



**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. 15-00884

Appearances

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

For Applicant: *Pro se*

10/13/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the trustworthiness concerns regarding financial considerations and personal conduct. Eligibility to occupy a public trust position is granted.

Statement of the Case

On August 31, 2012, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On August 3, 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

¹ GE 1 (e-QIP, dated August 31, 2012).

Considerations) and Guideline E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to make 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 14, 2015. In a sworn statement, dated August 28, 2015, Applicant responded to all but one of the SOR allegations and requested a hearing before an administrative judge.² She supplemented her Answer by addressing the omitted personal conduct allegation on January 27, 2016.³ 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 3, 2016.

During the hearing, 5 Government exhibits (GE 1 through GE 5), 25 Applicant exhibits (AE A through AE Y), and 1 administrative exhibit were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on February 12, 2016. I kept the record open to enable Applicant to supplement it. She took advantage of that opportunity and timely submitted additional documents, which were marked and admitted as AE Z through AE AB, without objection. The record closed on February 23, 2016.

Findings of Fact

In her Answers to the SOR, Applicant admitted, with comments, all but two of the factual allegations pertaining to financial considerations (§§ 1.b. and 1.k.) of the SOR. She denied, with comments, the one factual allegation pertaining to personal conduct. Applicant's admissions and comments 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 34-year-old employee of a defense contractor. She has been a full-time claims processor, and later a customer service advocate, for a defense contractor since August 2011.⁴ She previously served in a variety of positions with other employers and temporary employment agencies since March 2002.⁵ She also went through several periods of unemployment: December 2002 until March 2003; April 2010 until June 2010; and November 2010 until December 2010.⁶ She is seeking to retain her eligibility for occupying a public trust position to support a contract with the DOD. She is a 2000 high

² Applicant's Answer to the SOR, dated August 28, 2015.

³ Applicant's Supplemental Answer to the SOR, dated January 27, 2016.

⁴ GE 1, *supra* note 1, at 11; Applicant's Answer to the SOR, *supra* note 2, at 2-3; Tr. at 45.

⁵ GE 1, *supra* note 1, at 12-21.

⁶ GE 1, *supra* note 1, at 13-21.

school graduate. She has never served with the U.S. military.⁷ She has never married and has no children.⁸

Financial Considerations⁹

When Applicant was in her early 20's, she had no debt or bills other than rent and utilities. She wanted to establish good credit, and following someone's suggestion that to do so she should obtain credit cards, she started with a secure credit card with a \$200 credit limit, and continued on from there. She was saving between \$1,000 and \$1,500 per month. Following her parents' guidance, her intentions were to never live above her means and always pay her bills on time. Things progressed smoothly until several factors, two of which were noble, disrupted her plans. At one point, her mother was diagnosed with cancer, so Applicant started giving her some financial assistance, including some mortgage payments, car payments, and a credit card for between a one and two-year period. At another point, Applicant's sister was going through a divorce, so Applicant financially assisted her and her two children.¹⁰

During the period August 2008 until September 2009, Applicant resided with her fiancé. His mother later joined them because of her own financial issues. They utilized her credit cards and she obtained a personal loan for "materialistic things" such as financing her fiancé's vehicle. They lived beyond their means without realizing that she was "overdoing it." The greater the credit card use, the higher her credit limits went.¹¹ At some point, Applicant's former fiancé stopped contributing to the bills. When they finally broke up, he promised to assist her in paying off her accounts by February 2013. He failed to do so.¹² Another factor with substantial negative financial consequences occurred in 2010 when she was laid off. When she obtained her new job, it came with a reduced annual salary of \$20,000 as well as increased commuting expenses. Her lost job was five minutes away from her residence, but the new job was 30 miles away.¹³

As a result of the combination of the above factors, although Applicant tried maintaining her accounts current as long as she could on her reduced salary, accounts started to become delinquent. Her former fiancé's promises to financially assist her fell

⁷ GE 1, *supra* note 1, at 21.

⁸ GE 1, *supra* note 1, at 23.

⁹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 21, 2012); GE 3 (Equifax Credit Report, dated January 5, 2015); GE 5 (Equifax Credit Report, dated September 24, 2015); Answer to the SOR, *supra* note 2; GE 2 (Personal Subject Interview, dated October 19, 2012). More recent information can be found in the exhibits furnished and individually identified.

