by her or were no longer listed in her most recent credit report. Merely disputing certain accounts, or claiming that they are duplicates, without substantially more, and without any substantiating documentation, is not sufficient to prove those disputes.

This is not a particularly difficult endeavor. There is a substantial risk when one accepts, at face value, the contents of a credit report without obtaining original source documentation to verify entries. Credit bureaus collect information from a variety of sources, including public records and "other sources," and it is these other unidentified sources that are the cause for concern. Likewise, when accounts are transferred, reassigned, sold, or merely churned, an individual's credit history can look worse than it really is. In this particular instance, the credit reports referred to numerous creditors for far fewer delinquent accounts. Because of abbreviated names and acronyms, as well as incomplete account numbers, many of those entries are garbled and redundant, and have inflated the financial concerns. Furthermore, the absence of account numbers or the identity of original creditors or subsequent debt purchasers in the SOR and only partial accounts numbers in the credit reports, and no apparent effort to analyze the potential duplications, makes my analysis that much more difficult. Applicant should have had greater familiarity with her various accounts, or an enhanced interest in following through on disputed issues.

Trustworthiness adjudications are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The adjudicative guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. In this instance, there is a verbal alleged plan to resolve financial problems, but there is little documentation to support the existence of such a plan.

In this instance, there are purported actions taken and some recent insignificant payments made to some creditors, but, with the exception of those insignificant payments, there is little documentation to support the existence of most of Applicant's claimed actions or payments. She failed to submit a personal financial statement, her proposed repayment plan related to her accounts with a repayment schedule, repayment arrangements supposedly entered into with various creditors, where the \$10,000 life insurance went, or proof of past payments. Applicant has not acted

responsibly by failing to timely address her delinquent accounts or the judgment filed against her.⁶⁰ Applicant's relative inaction under the circumstances confronting her cast substantial doubt on her current reliability, trustworthiness, and good judgment.⁶¹

There is no evidence to indicate that Applicant ever received financial counseling. It is not known what Applicant's financial resources may be, or if she has any funds remaining at the end of each month for discretionary use or savings. There is no evidence to reflect that Applicant's financial problems are under control. To the contrary, the overwhelming evidence leads to the conclusion that Applicant's financial problems are not under control.

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁶²

There is some evidence in favor of mitigating Applicant's conduct. She is a veteran. There is no evidence of misuse of information technology systems, mishandling protected information, or substance abuse. Applicant has worked with the same employer since August 1996. She is a loving, caring mother and daughter.

⁶⁰ "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.

⁶¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁶² 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).

Confronted with financial issues following her husband's health issues, his unemployment and his under-employment issues, and his eventual death, Applicant prioritized her accounts. With only a very modest annual income, she apparently made some efforts to resolve her delinquent accounts. Applicant did not conceal her financial difficulties when completing her e-QIP. Instead, she was honest and forthright, and she reported them. A number of the SOR accounts are duplicates, and some of the allegations are merely "snapshots" along the timeline of the same account.

The disqualifying evidence is more substantial and compelling. Applicant contended she paid a number of non-SOR accounts, but she failed to submit any documentation such as receipts, cancelled checks, account records, etc., to support her contentions. Applicant failed to take any positive action to resolve the vast majority of the SOR accounts until February 1, 2016, nearly 30 months after she was interviewed by an OPM investigator and 5 months after the SOR was issued. Because she feared the loss of her job, she finally took some positive action. On February 3, 2016, she paid various collection agents a total of \$192.99. She offered no documentation to support the existence of subsequent payments to any creditors, debt purchasers, or collection agents. Although she was urged to submit documentation to support her contentions that she had entered into a number of repayment agreements with her creditors and had made a number of payments to creditors and collection agencies, she failed to submit such materials for a majority of her accounts. She failed to specify how and to whom the \$10,000 life insurance policy proceeds were distributed. She failed to submit a personal financial statement to enable me to review her current financial status. She has not received any financial counseling. There are clear indications that Applicant's financial problems are no closer to becoming under control.

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

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.⁶³

Applicant has demonstrated a poor track record of debt reduction and elimination efforts during and after the illness and death of her husband. While she has spoken about having resolved non-SOR debts, she failed to submit documentation to support any such actions. She discussed repayment arrangements and payments to SOR-related creditors, but with the exception of payments totaling \$192.99 to various collection agents in February 2016, she again offered no documentation, even though she was exhorted to do so.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has failed to mitigate the trustworthiness concerns arising from her financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraphs 1.d. and 1.q.:	Against Applicant
Subparagraphs 1.e. and 1.p.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraphs 1.g. and 1.s.:	For Applicant
Subparagraphs 1.h. and 1.n.:	For Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant
Subparagraphs 1.l. and 1.u.:	For Applicant
Subparagraphs 1.m. and 1.x.:	Against Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraph 1.r.:	Against Applicant
Subparagraphs 1.t. and 1.v.:	Against Applicant
Subparagraph 1.w.:	Withdrawn - For Applicant
Subparagraph 1.y.:	Against Applicant

⁶³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the interests of national security to grant Applicant eligibility to occupy a public trust position to support a contract with DOD. Eligibility is denied.

ROBERT ROBINSON GALES
Administrative Judge