¹⁰ Answer to the SOR, *supra* note 2, at 1-2; Tr. at 46-48.

¹¹ Tr. at 52, 55-56.

¹² GE 2, *supra* note 9, at 7-8.

¹³ Answer to the SOR, *supra* note 2, at 2.

through. Her mother's promises to financially assist her with one account eventually commenced, and she reduced the amount of rent Applicant was paying her to reside in the family residence. Nevertheless, accounts continued to become delinquent. Some were placed for collection, and two were charged off. Her fiancé's vehicle was repossessed.

In October 2012, Applicant was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). Applicant discussed a number of delinquent accounts and described what she referred to as her plan to resolve her debts, based on what she believed her former fiancé and her mother would do. Applicant acknowledged that her current financial situation was "unstable," and that she had insufficient funds to start making payments. However, she added that she intended to start possibly settling some accounts and setting up repayment arrangements by February 2013.¹⁴ While Applicant missed doing so by that date, it appears that within days of receiving her SOR in August 2015, she contacted several debt consolidation companies, but their suggestions would have required her to make a very large monthly payment, and that was something which she could not afford.¹⁵ Instead, Applicant prioritized her accounts and entered into repayment arrangements directly with a number of creditors or debt purchasers.

The SOR identified 12 purportedly continuing delinquent accounts, totaling approximately \$43,077, as reflected by the September 2012 credit report,¹⁶ the January 2015 credit report,¹⁷ and the September 2015 credit report.¹⁸ Those debts and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below:

SOR ¶ 1.a.: This is a bank loan used to pay off other debts with a high credit of \$7,580 and an unpaid balance of \$9,072 that was placed for collection in 2010 and sold to a debt purchaser.¹⁹ The account was originally set to be included in her proposed debt consolidation, but nothing initially took place until recently because it was in a lower tier of her list of priorities. She apparently contacted the debt purchaser, and she agreed to a repayment plan under which she has been making monthly payments of \$50.²⁰ The account is in the process of being resolved.

¹⁴ GE 2, *supra* note 9, at 3-8.

¹⁵ Tr. at 56-58.

¹⁶ GE 4, *supra* note 9.

¹⁷ GE 3, *supra* note 9.

¹⁸ GE 5, *supra* note 9.

¹⁹ GE 5, *supra* note 9, at 1.

²⁰ Tr. at 61-62; Answer to the SOR, *supra* note 2, at 1; AE AB (Monthly Budget, undated).

SOR ¶ 1.b.: This is a bank credit card (with an initial credit of \$200, which was eventually increased to \$7,500) with high credit of \$7,746 that was placed for collection and charged off.²¹ The creditor apparently issued a Form 1099-C, *Cancellation of Debt*, and the charged-off amount was reported to the Internal Revenue Service (IRS) as income. Her anticipated refund was applied by the IRS to her additional income tax liability, and she recently agreed to make monthly payments of \$25 to the creditor to cover any unpaid balance.²² The account has either been resolved or is in the process of being resolved.²³

SOR ¶ 1.c.: This is a bank credit card with a credit limit of \$5,000 and unpaid and past-due balance of approximately \$7,037 that was placed for collection and sold to a debt purchaser.²⁴ Applicant contacted the debt purchaser, and on August 24, 2015, she agreed to a repayment plan under which she has been making monthly payments of \$50.²⁵ The account is in the process of being resolved.

SOR ¶ 1.d.: This is an automobile loan on a car purchased by Applicant's former fiancé (using her credit because of his bad credit). Routine monthly payments were made for about one year until he stopped making them and their relationship dissolved. The account was placed for collection. The vehicle was repossessed, and \$12,817 was charged off, leaving an unpaid balance of \$6,665.²⁶ Applicant's former fiancé has continued to fail to make promised payments, and Applicant requested repayment terms from the collection agent consistent with her ability to pay. While the account remains in Applicant's second group of priorities, she recently agreed to make monthly payments of \$25.²⁷ The account is in the process of being resolved.

SOR ¶ 1.e.: This is a computer credit card account with a high credit of \$1,794 and unpaid and past-due balance of approximately \$3,119 that was placed for collection and sold to a debt purchaser.²⁸ Applicant contacted the debt purchaser, and on August 24,

²¹ GE 3, *supra* note 9, at 2.

²² Answer to the SOR, *supra* note 2, at 4; Tr. at 50; AE A (IRS Notice, dated March 9, 2015); AE B (IRS Notice, dated March 24, 2015); AE AB, *supra* note 20.

²³ It should be noted that GE 5, *supra* note 9, at 7, clearly indicates that the account had been paid and closed.

²⁴ GE 5, *supra* note 9, at 2; Answer to the SOR, *supra* note 2, at 5. The actual remaining balance was \$7,036.70.

²⁵ Answer to the SOR, *supra* note 2, at 5; AE M (Repayment Arrangement, dated August 24, 2015); AE V (Letter, dated January 6, 2016); Tr. at 62-63; AE AB, *supra* note 20.

²⁶ GE 5, *supra* note 9, at 4; Answer to the SOR, *supra* note 2, at 5.

²⁷ Answer to the SOR, *supra* note 2, at 5; Tr. at 63-64; AE AB, *supra* note 20.

²⁸ GE 5, *supra* note 9, at 3; Answer to the SOR, *supra* note 2, at 6.

2015, she agreed to a repayment plan under which she has been making monthly payments of \$25 to \$50.²⁹ The account is in the process of being resolved.

SOR ¶ 1.f.: This is a bank credit card account with a credit limit of \$2,100 and past-due balance of \$2,626 that was placed for collection and sold to a debt purchaser.³⁰ The unpaid and past-due balance was increased to approximately \$3,123.³¹ Applicant contacted the debt purchaser, and on August 24, 2015, she agreed to a repayment plan under which she has been making monthly payments of between \$15 and \$50.³² The account is in the process of being resolved.

SOR ¶ 1.g.: This is a lease for an apartment from which Applicant was evicted for failing to pay the rent for two months after she was laid off. The account, with a high credit of \$1,697 and a remaining unpaid balance of \$2,823, was placed for collection.³³ During her OPM interview, Applicant was under the impression that the collection agent for the account was the collection agent for a credit card account, and she claimed to have reached a settlement.³⁴ Her impression was incorrect. Applicant expressed some uncertainty regarding the account because she was unsure if the charges included carpet damage from the earlier apartment in the same complex that she shared with her former fiancé.³⁵ Applicant disputed the account, but failed to indicate the basis or result of her dispute. She recently agreed to make monthly payments of \$15.³⁶ The account is in the process of being resolved.

SOR ¶ 1.h.: This is a bank credit card account with a credit limit of \$900 and past-due and unpaid balance of \$1,327, that was placed for collection, charged off, and sold, in turn, to different debt purchasers.³⁷ She recently agreed to make monthly payments of \$15.³⁸ The account is in the process of being resolved.

SOR ¶ 1.i.: This is a bank credit card account with a credit limit of \$500, high credit of \$1,108, and a past-due balance of \$564, that was placed for collection and sold to a

²⁹ Answer to the SOR, *supra* note 2, at 6; AE O (Repayment Arrangement, dated August 24, 2015); AE T (Letter, dated January 6, 2016); Tr. at 65; AE AB, *supra* note 20.

³⁰ GE 4, *supra* note 9, at 6; Answer to the SOR, *supra* note 2, at 6.

³¹ GE 5, *supra* note 9, at 3.

³² Answer to the SOR, *supra* note 2, at 6; AE N (Repayment Arrangement, dated August 24, 2015); AE S (Letter, dated January 6, 2016); AE AB, *supra* note 20.

³³ GE 3, *supra* note 9, at 2; Answer to the SOR, *supra* note 2, at 7; GE 2, *supra* note 9, at 4; Tr. at 32-34.

³⁴ GE 2, *supra* note 9, at 7.

³⁵ Tr. at 32, 35.

³⁶ Answer to the SOR, *supra* note 2, at 5; Tr. at 63-64; AE AB, *supra* note 20; AE AB, *supra* note 20.

³⁷ GE 4, *supra* note 9, at 5; GE 5, *supra* note 9, at 4; Answer to the SOR, *supra* note 2, at 7.

³⁸ Answer to the SOR, *supra* note 2, at 5; Tr. at 63-64; AE AB, *supra* note 20; AE AB, *supra* note 20.

debt purchaser.³⁹ The unpaid and past-due balance was increased to approximately \$1,059.⁴⁰ Applicant contacted the debt purchaser, and on August 24, 2015, she agreed to a repayment plan under which she has been making monthly payments of between \$15 and \$50.⁴¹ The account is in the process of being resolved.

SOR ¶ 1.j.: This is a clothing store charge card account with a credit limit of \$430 and high credit of \$556 that was placed for collection and charged off in 2011.⁴² It was sold to a debt purchaser, and the unpaid and past-due balance was increased to \$662.⁴³ Applicant contacted the debt purchaser, and on August 24, 2015, and although she was offered a settlement of \$397.42, something she did not feel comfortable agreeing to, she agreed to a repayment plan under which she has been making monthly payments of between \$15 and \$50.⁴⁴ The account is in the process of being resolved.

SOR ¶ 1.k.: This is a telephone account with a high credit and unpaid balance of approximately \$250 that was placed for collection.⁴⁵ Applicant steadfastly and consistently disputed the account contending that she has had both a land line and a cell phone with the same company for a number of years and that both accounts are current.⁴⁶ Applicant contended that she called the creditor regarding the SOR account and the creditor was unable to locate any record of a delinquency.⁴⁷ She disputed the listing with TransUnion, and her most recent credit report no longer lists the purported delinquency.⁴⁸ Applicant's September 2015 Equifax credit report no longer includes the account.⁴⁹ Just to be safe, she recently agreed to make monthly payments of \$10 to cover any remaining unpaid balance.⁵⁰ The account has either been resolved or is in the process of being resolved.

³⁹ GE 4, *supra* note 9, at 6; Answer to the SOR, *supra* note 2, at 8.

⁴⁰ GE 5, *supra* note 9, at 3. The actual remaining balance was \$1,058.62.

⁴¹ Answer to the SOR, *supra* note 2, at 8; AE P (Repayment Arrangement, dated August 24, 2015); AE R (Letter, dated January 6, 2016); AE AB, *supra* note 20.

⁴² GE 4, *supra* note 9, at 9; Answer to the SOR, *supra* note 2, at 8.

⁴³ GE 5, *supra* note 9, at 3.

⁴⁴ Answer to the SOR, *supra* note 2, at 8; AE Q (Repayment Arrangement, dated August 24, 2015); AE U (Letter, dated January 6, 2016); AE AB, *supra* note 20.

⁴⁵ GE 4, *supra* note 9, at 12; GE 3, *supra* note 9, at 2.

⁴⁶ Answer to the SOR, *supra* note 2, at 9.

⁴⁷ Tr. at 67-68.

⁴⁸ Tr. at 68.

⁴⁹ GE 5, *supra* note 9.

⁵⁰ Answer to the SOR, *supra* note 2, at 5; Tr. at 63-64; AE AB, *supra* note 20; AE AB, *supra* note 20.

SOR ¶ 1.I.: This is a dental (referred to as a medical) account with a high credit and unpaid balance of \$201, that was placed for collection.⁵¹ Applicant stated that the professional dental services rendered cost her over \$5,000, and she was unaware that she still owed any remaining balance.⁵² She recently agreed to make monthly payments of \$10 to cover any remaining unpaid balance.⁵³ The account has either been resolved or is in the process of being resolved.

While Applicant has not received formal financial guidance from any professional source, she has been counseled by her pastor on issues such as making the right financial decisions, and paying off debts. She has been maintaining a spread sheet to keep track of her bills, and based on her assessment of the financial information, her monthly bills are essentially constant, enabling her to know when it is safe to enter into repayment arrangements with creditors of her delinquent accounts.⁵⁴ Applicant prepared two separate budgets. They both reflect a monthly net income is \$1,200. One budget reflects normal monthly expenses of \$850, and monthly debt payments of \$270, leaving a monthly remainder of \$20 available for saving or spending.⁵⁵ The other budget, reflecting the status as of February 2016, reflects monthly expenses and debt expenses totaling \$1,195, leaving a monthly remainder of \$5 available for saving or spending.⁵⁶ Applicant has no other outstanding debts. In the absence of any additional unidentified delinquencies, it appears that Applicant's financial problems are under control.

Personal Conduct

On August 31, 2012, when Applicant completed her e-QIP after working on it for several days, she “responded” to questions pertaining to her financial record. Several of those questions in Section 26 – Financial Record – asked if, in the past seven years she had: any possessions or property voluntarily or involuntarily repossessed or foreclosed; any bills or debts turned over to a collection agency; any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; been over 120 days delinquent on any debt not previously entered; or if she was currently over 120 days delinquent on any debt.⁵⁷ Applicant contended that she “distinctly remember[ed]” leaving the answers blank because she had so much debt she was overwhelmed by it. She denied entering the response “no” to those questions, and she claimed that the responses were apparently self-populated. She certified that the responses were “true, complete,

⁵¹ GE 4, *supra* note 9, at 11; GE 3, *supra* note 9, at 2; Answer to the SOR, *supra* note 2, at 9.

⁵² Tr. at 68-69.

⁵³ AE AB, *supra* note 20.

⁵⁴ Tr. at 70-72; AE AA (Expense Tracker, undated).

⁵⁵ AE AB, *supra* note 20.

⁵⁶ AE Z (Monthly Budget, dated February 2016); AE X (Water Utility Bill, dated December 15, 2015); AE Y (Electric Utility Bill, dated January 26, 2016).

⁵⁷ GE 1, *supra* note 1, at 32-33.

and correct” to the best of her knowledge and belief,⁵⁸ but the responses to those questions were, in fact, incorrect, for at that time, Applicant had a significant number of accounts that fell within the stated parameters.

On October 19, 2012 – less than two months after she completed her e-QIP – and before she was interviewed specifically about her finances, Applicant volunteered information to the OPM investigator about her defaulted loans, a voluntarily repossessed vehicle, suspended credit cards, eviction for failing to pay rent, accounts placed for collection, and accounts that were over 120 days delinquent. She explained that she failed to mark her answers to those questions because she was overwhelmed with all of her debts and did not know where to start or how to list her debts.⁵⁹

Character References

The state senator representing Applicant’s legislative district has known Applicant and her mother over an unspecified number of years. He has seen Applicant grow into a strong, independent young lady who learned to accept responsibilities during difficult times, and to flourish during these past years. Applicant works hard to achieve her goals. He considers her to be energetic, a team player, trustworthy, and a hard worker. He does not hesitate to support her.⁶⁰ A town councilman has known Applicant her entire life. She noted that Applicant serves as the chairperson of the pastor parish relations committee of their church on which the councilman serves. Applicant is very honest, trustworthy, willing to serve, and dedicated to getting things done.⁶¹ A county deputy sheriff has known Applicant for over five years, and he considers her to be very ambitious, independent, hard-working, trustworthy, and level-headed, with a courteous demeanor.⁶² Applicant’s former pastor has known Applicant since she was a toddler, and watched her develop into a responsible adult. He found her to be trustworthy, and noted that she is both the president of the church women, but also the financial secretary of the church.⁶³ Other community leaders and members, including the chair of the county board of education, a board member, a teacher, and other citizens, are equally effusive over Applicant’s honor, integrity, trustworthiness, dependability, and dedication.⁶⁴ Applicant’s mother explained Applicant’s life and financial issues, and she watched as Applicant turned her life around

⁵⁸ GE 1, *supra* note 1, at 35; Tr. at 74-79; Supplemental Answer to the SOR, *supra* note 3.

⁵⁹ GE 2, *supra* note 9, at 3.

⁶⁰ AE K (Character Reference, dated August 25, 2015).

⁶¹ AE I (Character Reference, dated August 25, 2015).

⁶² AE H (Character Reference, dated August 20, 2015).

⁶³ AE E (Character Reference, dated August 16, 2015).

⁶⁴ AE G (Character Reference, dated August 25, 2015); AE W (Character Reference, undated); AE F (Character Reference, dated August 25, 2015); AE L (Character Reference, dated August 25, 2015); AE J (Character Reference, dated August 25, 2015).

and accepted the challenge of paying off her debts. She and other community members support granting Applicant another chance to overcome her past financial issues.⁶⁵

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 [position of public trust].”⁶⁶ 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. Positions designated as ADP-I and ADP-II are classified as “sensitive positions.”⁶⁷ “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.”⁶⁸ DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.⁶⁹

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.”⁷⁰ The Government initially has the burden of producing evidence to establish

⁶⁵ AE D (Character Reference, dated August 27, 2015).

⁶⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶⁷ 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.

⁶⁸ Regulation ¶ C6.1.1.1.

⁶⁹ Regulation ¶ C8.2.1. It should be noted that a memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, *Adjudication of Trustworthiness Cases*, dated November 19, 2004, covers the handling of trustworthiness cases under the Directive. The memorandum directed the Defense Office of Hearings and Appeals (DOHA) to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

⁷⁰ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁷¹

A person who seeks access to sensitive 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 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.⁷² 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 [sensitive] 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. Also, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise trustworthiness concerns. Applicant's financial problems arose between 2008 and 2010 when several accounts started to become delinquent. Some of those problems arose because she was living beyond her means. Eventually, additional accounts became

⁷¹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁷² *Egan*, 484 U.S. at 531.

delinquent. Accounts were placed for collection. A vehicle was repossessed. 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 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.”⁷³

AG ¶¶ 20(c) and 20(d) apply. AG ¶¶ 20(a) and 20(b) partially apply. Applicant was making a good salary and saving substantial amounts before she and her fiancé started living beyond her means. The nature of Applicant’s multi-year period of continuing financial difficulties since 2008 and 2010 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” However, it appears that Applicant’s initial financial problems were caused by events that were both largely and minimally beyond her control: she was engaged to an individual who later turned out to be a scoundrel, a deadbeat, and untrustworthy when he added to her expenses, and then walked away from his financial responsibilities and ignored his promises to cover his share of their bills; she financially assisted her sick mother as well as her divorcing sister; she was laid off in 2010; and when she obtained another job, it was at a salary \$20,000 a year less than what she had been earning. With insufficient income to address her debts, she had to prioritize those debts and some accounts remained dormant.

Applicant eventually contacted her creditors to set up repayment plans and started making regular monthly payments. Aware of the Government’s trustworthiness concerns

⁷³ 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)).

over her finances, Applicant apparently scrapped her initial plan of prioritizing her accounts, and she is now making a variety of modest payments to most of her creditors.

Applicant estimated that she has a monthly remainder of between \$5 and \$20 available for saving or spending, especially now that she is making so many simultaneous payments to creditors. She keeps track of her expenses. She has been in the process of resolving or has already resolved all of her SOR-related debts. Once some debts are resolved, the money spent on those debts can be reapplied as increased payments to other debts. Other than those SOR-related debts, Applicant has no other outstanding debts. In the absence of any additional unidentified delinquencies, it appears that Applicant's financial problems are generally under control. Applicant's actions no longer cast doubt on her current reliability, trustworthiness, or good judgment.⁷⁴

Guideline E, Personal Conduct

The trustworthiness concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect [sensitive] information. Of special interest is any failure to provide truthful and candid answers during the [trustworthiness eligibility] process or any other failure to cooperate with the [trustworthiness eligibility] process.

The guideline notes a condition that could raise trustworthiness concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is

a deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

On August 31, 2012, when Applicant completed her e-QIP, she “responded” to questions pertaining to her financial record. Several of those questions in Section 26 – Financial Record – asked if, in the past seven years she had: any possessions or property voluntarily or involuntarily repossessed or foreclosed; any bills or debts turned over to a collection agency; any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; been over 120 days delinquent on any debt not previously entered; or if she was currently over 120 days delinquent on any debt. While the e-QIP reflects “no” answers to the questions, Applicant contended that she left the answer section blank because she was so overwhelmed by her debts. It is her position that the responses were self-populated. Nevertheless, regardless of how those answers were generated, Applicant certified that the responses were “true, complete, and correct” to the

⁷⁴ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

best of her knowledge and belief. The “no” answers were also incorrect, for at that time, there was a significant number of accounts that fell within the stated parameters.

Applicant’s response provides sufficient evidence to examine if her submission was a deliberate falsification, as alleged in the SOR, or merely an omission that was the result of oversight or misunderstanding of the true facts on her part. Proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the falsification or omission occurred. As an administrative judge, I must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning Appellant’s intent or state of mind at the time the alleged falsification or omission occurred.⁷⁵ I have considered the entire record, including Applicant’s reputation for honesty, reliability, and trustworthiness; her prompt, good-faith effort to correct the omission with the OPM investigator before Applicant was asked about or challenged regarding her finances; Applicant’s steadfast insistence that she had not answered the e-QIP questions, but that those responses were self-populated; and her denial that she had deliberately falsified, omitted, or concealed the true facts. I have concluded that her confusion on how to go about entering the correct financial data was not a deliberate action involving questionable judgment, lack of candor, dishonesty, or a conscious effort to conceal the reality of her financial situation. AG ¶ 16(a) has not been established.

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

⁷⁵ The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant’s intent or state of mind at the time the omission occurred.

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.⁷⁶

There is some evidence against mitigating Applicant's conduct. While residing with her fiancé she failed to exercise sufficient control over her expenses and spent beyond her means. While it did not immediately create financial difficulties, subsequent events made it impossible to maintain her various accounts in a current status. Accounts became delinquent and were placed for collection. A vehicle was repossessed.

The mitigating evidence is more substantial. There is no evidence of misuse of information technology systems, mishandling protected information, or substance abuse. She is active and highly thought of in her community. Applicant initially followed her parents' advice to never live above her means and always pay her bills on time. Things progressed smoothly until several factors essentially disrupted her plans: her mother was diagnosed with cancer, so Applicant started giving her some financial assistance, including some mortgage payments, car payments, and a credit card for between a one and two-year period; Applicant's sister was going through a divorce, so Applicant financial assisted her and her two children; Applicant and her fiancé utilized her credit cards and she financed his vehicle; they lived beyond their means without realizing that she was "overdoing it;" Applicant's former fiancé stopped contributing to the bills; when they broke up, he promised to assist her in paying off her accounts by February 2013, but he failed to do so; Applicant was laid off; and her new job came with a reduced annual salary of \$20,000 as well as increased commuting expenses.

Applicant eventually contacted her creditors to set up repayment plans and started making regular monthly payments. Aware of the Government's trustworthiness concerns over her finances, Applicant apparently scrapped her initial plan of prioritizing her accounts, and she is now making a variety of modest payments to most of her creditors. Applicant estimated that she has a monthly remainder of between \$5 and \$20 available for saving or spending, especially now that she is making so many simultaneous payments to creditors. She keeps track of her expenses. She has been in the process of resolving or has already resolved all of her SOR-related debts. Once some debts are resolved, the money spent on those debts can be reapplied as increased payments to other debts. Other than those SOR-related debts, Applicant has no other outstanding debts. In the absence of any additional unidentified delinquencies, it appears that Applicant's financial problems are generally under control. Applicant's actions no longer cast doubt on her current reliability, trustworthiness, or good judgment.

Applicant has re-embraced the paradigm of fiscal responsibility. The undisputed developed evidence enables me to conclude that there are clear indications that Applicant's financial problems are now generally under control.

⁷⁶ 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:

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.⁷⁷

Applicant has demonstrated a nascent, but so far good, track record of debt reduction and elimination efforts, limited only by her modest earnings. She has either resolved, or is in the process of resolving, all of her SOR-related debts. She keeps track of her expenses and maintains a budget. Nevertheless, because Applicant is currently in the process of resolving her remaining debts, this decision should serve as a warning that Applicant’s failure to continue her debt resolution efforts pertaining to those remaining accounts, or the actual accrual of new delinquent debts, will adversely affect her future eligibility for a position of public trust.⁷⁸

Overall, the evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has mitigated the trustworthiness concerns arising from her financial considerations and personal conduct. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

⁷⁷ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

⁷⁸ While this decision should serve as a warning to Applicant as security officials may continue to monitor his finances, this decision, including the warning, should not be interpreted as a conditional eligibility to hold a position of public trust to support a contract with DOD. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of a position of public trust now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security [or trustworthiness] significance of past conduct or circumstances in light of more recent conduct having negative security [or trustworthiness] significance.” Nevertheless, the Defense Office of Hearings and Appeals (DOHA) has no authority to attach limiting conditions, such as an interim, conditional, or probationary status, to an applicant’s eligibility for a position of public trust. See, e.g., ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006); ISCR Case No. 04-04302 at 5 (App. Bd. June 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).

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
Subparagraphs 1.a. through 1.l.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly 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 granted.

ROBERT ROBINSON GALES
Administrative Judge